

The image shows the exterior of a modern brick building with large glass windows and a prominent white architectural feature. A large white text box is overlaid on the center of the image. The text inside the box reads "MANCHESTER PREPARATORY ACADEMY" in a bold, black, sans-serif font. Below this, a smaller white text box contains the text "Governance Training – Protecting the Rights of Students and Families" in a bold, black, sans-serif font. The background shows a clear blue sky and a green lawn in the foreground.

# MANCHESTER PREPARATORY ACADEMY

**Governance Training – Protecting the Rights of  
Students and Families**

## WHY AN “INTERACTIVE” SESSION?

- Practice makes perfect!
- Consideration of different perspectives strengthens decision-making.
- Thoughtful navigation of “hard” questions.



# PERSPECTIVE MATTERS!



School Leader –  
primary concern  
is maintaining  
order and a  
positive school  
culture



Governing Board  
member –  
accountable to  
numerous  
groups, including  
the authorizer,  
parents and the  
community



Authorizer –  
responsible for  
ensuring that  
schools act in  
accordance with  
their charter  
contract and  
established law



Family  
Member –  
primary  
concern is  
his/her  
student

# QUESTIONS TO CONSIDER

- Consider each situation carefully and identify the issue(s). What was handled correctly and what was handled incorrectly?
- Remember that perspective matters:
  - School Leader Perspective
    - Did the school leader use good judgment and decision-making?
  - Governing Board Perspective
    - Does the governing board need to take any action? What is its role in the situation?
  - Authorizer Perspective
    - Should the authorizer be concerned? Did the school violate the charter contract? What should the authorizer's next steps be?
  - Family Perspective
    - What is the family's perspective? How can the school best address the family's concerns while meeting its other obligations?





## THE SCHOOL

- Manchester Preparatory Academy (MPA) serves a diverse and affluent student body of 700 students in grades 6-12 and has a statewide attendance zone.
- Students are taught using a rigorous PBL curriculum.
- The school cites family involvement and few discipline issues as evidence of its positive school culture.

## SCENARIO #1:

Vicki has been the MPA school leader for the past year. Her first year as the school leader was rocky. She implemented new policies that teachers and families did not agree with. Further, she did not renew contracts for many well-loved MPA teachers. Nevertheless, the MPA governing board is supportive of Vicki's leadership and is impressed with the academic results she achieved in her first year.

At the start of her second year, Vicki announced plans to move the school start time from 8:30am to 7:45am so students would receive an additional 45 minutes of instructional time per day. She also announced that she would be banning all clubs that did not have an academic component, including the popular running and knitting clubs.

Students and families were upset.



## SCENARIO #1:

Kelly, a 7<sup>th</sup> grade student at MPA student, was upset by the new wave of changes and made stickers of Vicki's face that read, "FIRE VICKI." Kelly made 36 stickers. Kelly wore a sticker on her t-shirt and placed one on her phone case. Kelly also passed out stickers out to seven other students who also placed them on their t-shirts. The presence of the stickers did not disrupt classes or disturb the learning environment.

When Assistant Principal Tamara sees a student wearing the "FIRE VICKI" sticker and later learns that Kelly made the stickers, Tamara suspends Kelly for one week for violating the code of conduct rules regarding "disrespectfulness" and "creating a disturbance."

According to Tamara, a disturbance resulted when she had to locate students with stickers, confiscate the stickers, and issue discipline to the students wearing stickers. The next day, Tamara reduced Kelly's weeklong suspension to one day of in-school suspension.

## SCENARIO #1: QUESTIONS TO CONSIDER

- Can students wear stickers that call for the firing of school administrators or teachers?
  - Under what circumstances would this be allowed or not allowed?
- Was Kelly's punishment proper?
- Did Kelly and the "FIRE VICKI" stickers cause a school disturbance?
- What do you consider a school disturbance?



# SCENARIO #1: ISSUES, RULES, AND SUMMARY

## **The First Amendment protects speech and acts of free expression.**

- Speech and free expression are the abilities of an individual or group of individuals to express their beliefs, thoughts, ideas, and emotions about different issues free from government (including public school) censorship.
- When you have a potential First Amendment issue, your first question should always be “is this actually speech or free expression?”
- If something isn’t speech or an act of free expression, it likely would not be afforded any First Amendment protections.

# SCENARIO #1: ISSUES, RULES, AND SUMMARY, CONTINUED

## **Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.**

- Students and teachers have First Amendment rights that are applied in light of the special characteristics of the school environment
- School officials cannot infringe on a student's right to free and unrestricted expression where the exercise of such rights in the school does not materially and substantially interfere with classwork, cause substantial disorder, or invade on the rights of others.
- So what does that actually mean?
  - Speech is prohibited when it impedes the maintenance of a civil and respectful atmosphere toward teachers and students.
  - Speech is prohibited when it interferes with a school's vital educational mission.

## SCENARIO #1: ISSUES, RULES, AND SUMMARY, CONTINUED

### **What about the threat of disruption (i.e., prohibiting speech before any negative consequences occur)?**

- Certain types of expression unquestionably cause enough threat of disruption to warrant suppression even before negative consequences occur. **BUT** undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression, even in public schools.
- There must be demonstrable factors that give rise to any reasonable forecast by school administration of a substantial and material disruption of school activities before expression may be constitutionally restrained.



THIS ACTUALLY HAPPENED IN GEORGIA.



Occurred at Chamblee Charter High School. DeKalb County School District paid the family \$45,500 in a settlement for pain and suffering and attorneys' fees.

<https://www.ajc.com/news/local/settlement-over-student-sticker-family-heralds-free-speech-win/luY1au4vd2dXRmdhZj2XGj/>

K.B. v. DeKalb County School District et al, No. 1:18-CV-5201-MHC (N.D. Ga. Apr. 29, 2019).

## SCENARIO #1: WITH A TWIST!

- What if students were handing out the stickers during class and interrupting instruction?
- What if instead of the sticker reading, “FIRE VICKI” it read, “F\*\*\* VICKI”?

# SCENARIO #1: WITH A TWIST! ISSUES, RULES, AND SUMMARY

## **A student's right to free expression is not absolute.**

- The First Amendment does not prevent school officials from prohibiting speech that is:
  - Vulgar or lewd;
  - Plainly offensive, personally insulting, promotes illegal activity (like drug use), or contains rumors about private matters; or
  - Disruptive to the educational environment.



## SCENARIO #1: ISSUES, RULES, AND SUMMARY – ADDITIONAL INFORMATION

- Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986).
- Morse v. Frederick, 551 U.S. 393 (2007).
- Smith ex rel. Smith v. Mt. Pleasant Pub. Schs., 285 F. Supp. 2d 987 (E.D. Mich. 2003).
- Requa v. Kent Sch. Dist. No. 415, F. Supp. 2d 1272 (W.D. Wash. 2007).
- Holloman ex rel. Holloman v. Harland, 370 F.3d 1252 (11th Cir. 2004).
- Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).
- Burnside v. Byars, F.2d 744 (5th Cir. 1966).\* During this time, Georgia was a part of the Fifth Circuit, so this is still controlling authority.

## SCENARIO #2:

Vicki then implements a new school dress code. The dress code contains the following:

*MPA will not interfere with the right of students and their parents to make decisions regarding their appearance, however, the standards of appearance for students shall ensure that the student be clean, neat, and properly dressed. They shall observe modes of dress and standards of personal grooming which are in conformity with the studious atmosphere and good personal hygiene necessary in schools.*

*Pierced jewelry shall be limited to the ear. Dog collars, tongue rings, wallet chains, large hair picks, chains that connect one part of the body to another, or other jewelry/accessories that pose a safety concern for the student or others shall be prohibited.*

Alexis has her tongue pierced and contends that her piercing is an expression of her individuality. Therefore, the new dress code provision violates her First Amendment rights.

## SCENARIO #2: QUESTIONS TO CONSIDER

- Is this dress code policy valid?
- Can MPA prohibit Alexis from wearing her tongue piercing?



## SCENARIO #2: ISSUES, RULES, AND SUMMARY

**Dress codes are valid if they advance a compelling government interest, are content-neutral, and consistent.**

- MPA here is seeking to avoid extreme dress or appearance which might create a school disturbance, or which could be hazardous to the student or to others. The prohibition is also narrowly tailored.
- Other guidance for dress codes:
  - Public schools can generally prohibit lewd, illegal, or indecent speech on clothing.
  - Public schools can generally prohibit clothing that is likely to cause a school disturbance – but be careful!

## SCENARIO #2: RELATED ISSUES OF SCHOOL UNIFORMS AND DRESS CODES

### What about uniforms?

- Implementing uniform policies can prevent students from expressing themselves with clothing. However, uniform policies are not likely to violate free speech rights when they:
  - 1) further an important or substantial government interest;
  - 2) the interest is unrelated to the suppression of student expressions; **and**
  - 3) the restrictions on speech are no more than necessary to further the government interest.
- Uniform policies should be consistent with the governing board's interest in improving education and not implemented as an attempt to curtail any particular viewpoint or message.

*Bonus Question: What if the school uniform contains a school motto like "Tomorrow's Leaders"?*

## SCENARIO #2: ISSUES, RULES, AND SUMMARY – ADDITIONAL INFORMATION

- Morse v. Frederick, 551 U.S. 393 (2007).
- Canady v. Bossier Parish Sch. Bd., 240 F.3d 437 (5th Cir. 2001).
- Frudden v. Pilling, 877 F.3d 821 (9th Cir. 2017).
- Bar-Navon v. Brevard County School Bd., 290 Fed.Appx. 273, 277 (11th Cir. 2008).

## SCENARIO #3:

Tegan is a new 7<sup>th</sup> grade student at MPA. She has been following a vegan diet since watching a documentary about livestock farming practices. Because Tegan is vegan, she brings her lunch each day and does not participate in school pizza or ice cream parties. Tegan's classmates found her veganism and lack of participation in school events amusing and began making fun of her by chanting, "TEGAN THE VEGAN" whenever they saw her. This continued beyond the confines of the school and persisted online.

A group of students would post comments on Tegan's Facebook posts related to veganism with photos of dead animals and animal-based foods like hamburgers or steaks. Many of these posts came from fellow MPA student, David. David is a notorious bully at MPA and has already been disciplined twice this school year for bullying. All of this posting to Tegan's Facebook page by David and other MPA students occurred on the students' home internet networks and personal devices after normal school hours.



## SCENARIO #3:

The online behavior towards Tegan began to escalate. David posted on his personal Facebook page that he was going to switch out Tegan's vegan "turkey" sandwich tomorrow at school with actual turkey in an effort to trick Tegan into eating meat. When Tegan read David's post, she was immediately upset. She had been keeping the online comments from MPA students a secret from her family, but this last Facebook post was too much for Tegan handle alone and she confided in her father. Her father was distraught with the countless Facebook posts that taunted Tegan about her lifestyle choice.

Tegan's father made an appointment to meet with Vicki to show her what he considered cyberbullying and thought the students – especially David - should be disciplined by the school for their comments. Vicki stated that because the comments had not occurred during school hours or using school technology, there was nothing that she could do.

## SCENARIO #3: QUESTIONS TO CONSIDER

- How do you define bullying? What about cyberbullying?
- Can a public school punish a student for cyberbullying if the cyberbullying did not occur during school hours, on school property, or with school equipment?
- Does David's single comment about switching out Tegan's sandwich rise to the level of bullying?
- Are there any specific requirements regarding disciplining students for bullying?
- How does your school try to prevent bullying?

## SCENARIO #3: ISSUES, RULES, AND SUMMARY

**Bullying is a serious problem that schools must develop policies and procedures to help prevent it from occurring, and schools must discipline students appropriately for bullying.**

- Bullying as defined by O.C.G.A. § 20-2-751.4:
  - (a) As used in this Code section, the term “bullying” means an act that is:
    - (1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so;
    - (2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm; or
    - (3) **Any intentional written, verbal, or physical act which a reasonable person would perceive as being intended to threaten, harass, or intimidate**, that:
      - (A) Causes another person substantial physical harm within the meaning of [Code Section 16-5-23.1](#) or visible bodily harm as such term is defined in [Code Section 16-5-23.1](#);
      - (B) **Has the effect of substantially interfering with a student's education;**
      - (C) **Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment;** or
      - (D) **Has the effect of substantially disrupting the orderly operation of the school.**

## SCENARIO #3: ISSUES, RULES, AND SUMMARY

### What about cyberbullying?

O.C.G.A. § 20-2-751.4 also provides the following:

The term [bullying] also applies to acts of cyberbullying which occur through the use of electronic communication, **whether or not such electronic act originated on school property or with school equipment**, if the electronic communication:

- (1) is directed specifically at students or school personnel;
- (2) is maliciously intended for the purpose of threatening the safety of those specified or substantially disrupting the orderly operation of the school; **and**
- (3) creates a reasonable fear of harm to the students' or school personnel's person or property or has a high likelihood of succeeding in that purpose.

For purposes of this Code section, electronic communication includes but is not limited to any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system.



## SCENARIO #3: ISSUES, RULES, AND SUMMARY, CONTINUED

### What bullying requirements exist for public schools?

- O.C.G.A. § 20-2-751.4 provides:
  - Schools must adopt a policy that prohibits bullying of a student by another student and this prohibition should be included in the school's code of conduct.
  - **A school's disciplinary policy must require that upon a finding by the disciplinary hearing officer, panel, or tribunal of school officials provided for in this subpart that a student in grades six through 12 has committed the offense of bullying for the third time in a school year, such student shall be assigned to an alternative school.**
  - Schools must establish and publish in their governing board's bullying policy a method to notify the family, guardian, or other person who has control or charge of a student upon a finding by a school administrator that such student has committed an offense of bullying or is a victim of bullying.
  - Schools must ensure that students and parents of students are notified of the prohibition against bullying, and the penalties for violating the prohibition, by posting such information at each school and by including such information in student and parent handbooks.

# SCENARIO #3: ISSUES, RULES, AND SUMMARY, CONTINUED

## Alternative Schools and Alternative Education Programs in State Charter Schools

- As the need arises, you are required to provide an alternative education program or alternative school.
  - O.C.G.A. § 20-2-751.4(b) provides that each local school system shall provide an **alternative education program** that meets the following requirements:
    - **Is provided in a setting other than a student's regular classroom;**
    - **Is located on or off of a regular school campus and may include in-school suspension that provides continued progress on regular classroom assignments;**
    - Provides for disruptive students who are assigned to the **alternative education program** to be separated from nondisruptive students who are assigned to the **program**;
    - Focuses on English language arts, mathematics, science, social studies, and self-discipline;
    - Provides for students' educational and behavioral needs; and
    - Provides supervision and counseling.
- Schools should remain mindful of due process, special education, and Section 504 obligations, among others, when assigning students to alternative settings.

# SCENARIO #3: ISSUES, RULES, AND SUMMARY, CONTINUED

## Hearing Officer and Tribunal Panel Member Requirements

- Requirements for disciplinary hearing officers (includes disciplinary tribunal or panel members) as provided by [SBOE rule 160-4-8-.15](#):
  - Qualifications:
    - In good standing with the State Bar of Georgia; or
    - Has experience as a teacher, counselor, or administrator in a public school system.
  - In addition to meeting one of the above qualifications, each governing board must make available to all qualified disciplinary hearing officers the initial and ongoing tribunal training course prior to the individual(s) serving in such capacity. The school governing board shall ensure initially trained student discipline hearing officers undergo continuing education so as to continue to serve in such capacity.
- **NOTE:** the qualifications and training requirements **DO NOT** apply to appeals. For example, a student has a hearing by a qualified disciplinary hearing officer, and per the school's appeals policy, the student makes a timely and proper appeal to the governing board. The governing board does not need to meet these qualifications or training requirements.

## SCENARIO #3: ISSUES, RULES, AND SUMMARY, CONTINUED

### **Data Surrounding Bullying in Schools**

- In a recent survey of 455 adults, over 60% said they still think about being bullied as a child.
- Almost 30% of youth in the United States (or over 5.7 million) are estimated to be involved in bullying as either a bully, a target of bullying, or both.
- 60% of boys who were bullies in middle school had at least one conviction by age 24.
  - 40% had three or more convictions
- 42% of kids have been bullied or threatened online.
- 53% of kids admit having said mean or hurtful things to others online.
- 58% have not told their parents or an adult about something mean or hurtful that happened to them online.



## SCENARIO #4:

Slade is 24 years old and is in his first year of teaching at MPA. Slade coaches the high school girls soccer team and has taken a romantic interest in the team's star player, Gretchen. Gretchen is sixteen-years-old.

Slade asks Gretchen to come back to his classroom after an evening practice. He professes his love for her and then touches Gretchen's breast. Gretchen is in shock and doesn't move or say anything while Slade continues his physical advances. Slade eventually walks Gretchen to her car, and Gretchen goes home. She confides in her best friend about what happened. Gretchen's friend encourages her to report this behavior to the school leader Vicki.

School leader Vicki receives Gretchen's report, but she thinks Gretchen is exaggerating what occurred and does no investigation into Gretchen's report.

## SCENARIO #4: QUESTIONS TO CONSIDER

- Was Vicki's decision not to investigate proper?
  - Can Vicki even investigate since this might be an allegation of child abuse?
- What process should Vicki follow?
- What obligations do schools have about notifying students and employees about how to report inappropriate behavior by school employees?

# SCENARIO #4: ISSUES, RULES, AND SUMMARY

## **State charter schools must notify students and employees of the process of reporting inappropriate behavior by staff members on students.**

- O.C.G.A. § 20-2-751.7 provides that each school must implement and follow the state mandated process for students to follow in reporting instances of alleged inappropriate behavior by a teacher, administrator, or other school employee toward a student. This does not prohibit the ability of a student to report the incident to law enforcement authorities.
  - **Schools must include the mandated process in student handbooks and in employee handbooks or policies.**
- **Summary** of state mandated process:
  - Any student (or family member or friend of student) who has been the victim of inappropriate behavior by school employee is to make an oral report to any teacher, counselor, or administrator. After a staff member receives this report, the staff member shall make a report to the school principal immediately
  - Any school principal who receives a report of abuse as defined in O.C.G.A. § 19-7-5 (child abuse and neglect statute), shall make a report to DFCS (or local law enforcement when DFCS is not available) no later than 24 hours from the time there is reasonable cause to believe that suspected child abuse has occurred.
  - If a student has allegedly been abused or subjected to inappropriate behavior by a school employee, a report of such allegation will also be made as soon as practicable by the principal or principal's designee to the Superintendent's designee. The school then conducts an investigation. If investigation shows any validated acts of sexual misconduct, the Professional Standards Commission Ethics Division must also be notified.
- Under this scenario, schools would also have obligations under Title IX of the Education Amendments Act of 1972.

## SCENARIO #5:

Gretchen is disappointed by Vicki's response and tells her friend what Vicki said and that she isn't going to go to the police because she fears no one will believe her. Gretchen's friend tells Gretchen's mom about what happened. Gretchen's mom Heather is furious at Vicki's lack of response and investigation.

Heather decides that she wants to speak at the school's governing board meeting regarding Gretchen's allegations and Vicki's response. Heather follows all of the governing board's procedures to sign up for public comment, including notifying Emily, the school's board chair, in writing 48 hours prior to the meeting.

Once the public comment section of the agenda comes, Emily states that any public comments cannot refer to any staff members, students, or confidential matters (including employment matters).



## SCENARIO #5: QUESTIONS TO CONSIDER

- Can the governing board prohibit Heather from speaking about her daughter's allegations and Vicki's response?
- Can Heather state that it was the teacher Slade who abused her daughter?

## SCENARIO #5: ISSUES, RULES, AND SUMMARY

**State charter school governing boards do not have to offer public comment. Nevertheless, offering public comment is a best practice and governing boards should allow the public to freely speak during public comment (with some limited exceptions).**

- Georgia Open Meetings Act and the First Amendment do not provide an absolute right to make public comment at a public meeting, thus, governing boards do not have to offer public comment at any meeting. Governing boards should ensure that whatever decision they make on offering public comment is consistent with the governing board's by-laws.
- When a governing board offers public comment – it creates a ‘limited’ or ‘designated’ public forum, meaning, a government entity (i.e., the governing board) may place reasonable time, place, and manner restrictions on the speech, but a government entity **cannot restrict or regulate the content of a public commenter's speech.**
  - Valid time, place, and manner restrictions include procedures for signing up for public comment and limiting the time of a speaker's comments. These are *content-neutral restrictions*.
  - Invalid restrictions on a public commenter's speech include preventing a commenter from speaking about personnel matters or other students.
  - If a public commenter is vulgar, inciting violence, or disrupting the meeting preventing the governing board from conducting further business, then the governing board has a significant government interest in stopping the comments from the public commenter.

## QUESTIONS?

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