

August 8, 2012

Mr. Eric Spencer
Nathan Hale-Ray High School
15 School Drive, P.O. Box 404
Moodus, CT 06469

*Sent via Facsimile and
USPS First Class Mail*

Re: Sara Dickinson

Dear Mr. Spencer,

We are writing on behalf of senior Sara Dickinson and her parents. Sara comes from a family with a history of breast cancer, and habitually wears a breast cancer awareness bracelet that says "I ♥ Boobies (keep a breast)" to express her support for breast cancer patients and to raise breast cancer awareness. In her sophomore year Principal Eric Spencer announced that students would no longer be permitted to wear these bracelets. Sara briefly stopped wearing her bracelet, and then resumed wearing it to show her support for breast cancer awareness and survivors when her friend's mother was diagnosed with breast cancer. Since then, school officials have confiscated her bracelet on two occasions, and threatened her with detention if she refused to remove it. More recently, Sara states that school officials have threatened her with an injunction to force her to stop wearing the bracelet.

As the Supreme Court explained in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), students do not forfeit their free speech rights when they walk through the school doors. School officials may only forbid student speech when it threatens to "materially or substantially interfere with...the operations of the school" under *Tinker*, or if it contains the sort of "vulgar and lewd speech" that would "undermine the school's basic educational mission" under *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986). Sara's bracelet does neither.

In a recent Pennsylvania case, *H. v Easton Area School Dist.*, 827 F.Supp.2d. 392 (E.D. PA 2011), middle school authorities took issue with students wearing bracelets reading "I ♥ Boobies (keep a breast)." The school officials issued an announcement that students were not permitted to wear bracelets with the word "boobies" on them, based on their understanding that the word "boobies" was vulgar.

The Easton court ruled that this ban was unconstitutional under *Tinker* and *Fraser*. In doing so, the court distinguished the language on the bracelets at issue from the language at issue in the Supreme Court case of *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986), which permitted the school administrators to punish a student who gave a speech in a school assembly referring to his candidate for class office "in terms of an elaborate,

graphic and explicit sexual metaphor” without having to meet the Tinker disruption standard. The Easton court noted that while Fraser’s standard is more permissive than that of Tinker, it only applies to speech which is lewd, vulgar or sexually offensive. The court concluded that the phrase “I ♥ Boobies” in a breast cancer awareness bracelet does not fit into any of these categories and so is protected speech under the First Amendment.

In order to regulate non-vulgar student speech, school officials must show that the speech is likely to materially and substantially disrupt school activities under Tinker. The Easton court concluded that H’s bracelet did not present the risk of any such disruption. H’s bracelet was protected, and so is Sara’s.

In event of litigation, the school district, if unsuccessful, could be liable for plaintiff’s damages and attorneys’ fees. In addition, implicated school officials could forfeit their qualified immunity and become personally liable, for damages and attorneys’ fees, if they violated clearly established constitutional rules of which they ought to have known. E.g., *Doninger v. Niehoff*, 642 F.3d (2d Cir. 2011). They could also be assessed punitive damages if a court were to find that they had acted with “reckless or callous indifference” to such rules. *Smith v. Wade*, 461 U.S. 30, 56 (1983).

In light of these well-settled doctrines, we respectfully request your written assurance that neither Sara Dickinson, nor other Nathan Hale-Ray High School students, will be forbidden hereafter to wear the bracelet at issue, or similar bracelets that likewise do not contain vulgar or lewd speech. In requesting such assurance, we acknowledge the school’s power to protect itself and its students to the full extent permitted by Tinker, Fraser, Easton and kindred decisions.

If you or school counsel would like to discuss this matter further, please do not hesitate to call upon us.

Yours truly,



Sandra Staub
Legal Director

Martin B. Margulies
Cooperating Attorney

SJS/jjs