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### By Electronic and First-Class Mail

125 N. Stephen H. Guthrie, Superintendent  
Carroll County Public Schools  
Court Street  
Westminster, Maryland 21157

Re: Confederate Battle Flags

Dear Mr. Guthrie:

You have asked for research and guidance on the issue of whether revising the Carroll County Public Schools policies to include a ban on clothing that displays the Confederate battle flag and displaying the Confederate battle flag on student vehicles in school parking lots would be a permissible limit on student expression without violating the First Amendment. As will be discussed at length below, although the United States Court of Appeals for the Fourth Circuit and courts in other jurisdictions have upheld bans on Confederate flag attire in schools, the analysis depends on whether school officials can meet the standard set forth in *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 509 (1969) by demonstrating facts upon which school authorities may reasonably forecast that the wearing of such items would "substantially interfere with the work of the school or impinge upon the rights of other students."

Under this "substantial disruption" standard, if school officials can demonstrate either that such an interference has occurred or can reasonably forecast that such an interference is likely to occur as a result of the presence of Confederate battle flag symbols in the schools, then a prohibition of such symbols will likely be sustained. See, e.g., *Hardwick ex rel. Hardwick v.*

*Heyward*, 711 F.3d 426, 432 (4th Cir. 2013) (upholding the ban of Confederate battle flag symbols in a South Carolina school district). On the other hand, if there is insufficient evidence that the presence of such symbols in the schools have or would either “substantially interfere with the work of the school or impinge upon the rights of other students,” such a ban would likely not be sustained. *See, e.g., Castorina ex rel. Rewt v. Madison County School Bd.* (6th Cir. 2000) (remanding case for determination of whether there was evidence of substantial disruption). Accordingly, these cases tend to be fact specific. If school officials can reasonably forecast that the Confederate battle flag symbols will either substantially interfere with the work of the schools or collide “with the rights of other students to be secure and to be let alone,” 393 U.S. at 508, then a prohibition on the Confederate battle flag will likely prevail, as in the *Hardwick* case.

Among the things that the Board will need to consider is the history of racial tension in Carroll County generally and in the schools, the statements of students, parents, and employees complaining of a racially hostile environment, and the considerable difficulty in attracting, hiring and retaining minority teachers and other employees. Ultimately, the Board will need to be prepared to provide evidence of such factors as support for a reasonable forecast that the presence of the Confederate battle flag symbol on student attire will meet the substantial disruption standard by either interfering with the work of the schools or impinging upon the rights of other students. With regard to the display of Confederate battle flags on vehicles in student parking lots, the law is less settled. However, at least one jurisdiction has upheld a ban of the Confederate battle flag on school property when the student conduct at issue included driving a car with a Confederate battle flag onto a school parking lot. Additionally, other school districts across the country are imposing similar bans.

### **I. Current CCPS Dress Code**

The Carroll County Public Schools dress code currently reads, in pertinent part, “Clothing shall not convey symbols or messages generally accepted to promote intolerance, hate, racial slurs, or sexual harassment.” *See* Carroll County Public Schools Student Handbook, 2017/2018, available at: <https://www.carrollk12.org/about/Documents/studenthandbook.pdf>. There is no explicit ban on wearing clothing that displays the Confederate battle flag. At an August 2015 Board meeting, in response to a Board member’s question as to whether CCPS would prohibit the display of the Confederate battle flag in schools, Superintendent Guthrie confirmed that displaying the flag would need to cause a disruption, and that he could not “outright ban symbols.” *See Carroll Schools Revise Student Dress Code*, THE CARROLL COUNTY TIMES (Aug. 22 2015), <http://www.carrollcountytimes.com/news/local/ph-cc-dress-code-20150822-story.html>. Yet, since that time, recent hostile events such as occurred in Charlottesville, Virginia immediately preceding the current school year, and increased concerns expressed by CCPS students, parents, and faculty alike have caused a re-examination of whether the continued appearance of Confederate battle flags in the Carroll County Public Schools either substantially interferes with the work of the schools, impinges on the rights of students, or both. *See Carroll County Public Schools discusses possibility of banning Confederate flag items in schools*, THE CARROLL COUNTY TIMES (Jan. 10, 2018),

<http://www.carrollcountytimes.com/news/education/cc-boe-january-2017-story.html>.

It appears that some public school systems both locally and out of state have implemented dress codes specifically banning clothing that displays the Confederate battle flag. Although most Maryland school systems do not *specifically* ban the Confederate battle flag, many nonetheless prohibit students from wearing such symbols. Talbot County Public Schools recently amended its dress code to include as prohibited attire "Clothing that demeans or promotes sexual harassment or hatred toward an identifiable person or group based on a person's race, color, religion, ethnicity, national origin, ancestry, gender, sexual orientation or disability are not permitted. This includes, but is not limited to, clothing that depicts the Confederate flag or swastikas." See Talbot County Public Schools Student Dress Code – AR, rev. 11/15/2017, available at [http://www.tcps.k12.md.us/application/files/7715/1094/9762/10.15-AR\\_Student\\_Dress\\_Code.pdf](http://www.tcps.k12.md.us/application/files/7715/1094/9762/10.15-AR_Student_Dress_Code.pdf).

Clothing depicting images of the Confederate battle flag has also been banned in multiple school districts across the nation, including the Pennsylvania Plum Borough School District, the California Orange County School District, the North Carolina Durham County and Orange County School Districts, and at least one high school in Indiana. See *Freedom of Speech? Why Some Schools Treat the Confederate Flag Like the Swastika*, NEWSWEEK (Aug 21 2017), <http://www.newsweek.com/confederate-flag-dress-code-charlottesville-651940>; *Indiana School Bans Confederate Symbols After Students Wear Them 2 Days in a Row*, USA TODAY (Sep 6 2017), <https://www.usatoday.com/story/news/nation-now/2017/09/06/indiana-school-bans-confederate-symbols/636529001>; *Some North Carolina public schools ban Confederate flag clothing*, THE HILL (Aug 25 2017), <http://thehill.com/homenews/347981-north-carolina-public-school-system-bans-confederate-flag>. In addition, as noted earlier and as discussed further below, the Fourth Circuit's decision in *Hardwick* upheld a South Carolina school district's prohibition against the wearing of a variety of Confederate flag attire.

## **II. Fourth Circuit Case Law Applying the *Tinker* Standard to Bans of Confederate Flag Clothing in Schools**

In *Hardwick*, the Fourth Circuit considered whether the Latta, South Carolina school district's policy of prohibiting students from wearing clothing displaying various Confederate flag attire was a constitutional limit on student expression. *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 432 (4th Cir. 2013). The dress codes at issue did not explicitly ban Confederate flags but stated that student dress must not "distract others, interfere with the instructional programs, or otherwise cause disruption." *Id.* at 430. The administrators of those schools required students wearing Confederate flag clothing to change or cover it. *Id.* at 431. The Fourth Circuit concluded that the school officials' refusal to allow students to wear Confederate flag clothing to school did not violate the First Amendment. *Id.* at 440. In so holding, the court cited to the past and current racial tensions which led to school officials' reasonable belief that Confederate flag clothing would materially and substantially disrupt school operations:

The record contains ample evidence from which the school officials could reasonably forecast that all of these Confederate flag shirts “would materially and substantially disrupt the work and discipline of the school.” *Tinker*, 393 U.S. at 513, 89 S.Ct. 733. Latta is a small Southern town in which whites and African-Americans were segregated, including in school, for more than a century. When the schools were finally integrated in the 1970–71 school year, the presence of racial tension was understandable. Over the past four decades, this tension has diminished, but it has not completely disappeared, as numerous incidents illustrate.

*Id.* at 438. The Fourth Circuit also noted that courts may consider incidents of racial tension not specifically involving the Confederate flag, incidents that occurred more than thirty years before, and incidents occurring off-campus. *Id.* at 438–39. *See also, West v. Derby Unified Sch. Dist. No. 260*, 206 F.3d 1358, 1362 (10th Cir. 2000) (considering off-school incidents when determining whether school officials could reasonably forecast that the Confederate flag would cause a substantial disruption at school); *Defoe ex rel. Defoe v. Spiva*, 625 F.3d 324, 335 (6th Cir. 2010) (“*Tinker* does not require that displays of the Confederate flag *in fact* cause substantial disruption or interference, but rather that school officials reasonably *forecasted* that such displays could cause substantial disruption or materially interfere with the learning environment”).<sup>1</sup>

In responding to the student’s argument that her specific attire did not cause a substantial disruption, the Fourth Circuit responded that her argument missed the point:

Even assuming that Candice’s shirts never caused a disruption, her argument misses the mark. That her shirts never caused a disruption is not the issue; rather, the issue is whether school officials could reasonably forecast a disruption because of her shirts. *See Tinker*, 393 U.S. at 513–14, 89 S.Ct. 733. As we have noted, “a public school has the power to act to prevent problems before they occur, and the school is not limited to prohibiting and punishing conduct only after it has caused a disturbance.” *Newsom ex rel. Newsom*, 354 F.3d at 259 n. 7. We have already concluded that the school officials met their burden of showing that they could predict that a substantial disruption might occur.

*Id.* at 439.

Additionally, a student’s intent in wearing a Confederate flag is irrelevant; whether it is intended to be a symbol of racism or of “heritage,” the inquiry is whether *school officials* could

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<sup>1</sup> Similarly, as the United States District Court for the District of South Carolina reasoned in *Phillips v. Anderson Cty. Sch. Dist. Five*, 987 F. Supp. 488, 493 (D.S.C. 1997), a student’s “right to wear the Confederate Flag must yield to the school’s interest in affording his classmates an educational environment conducive to learning and, as much as possible, free from disruptions and distractions.”

reasonably forecast that Confederate flag clothing would cause a material disruption. On that point, the Fourth Circuit reasoned that “the proper focus is whether school officials could predict that the Confederate flag shirts would cause a disruption. *See Tinker*, 393 U.S. at 513–14, 89 S.Ct. 733; *see also B. W.A. v. Farmington R-7 Sch. Dist.*, 508 F.Supp.2d 740, 749 (E.D.Mo.2007) (“[T]he plaintiff’s interpretation of the Confederate flag’s meaning is largely irrelevant because courts recognize that it is racially divisive in nature.” (citing *Briggs v. Mississippi*, 331 F.3d 499, 506 (5th Cir.2003))).” 711 F.3d at 439–40.

The Fourth Circuit further reasoned that determination of whether the forecast of disruption is reasonable is one that should be made by school officials. “Because school officials are far more intimately involved with running schools than federal courts are, “[i]t is axiomatic that federal courts should not lightly interfere with the day-to-day operation of schools.” 711 F.3d at 440, *citing Augustus v. Sch. Bd. of Escambia Cnty., Fla.*, 507 F.2d 152, 155 (5th Cir.1975).

### III. Confederate Flag Clothing Bans In Other Circuits

There have been multiple other jurisdictions which have held that bans of Confederate flag displays are constitutional limitations on student speech. *See, e.g., Melton v. Young*, 465 F.2d 1332 (6th Cir.1972))(upholding suspension for wearing a jacket with a Confederate flag patch when four-year period preceding incident was rife with racial tension and school was newly integrated); *West v. Derby Unified School District No.260*, 206 F.3d 1358 (10th Cir.2000)(upholding suspension for violating “Racial Harassment and Intimidation” policy for drawing a picture of a Confederate flag during class); *Defoe ex rel. Defoe v. Spiva*, 625 F.3d 324, 336 (6th Cir. 2010)(holding that school officials reasonably predicted that permitting displays of the Confederate flag would result in disruption based on “racial violence, tension, and threats” in the schools and because the Confederate flag “is a controversial racial and political symbol”)(internal citations omitted); *A.M. ex rel. McAllum v. Cash*, 585 F.3d 214, 223 (5th Cir.2009)(holding that the inflammatory meaning commonly associated with the Confederate flag as well as showing of past racial tensions demonstrated that school officials reasonably predicted displaying the Confederate flag may cause substantial disruption); *B.W.A. v. Farmington R-7 Sch. Dist.*, 554 F.3d 734, 742 (8th Cir. 2009)(holding that school officials could reasonably have determined that displays of the Confederate flag could have caused disruption based on evidence of “likely racially-motivated violence, racial tension, and other altercations directly related to adverse race relations in the community and the school”); *Scott v. Sch. Bd. of Alachua Cty.*, 324 F.3d 1246, 1249 (11th Cir. 2003)(reasoning that the “Court finds that the ban on the display of Confederate symbols was not unconstitutional” because “School officials presented evidence of racial tensions existing at the school and provided testimony regarding fights which appeared to be racially based in the months leading up to the actions underlying this case”).

#### IV. Application of *Tinker* and *Hardwick* in the Carroll County Public Schools

In light of the Fourth Circuit decision in *Hardwick*, the Board will need to meet the *Tinker* standard in order to justify an explicit ban on Confederate battle flag symbols on student attire and in student parking lots. As discussed above, courts have previously found substantial disruption to be reasonably forecast upon a showing of prior racially-charged situations. See *Hardwick*, 711 F.3d at 432–33 (holding that the school system met the *Tinker* standard upon presenting evidence that the town had been segregated for generations, that there was a continued “underlying, mostly unspoken, prejudice” between the town’s white and African-American students, a student driving a truck with the Confederate battle flag through a school parking lot “caused commotion” in the early 1990s, and two students burned down an African-American church in the area in the mid-1990s).<sup>2</sup>

Although every school district across the country has unique characteristics, there are certain similarities between Carroll County and the community at issue in *Hardwick*. As in *Hardwick*, the Carroll County Public Schools were subject to *de jure* segregation until the Supreme Court’s decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). Even after that landmark decision, the schools remained largely segregated until 1964-1965.<sup>3</sup> In the not too distant past, Ku Klux Klan activity was a notorious, if not uncommon, occurrence in Carroll County; disdained by most, yet not hard to find.<sup>4</sup> In recent years, a Board member resigned after

<sup>2</sup> See also *Defoe ex rel. Defoe v. Spiva*, 625 F.3d 324, 334 (6th Cir. 2010) (holding that “uncontested evidence” of racial violence at a school included African American students being called racial epithets on the school buses and in school, and transferring schools based on fear of white students; physical altercations resulting from racial jokes and students singing racial songs; and “difficulty recruiting minorities to ACCTC because potential minority recruits do not want to attend ACCTC due to racial tensions”); *West v. Derby Unified Sch. Dist. No. 260*, 206 F.3d 1358, 1366 (10th Cir. 2000) (agreeing with school officials that there was evidence to reasonably conclude the display of the Confederate flag could lead to material disruption when there were hostile confrontations between white and African-American students and a fight at a football game, and noting that “the fact that a full-fledged brawl had not yet broken out over the Confederate flag does not mean that the district was required to sit and wait for one”); *Phillips v. Anderson Cty. Sch. Dist. Five*, 987 F. Supp. 488, 490–91 (D.S.C. 1997) (holding that reasonable belief in potential for disruption was based on past incidents including a student wearing a Confederate flag saying he “disliked black people” and getting into a fight with an African-American student later that year across the street from the school; that same white student bringing a razor blade to school; students getting into an argument over a white student wearing a Confederate flag bandana; and threats of violence and verbal altercations). But see *Bragg v. Swanson*, 371 F. Supp. 2d 814, 823 (S.D.W. Va. 2005) (noting prior to the *Hardwick* decision that the display of the Confederate flag was not per se and patently offensive because of the “comparatively benign history” in that community).

<sup>3</sup> See *History of Integration within Carroll County Public Schools Extracted from Official Board Minutes*, Unpublished Compilation by Becky Herman, Office Intern, and Teresa Richards, Executive Assistant to Superintendent Charles I. Ecker (2004) (noting, for example, Carroll’s practice in the late 1950’s of allowing minority students one week in June to apply for a transfer to a school otherwise reserved only to white students, and the practice in the early 1960’s of attempting to desegregate the Carroll County Public Schools one grade at a time).

<sup>4</sup> Indeed, in 1978, a probationary employee who was also an avowed member of the Ku Klux Klan was terminated after he distributed Ku Klux Klan materials to students and staff and broadcast racially derogatory remarks over a school P.A. system. See *Savina v. Gebhart*, 497 F. Supp. 65 (1980).

using a racial epithet to describe dark colored rock observed at a school construction site, and a teacher was terminated after using a similar epithet to describe a trip to Baltimore in the presence of a young African-American teacher who subsequently resigned.<sup>5</sup> As in *Hardwick*, there are situations where, in the current school year, students wear Confederate battle flag attire to school and drive pickup trucks flying the Confederate battle flag as they enter upon student parking lots. Increasing reports during this current school year by students, parents, and faculty evidence that the display of the Confederate battle flag on student attire and in student parking lots creates a racially hostile environment impinging upon their rights. As one parent of a high school student complained in an email this past November, students are repeatedly exposed to Confederate battle flag iconography on student attire and on phone cases in the hallways and at athletic events, and both this parent and his student view these displays in the school as unwelcome symbols of intolerance, racial hatred, and white supremacy.

In addition to the direct impact on students and parents who have expressed concerns about a racially hostile environment, this history of racial tension has impeded the Board in its ability to promote cultural proficiency in accordance with Board Policy AD and has negatively impacted the Board's ability to attract and retain a diverse professional workplace in accordance with COMAR 13A.07.05.01. On this point, the Board has struggled for years to recruit minority professionals to its ranks. A recent report showed that the CCPS student population consists of 14% minority students but that minority staff make up only 4.1% of CCPS staff. *Recent Hiring Data Shows Where CCPS Continues to Struggle*, THE CARROLL COUNTY TIMES (Oct. 28, 2017) <http://www.carrollcountytimes.com/news/education/cc-ccps-hiring-update-2017-story.html>. As reported, "Superintendent Stephen Guthrie said he has heard personally of the reputation the school system has among those living outside the county. He has been told by some people, he said, that Carroll County has a reputation for being a place where non-white individuals don't want to be after work hours end." *Carroll County Public Schools Lag in Diversity*, THE CARROLL COUNTY TIMES (Mar 12, 2016) <http://www.carrollcountytimes.com/news/education/ph-cc-school-diversity-0311-20160312-story.html>. Anecdotal evidence has shown that this reputation is largely due to a perception that Carroll County is unfriendly to minorities. A former Board President noted that when he began teaching at CCPS more than thirty years before, he often found Ku Klux Klan invitations on the windshield of his car. *Id.* Some college teaching programs have also been hesitant to send its graduates to CCPS, fearing that minority staff members will be treated poorly. *Id.* CCPS has recognized that the lack of minority teachers puts its students at a disadvantage, through the missed opportunity to prepare them for the world and its diverse population. *Id.*<sup>6</sup>

<sup>5</sup> The history of racial tension in Carroll County was detailed in the Findings of Fact made by the Maryland Office of Administrative Hearings in ██████ v. Board of Education of Carroll County, OAH No.: MSDE-BE-01-13-38476 (2014). ALJ Kathleen Chapman found that "[i]n the early 1980's, Carroll County, Maryland had a reputation for being non-diverse and unwelcoming to African-Americans," and that "the Ku Klux Klan . . . regularly marched in county sanctioned parades; cross burnings frequently occurred in the county; and racial epithets . . . including the word 'nigger,' were written on school buildings." See Proposed Order at 6, ██████ v. Board of Education of Carroll County, MSDE-BE-01-13-38476 (2014).

<sup>6</sup> In ██████ ALJ Chapman found that this racial tension has impeded CCPS's ability to hire minority staff. See

Further incidents involving racial disruption in Carroll County include a Pakistani-American teenager experiencing harassment around town; members of a Confederate color guard turning their backs during a speech honoring a black Civil War soldier buried in a local church cemetery; and a bomb threat made at Westminster High School on a day when many students wore shirts promoting diversity while other students wore Confederate battle flag attire in response. See, *School Asks Teachers To Take Down Pro-Diversity Posters, Saying They're 'Anti-Trump'*, THE HUFFINGTON POST (Feb 22, 2017) [https://www.huffingtonpost.com/entry/school-pro-diversity-posters-trump-us\\_58ac87b9e4b0e784faa21446](https://www.huffingtonpost.com/entry/school-pro-diversity-posters-trump-us_58ac87b9e4b0e784faa21446); *At Civil War commemoration in Westminster, Confederate group snubs Union speaker*, THE BALTIMORE SUN (July 1, 2017) <http://www.baltimoresun.com/news/maryland/bs-md-westminster-confederate-sons-20170701-story.html>; *Greater than fear: Carroll County students take a stance on diversity*, WYPR.ORG (Mar. 2, 2017) <http://wypr.org/post/greater-fear-carroll-county-students-take-stance-diversity>.

#### V. Banning Confederate Flag Displays From School Parking Lots

Unlike school attendance, on-campus student parking is a privilege, not a right.<sup>7</sup> Although there is no case law strictly on point in Maryland related to the constitutionality of banning displays of the Confederate battle flag on student vehicles in school parking lots, multiple school districts across the country have done so. See, *Riverdale School says no to Confederate Flag*, THE COURIER (Mar 9, 2017), <http://thecourier.com/local-news/2017/03/09/riverdale-school-says-no-to-confederate-flag/>; *New Prairie officials 'ban display of Confederate flags'*, SOUTH BEND TRIBUNE (Sep 19, 2016) [https://www.southbendtribune.com/news/local/new-prairie-officials-ban-display-of-confederate-flags/article\\_e36a4ff4-8a64-58fc-8aa6-b7c4ccc46350.html](https://www.southbendtribune.com/news/local/new-prairie-officials-ban-display-of-confederate-flags/article_e36a4ff4-8a64-58fc-8aa6-b7c4ccc46350.html); *Chiles High principal bans Confederate flag for rest of school year*, TALLAHASSEE DEMOCRAT (Mar 19, 2017) <http://www.tallahassee.com/story/news/2017/05/19/chiles-high-principal-bans-confederate-flag-rest-school-year/101871740/>; *New Policy Bans Confederate Flags at West Monroe High School*, MYARKLAMISS.COM, <http://www.myarklamiss.com/news/local-news/confederate-flags-removed-from-student-vehicles-at-west-monroe-high-school/225708390>; *Easthampton High School ban on Confederate flag allegedly not being followed*, WESTERN MASS NEWS (Jun 20, 2017) <http://www.westernmassnews.com/story/35382378/easthampton-high-school-ban-on-confederate-flag-allegedly-not-being-followed-by-some>.

Additionally, in *Scott v. School Board of Alachua County*, 324 F.3d 1246, 1247 (11th Cir. 2003), the United States Court of Appeals for the Eleventh Circuit upheld a school ban on Confederate flags on school grounds which included a prohibition against the display of

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Proposed Order at 7, *Cuff v. Board of Education of Carroll County*, MSDE-BE-01-13-38476 (2014). In 2010, the minority student population in Carroll County was ten percent, but the professional staff employed at Carroll County was only three percent. *Id.* at 8.

<sup>7</sup> See, e.g., *Zehner v. Cent. Berkshire Reg'l Sch. Dist.*, 921 F. Supp. 850, 861-62 (D. Mass. 1995) (reasoning that "[t] here is, however, no suggestion . . . that the Court ought to extend the protections of due process to the less significant interest in the use of a school parking lot, an interest which is most likely *de minimis*").



### Confederate battle flags on cars parked on school lots:

In October 2000, both Scott and Thomas were disciplined by Santa Fe High School administrators for violating an unwritten, but admitted ban on displays of Confederate Battle flags and clothing/apparel depicting Confederate Battle flags at Santa Fe High School. Scott drove his vehicle into the Santa Fe High School student parking lot on the morning of October 24, 2000 with a Confederate Battle flag flying from his antennae. Upon parking, he attempted to furl the Confederate Battle flag and place a PVC tube over the furled flag and antennae. . .Shortly thereafter, Santa Fe school administrators suspended him for two days for "displaying a Confederate Battle flag on his truck as he was entering campus". (R1-1-16). Additionally, the Alachua County School Board (the "School Board") revoked his zoning exception requiring him to re-enroll for the remainder of the school year at Buchholtz High School in Gainesville, Florida. (R1-1-16).

As such, it appears that there is a strong argument that a ban on displays of the Confederate battle flag in school parking lots would be permissible.

### VI. Conclusion

As Judge J. Harvey Wilkinson, III, of the United States Court of Appeals for the Fourth Circuit opines on page 8 of his treatise *From Brown to Bakke: The Supreme Court and School Integration 1954-1978* (Oxford University Press, 1981), "Race is the perpetual American dilemma. On its fair resolution, much of the verdict on our history hangs." That statement is as true today in Carroll County, Maryland as it is in Charlottesville, Virginia or Latta, South Carolina. Despite the sincere good-faith efforts of many Carroll County residents, the lingering vestiges of racial intolerance still exist as displayed on student clothing and on vehicles parked on student lots. Based upon these events and displays both past and present, school officials can reasonably forecast that the continued display of Confederate battle flag symbols on school grounds will both materially interfere with school operations and collide with the rights of students, faculty, and staff who not only *merely disagree* with the perceived message behind the symbols but are so vehemently and negatively impacted by their presence at school that a hostile educational environment is created adversely impacting their ability to learn and to teach.<sup>8</sup>

This analysis is admittedly fact-specific, and sincere people may very well disagree; however, the question of whether there is a reasonable forecast of material interference with the working of the schools and the rights of students is initially one for school officials to decide. If challenged, it is our opinion that a reviewing court will likely take both current and past events

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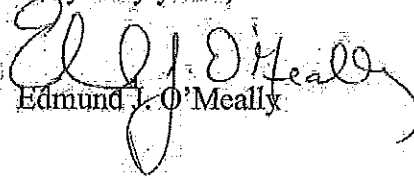
<sup>8</sup> As the Supreme Court reasoned in *Brown*, 347 U.S. at 493, "education is perhaps the most important function of state and local governments . . . and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society." Reasoning further, the Court opined that "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." *Id.*

Stephen H. Guthrie, Superintendent  
Carroll County Public Schools  
January 30, 2018  
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into account in conducting its analysis of the applicability of *Tinker* and *Hardwick* to the Carroll County Public Schools. As it is widely acknowledged that schools have a responsibility to protect students from harassment and violence, and to foster an environment conducive to learning, it is likely that an effort to ban displays of the Confederate battle flag on school grounds will be understood as advancing that duty.

Very truly yours,

  
Edmund J. O'Meally