

Re: Middleborough Public Schools [REDACTED] - Response to April 27, 2023 Letter

mfregault@middleboro.k12.ma.us Marcy Fregault

Friday, May 12, 2023 at 9:05:30 PM Eastern Daylight Time

To: ryoung@middleboro.k12.ma.us Richard Young

Hi Rich,

After reading the case cited in the letter, I would like to make it known that I oppose the current course of action by Carolyn Lyons in this matter. It puts the district and town at risk.

I am also requesting information prior to next week's meeting. I have them all numbered below. Please either provide me with the documents requested or provide answers to my questions prior to the next meeting.

I request the following information:

1. Copy of Carolyn Lyon's contract
2. Copy of Fee agreement with Stoneham, Chandler, and Miller LLP and current expenses occurred to date regarding this matter. I would also like to know if this is the same firm used for all district legal issues. If not, how was this firm vetted?
3. Copy of all expenses to date on the special police detail at School Street School in response to attention from this matter.
4. Who ultimately decides if we as a district choose to litigate a case? Is this decision solely up to Carolyn Lyons? It seems she holds all the power here and can lead our entire district down a costly path opening our entire town up to liability.
5. When will town counsel speak to us as a committee? We have the right to representation if/when we are named in a suit. I find it troubling we haven't been given the opportunity to have a discussion with legal representation yet.

Please provide me with the above mentioned information. I again would like to express my opposition to Carolyn's current course of action. This will be a major risk to our school district and our town. And given Carolyn Lyons doesn't live within the district, none of her decisions will affect her taxes or her children's education.

I also heard information that 2 other children wore the same shirt last Friday May 5th. Both were told/made to remove the shirt. One complied and one did not and was subject to in school suspension. Can you confirm if this was true? If so, why wasn't the committee informed of this? The decisions from administration have now possibly added 2 more students as plaintiffs if a lawsuit of filed. This is troubling.

On May 4, 2023, at 5:19 PM, Richard Young <ryoung@middleboro.k12.ma.us> wrote:

Marcy,

I did a quick Google search and found this piece from GLAD:

<https://www.glad.org/cases/foote-v-town-of-ludlow/#:~:text=A%20federal%20judge%20ruled%20in,affirm%20and%20support%20LGBTQ%2B%>

20students.&text=The%20school%20district's%20motion%20to,in%
20Springfield%20on%20October%202017.

Included in that article is the Judge's decision.

Rich

On Thu, May 4, 2023 at 5:09 PM Marcy Fregault <mfregault@middleboro.k12.ma.us>
wrote:

Hi Rich,

Is the ruling from Ludlow from a court case? If so, can you send me the copy of the
decision? I would like to read it.

Thanks,
Marcy

On May 4, 2023, at 4:58 PM, Richard Young
<ryoung@middleboro.k12.ma.us> wrote:

Marcy,

Thank you and I get what you are saying and appreciate your
comments. From my discussion with the attorneys, we are required to
follow the law and ensure a protected class is protected. I had several
questions with the attorneys and all of the answers went back to our
requirements under the law.

Recently, there was a ruling for the Ludlow School system that
emphasized the requirements of schools to protect those listed under
MA law as a protected class.

Feel free to have a conversation anytime. I think what might be the
best course of action is to try to set some time for a discussion with our
attorneys and allow all the members to ask their questions and listen to
the responses.

Thanks,
Rich

On Thu, May 4, 2023 at 4:44 PM Marcy Fregault
<mfregault@middleboro.k12.ma.us> wrote:

Hi Rich,

Thank you for forwarding the letter from the attorney. While I
understand the attorney's position, is this really in the best interest of
our entire district (and town)? This attorney's advice will lead to a
lawsuit and while she is confident the town will win, I do not share
her certainty.

Instead of digging in our heels, is there a better way to handle this? I don't think the scorched earth approach is a good idea. In an attempt to avoid a lawsuit, a spectacle of protests at Nichols Middle School, and a disruption to the education of our students' day, is there a middle path where cooler heads can prevail? This is very concerning to me.

This is not me agreeing with someone wearing this shirt or thinking it is good judgement. But that isn't the issue at stake here. There are a lot of things I don't personally agree with, but people have the legal rights to do things we don't always agree with. I feel a lawsuit that we could very well lose is not what is best for the students in our district.

Thanks,
Marcy

On May 4, 2023, at 3:29 PM, Richard Young
<ryoung@middleboro.k12.ma.us> wrote:

FYI

----- Forwarded message -----

From: **Rebecca Bryant** <RBryant@scmlip.com>
Date: Thu, May 4, 2023 at 2:04 PM
Subject: FW: Middleborough Public Schools, [REDACTED]
[REDACTED] - Response to April 27, 2023 Letter
To: Richard Young <ryoung@middleboro.k12.ma.us>, Carolyn Lyons <clyons@middleboro.k12.ma.us>

CONFIDENTIAL/ATTORNEY CLIENT PRIVILEGE

FYI—Sent today (see below).

Rebecca L. Bryant, Esq.
Stoneman, Chandler & Miller LLP
99 High Street
Boston, MA 02110
Phone: 617-542-6789, Ext. 315
Fax: 617-340-8587

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From: Garrett Gee <GGee@SCMLLP.COM>
Sent: Thursday, May 04, 2023 1:11 PM
To: sam@mfamily.org
Cc: Kay Hodge <KHodge@SCMLLP.COM>; Rebecca Bryant <RBryant@SCMLLP.COM>
Subject: Middleborough Public Schools [REDACTED]
- Response to April 27, 2023 Letter

Good Afternoon, Attorney Whiting:

Find attached Middleborough Public School's response to your April 27, 2023 letter regarding [REDACTED].

Kind Regards,

Garrett

Garrett A.D. Gee, Esq.

Stoneman, Chandler & Miller LLP

99 High Street

Boston, MA 02110

Work: (617) 542-6789

Cell: (740) 644-9406

Email: ggee@scmlp.com

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Fwd: NMS Issue

mfregault@middleboro.k12.ma.us Marcy Fregault
To: mfregault@hotmail.com Marcy

Monday, May 1, 2023 at 9:52:08 AM Eastern
Daylight Time

Begin forwarded message:

From: Marcy Fregault <mfregault@middleboro.k12.ma.us>
Date: March 24, 2023 at 6:58:32 PM EDT
To: Kevin Avitabile <kavltabile@middleboro.k12.ma.us>
Subject: Re: NMS Issue

Hi Kevin,

Thanks for the response. I never meant to imply this is a cut and dry issue. I understand its complexities. I just want a fair system enforced for all students. I truly appreciate you conversing with me. I hope we can continue to have this type of discourse around these topics. I foresee this happening again and I think it is important to continually keep the dialogue open about the best way to handle these situations as they arise.

I look forward to discussing this in more detail in person and hopefully crafting policies around what is best for all students.

As a hypothetical, I would like to know what (if any) action would have been taken if someone wore a shirt stating "there are 75 genders". Would the same reasonable forecast of a disturbance still apply? Would this hypothetical student be forced to remove the shirt or leave school? I think whatever the outcome is, it needs to be fair to all sides.

I would also like to know what basis did Mrs. Tucker have to conclude that there was a substantial risk for a serious disruption/disturbance in the school. I feel that needs to be adequately addressed and have policies around and parameters set. I would hope there was documentation made supporting her decision and what led her to come to her conclusion. Asking a student to leave school grounds and lose instructional time should be a last resort.

Right now, it seems that administration picks and chooses what to enforce from the dress code as it is currently written. In fact, a lot of policies seem to be hand picked on what to enforce at that school. I have two children at that school and it is alarming what continues to go on there on a daily basis.

And while I understand Melton v Young, wearing a confederate flag to public school during a time of extreme racial tension on the heels of segregation/integration doesn't seem to fit this scenario. I understand why that student lost his case. There definitely was a reasonable forecast of disturbance with that case. To my knowledge here, only a few students and teachers complained (and from the family's understanding it was the teacher to first complain and have an issue). Do we now allow a handful of complaints to dictate what someone can and cannot do at school?

Thanks,
Marcy

On Mar 24, 2023, at 1:23 PM, Kevin Avitabile <kavitabile@middleboro.k12.ma.us> wrote:

Hi Marcy,

Thanks for reaching back.

I would like to point out that *Tinker v Des Moines* case and Supreme Court also references that schools "do not have to wait for actual disruption if there is a "reasonable forecast of disturbance." An example of this is when the 6th U.S. Circuit court of appeals used this substantial disruption test in *Melton v Young* to rule that public schools officials did not violate the free speech rights of a student when they prohibited him from wearing a confederate flag jacket to school. The 6th circuit concluded that even if the display of the Confederate flag does not actually disrupt the learning environment, a school could reasonably forecast that displays of the flag would likely contribute to disruption in the future due to the "incendiary atmosphere then existing."

So while there is truth in your statement, the issue is not as clear as you described. I would agree this is a conversation that should continue on how we can best support a safe environment for all of our students.

Look forward to connecting when Carolyn gets back.

Kevin

On Fri, Mar 24, 2023 at 10:42 AM Marcy Fregault <mfregault@middleboro.k12.ma.us> wrote:

Hi Kevin,

Thank you for speaking to me yesterday. I still have grave concerns with the school's response to the child wearing "There are two genders" shirt. There is case law that protects this students right to free speech. I have attached a synopsis of the said case law.

In particular, the case specifically states:
Students don't shed their constitutional rights at the schoolhouse gate," the justices wrote, and because the expression was quiet and passive, it did not interfere with other students' learning environment. Student speech is protected unless it substantially disrupts or interferes with school operations.

People being offended by a shirt is not a substantial disruption. As per Heckler's Veto, it occurs when the government accepts restrictions on speech because of the anticipated or actual reactions of the opponents of that speech. Heckler's vetos have been typically struck down in court.

I believe the school and Mrs. Tucker violated this student's rights. The parents said Mrs. Tucker was very careful with her wording and claimed several times that Liam's shirt was "disruptive to the learning of others". I also don't think protected class comes into play into this scenario as no one from a protected class was suffering from discrimination at the hands of the school. [REDACTED] was basically given no choice: remove the shirt to stay at school or go home.

I would like to address this more in depth with Carolyn and you once Carolyn returns. I think this needs to be addressed immediately and policies and/or training put into place to assure things like this don't happen in the future.

Thanks,

Marcy

<https://www.aclu.org/other/tinker-v-des-moines-landmark-supreme-court-ruling-behalf-student-expression>

On Mar 23, 2023, at 5:48 PM, Kevin Avitabile <kavitabile@middleboro.k12.ma.us> wrote:

Hi Marcy
Do you have a number to reach you?
Kevin

Kevin Avitabile LICSW
Middleboro Public Schools
Director of Student Services
Kavitabile@middleboro.k12.ma.us

On Mar 23, 2023, at 5:44 PM, Marcy Fregault <mfregault@middleboro.k12.ma.us> wrote:

Hi Kevin,

In Carolyn's absence, I am wondering if you could speak to me regarding an issue that occurred at Nichols Middle School on 3/21. I had parents contact me and they are beyond upset with what transpired with their child.

Thanks,

Marcy

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 MPS Logo

Kevin Avitabile, LICSW

From: Marcy [REDACTED]
Sent: Friday, March 24, 2023 8:28 AM
To: [REDACTED]
Subject: Re: Incident at NMS

Hi,

I just wanted you to know that I spoke with Kevin Avitable last night. He is the director of Student Services and part of Carolyn Lyon's executive team. They are filling in for her while she is out. He said you can contact him to speak to him. I can pass along his number if you would like to speak with him.

I would suggest you wait and speak to Carolyn Lyons directly once she is back. While Kevin is extremely nice, he gave some information that was just incorrect. Being that Carolyn is an attorney, I would want to speak to her directly. I plan to talk to her about this once she is back.

Kevin did state that [REDACTED] will have no disciplinary measure on his record. This was recorded as a parent dismissal from school. I tend to also believe they did this to protect themselves as he did state [REDACTED] was not removed from school. I told him he was given basically no choice: remove the shirt or go home.

I have attached information regarding a case law that protects a student's right to freedom of speech in school.

I hope this helps and I will update more once I have more information.

Thanks,
Marcy

<https://www.aclu.org/other/tinker-v-des-moines-landmark-supreme-court-ruling-behalf-student-expression>

<https://www.aclu.org/know-your-rights/students-rights#do-i-have-first-amendment-rights-in-school>

On Mar 23, 2023, at 4:21 PM, [REDACTED] wrote:

I will most certainly do that. Thank you again. You are earning me vote for sure.

Sent from my iPhone

On Mar 23, 2023, at 3:43 PM, Marcy [REDACTED]
<[REDACTED]> wrote:

Hi,

I looked up the dress code and I don't see where he would have violated anything. Unless they are going to say it was "hate speech". They also don't follow the rest of the dress code in that school as it is written.

I have a huge problem with Mrs. Tucker singling out [REDACTED] and basically saying his view point is unacceptable to the community standards. She made herself the arbiter of community standards. I am not sure where she gets the power to make that determination.

I would suggest you reach out to Carolyn Lyons and request a phone call or meeting. Carolyn Lyons is also an attorney and she has to understand the legal implications of administrations handling of this situation. I will also request to meet and talk with her.

You can come to the next school committee meeting and speak at public comment. I have to warn you that no one is obligated to answer you or reply to you publicly. But at the very least, you get this out in the open. We don't have a set date yet for our next meeting. I will keep you updated once I receive the next meeting date.

And I agree, there are some bigger issues here.

Thank you again for all of your time and information.

Marcy

On Mar 23, 2023, at 12:49 PM,

[REDACTED] wrote:

Thank you for getting back to me Marcy. Mrs. Tucker did not reference any dress code violation or policy that [REDACTED] broke. I requested a copy of the student handbook and the secretary printed it up for us.

Mrs. Tucker's concern seemed to simply be the "disruption" of other students learning. She mentioned how we were "now disrupting" [REDACTED] learning too.

I don't think sitting down with Mrs. Tucker will bring us any answers since most of her comments centered around the blanket answer of "being disruptive to learning".

She assured [REDACTED] that he was not in trouble. That she supported him wearing what he wants to outside of school. She was very careful in her wording.

I don't know who the counselor was and didn't think to ask. I was actually more bothered by the fact that [REDACTED] was pulled out of class and made to sit down with two adults before a phone call was made to his father.

[REDACTED] conducted himself in a calm respectful manners and Mrs. Tucker complimented him on that a couple of times. [REDACTED] comment when we arrived was, I didn't think this would be such a big deal. There were no negative comments made to him by other students. In fact just the opposite, many kids were supportive.

Rumor quickly got around that he had been suspended. He let others know that he had not been suspended and would be back at school on Wednesday.

I'm not usually one to speak up but if my 12 year old stepson can stand strong under the pressure of two adults asking him to remove his shirt I think I might need to revisit that. Perhaps I need to attend and speak at a school committee meeting. Is that something you can help me to arrange.

[REDACTED] and I would certainly appreciate you meeting with the superintendent and would have no problem attending any meeting you would like us to be at.

I too would like to know what teachers are so sensitive that they needed to have this child removed from school. There might be some bigger issues here.

Thank you again and I welcome your help in any way that you can.

[REDACTED]

Sent from my iPhone

On Mar 23, 2023, at
11:43 AM, Marcy

[REDACTED]
<[REDACTED]>
m> wrote:

Hello [REDACTED]

First and foremost, I am sorry this happened to your step son. This matter is very concerning to me and I truly hope your step son is ok.

Did Mrs. Tucker site any dress code violation? Did she provide you with any policy or rule that she used to make her decision? Was any information given to you other than his shirt made people uncomfortable? This will be extremely helpful if she did provide anything. If this was due to "mob rule", there is a huge problem with the way this was handled. The fact he was removed from school and lost instructional time over his shirt is extremely concerning.

If I were you, I would ask to have a sit down meeting with her. Your concerns and questions are extremely valid. I will be requesting a meeting with the Superintendent once she is back to go over this situation. There is very limited information that the school will give me since it is not my child involved.

Did she provide you with the names of any staff who were "uncomfortable" with his shirt? Did he face any other disciplinary action other than being told he needed to leave school on 3/21? Who was the school counselor to sit down and talk to him? What were their concerns that they expressed to him?

And lastly (I hate to even ask this but I like to have all my ducks in a row), how was your stepson's demeanor when they asked him to remove the shirt?

I thank you for your time and email. I would like to address this further with Carolyn Lyons if you don't mind.

Thank you,
Marcy

On Mar
23,
2023,
at
11:17
AM,
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
wrote:

Good morning Marcy,
Thank you for reaching out with your personal email address regarding my stepsons incident at school on Tuesday 3/21.

Shortly after 10:00 my husband received a phone call from acting principal, Heather Tucker explaining that she had removed [REDACTED] from gym class. She went on to say that [REDACTED] shirt was "really upsetting to other people both staff and students" and they were "having trouble focusing".

Apparently, after removing [REDACTED] from class she and a school counselor sat down

with him to explain their concerns and asked him to take off the shirt.

Ms Tucker explained that she could not return [REDACTED] to class unless he removed the shirt.

The shirt [REDACTED] chose to wear to school on Tuesday simply stated "There are only two genders".

[REDACTED] father and I chose to support [REDACTED] in his decision to not remove the shirt and went to pick him up. When we arrived at the school [REDACTED] was sitting in the main office waiting for us. I asked Ms Tucker how many people had complained. She stated that several students had come down to the office to complain.

In her phone call conversation she clearly mentioned that both students and staff had complained.

My husband [REDACTED] and I are not on any social media least of all Facebook. From what I hear this has become a topic of conversation. One person even saying that we are planning a "protest". We are supporting our son, not trying to turn this into something more. The

handling of this matter does raise some questions but that can be a discussion for another day.

We would like to know how this incident is recorded, if at all, in his record.

How was the dismissal recorded.

Was this considered a disciplinary action.

██████ is a kind, quiet, honor roll student who has his own thoughts and simply wished to express himself as many others do. How his T-shirt could be considered so disruptive that he needed to be pulled out of class I don't know.

We would be interested in hearing your feedback on this situation.

Thank you,

████████████████████

Sent from my iPhone