



128 DORRANCE STREET, SUITE 220  
PROVIDENCE, RI 02903  
401.831.7171 (t)  
401.831.7175 (f)  
[www.riaclu.org](http://www.riaclu.org)

June 18, 2010

Supt. Kenneth DiPietro  
Superintendent of Schools  
Coventry School Department  
1675 Flat River Road  
Coventry, RI 02816

BY FAX AND MAIL

Dear Superintendent DiPietro:

I am writing in response to the highly-publicized incident that took place earlier this week at the Tiogue School, with the principal's decision to bar eight year old David Morales from wearing a patriotic hat because it included toy soldiers carrying weapons.

The ACLU agrees with those who have condemned this decision, which was based on an apparently inflexible "zero tolerance" policy regarding weapons that, as this incident demonstrates, defies all common sense. However, there is another aspect to this dispute that has not been discussed, and that is the significant *constitutional* problem with the school's decision to ban David from wearing his hat to school. Regardless of how this particular matter gets resolved, we believe it is incumbent upon the school district to revise its dress code policy, to the extent it bans apparel like that worn by David, in order to ensure that a similar incident like this does not reoccur.

It was over forty years ago, in the seminal student rights' case of *Tinker v. Des Moines*, that the U.S. Supreme Court declared that public school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Although school officials maintain some authority in this area, there are clear limits. The school's decision to ban a hat that was clearly non-violent and non-threatening in any way, and whose patriotic purpose was easily discernible, is simply not within those limits and cannot withstand even minimal scrutiny.

In fact, there are court cases that are almost directly on point. In 2003, for example, a federal appeals court ruled unconstitutional a school district's actions in barring a sixth grade student from wearing a National Rifle Association t-shirt that depicted silhouettes of men holding firearms. The court found there was no evidence that the t-shirt caused any material disruption in the school, and that a ban on clothing containing messages concerning weapons was unconstitutionally overbroad. *Newsom v. Albemarle County School Board*, 354 F.3d 249 (4th Cir. 2003). Even more to the point, a federal court has ruled unconstitutional the discipline of a student for wearing a T-shirt demonstrating support for the United States Marines that included a depiction of a rifle. *Griggs v. Fort Wayne School Board*, 359 F.Supp.2d 731 (N.D. Ind. 2005).

Page Two  
Supt. Kenneth DiPietro  
June 18, 2010

The breadth of the school district's ban of *any* clothing containing images of weapons cannot be understated. Presumably, a student in your school district is prohibited from wearing a shirt with a picture of Rhode Island's Independent Man on it, since he is depicted holding a spear. Other examples could be easily provided, but surely David's experience is example enough of the problems with this ban. Just like similar disputes that have arisen in other school districts in Rhode Island, this incident vividly demonstrates the bankruptcy of "zero tolerance" policies, which promote rhetoric over reality, simplicity over wisdom, and inflexibility over the exercise of good judgment and common sense.

We do not question the sincerity behind the decision to ban David's hat, but the dress code policy on which it was apparently based cannot stand. For the reasons expressed above, we urge you and other school officials to immediately reexamine that policy in order to avoid any other violations of students' constitutional rights.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Steven Brown  
Executive Director

cc: Principal Denise Richarik