

BILL: House Bill 418
TITLE: County Boards of Education - Symbols of Hate - Policy
DATE: February 5, 2021
POSITION: OPPOSE
COMMITTEE: Ways and Means
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The Maryland Association of Boards of Education (MABE) opposes House Bill 418, a bill to require each local school system to adopt a policy prohibiting the use or display of hate symbols within schools.

MABE opposes this legislation in favor of local board governance and policy-making authority regarding the display of symbols of hate. Local boards of education already have the authority, within the constitutional standards regarding student speech, to adopt policies regarding student behavior and speech to achieve the intended prohibition on hate symbols.

While it is true that students do possess First Amendment rights, it is also true that student expression rights in the school setting are not the same that adults possess in other settings. The Supreme Court has long held that speech that is obscene, vulgar, inflammatory, or defamatory is not entitled to constitutional protection. Thus, not all expression is considered as speech protected by the First Amendment. In *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986), the Supreme Court held that a student's vulgar and obscene speech was not entitled to constitutional protection.

Disruptive speech may also be prohibited. In 1969, the Supreme Court established a core principle of First Amendment law: that public school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)). But, as with any rights, there are limits. In establishing the *Tinker* standard, the Supreme Court reaffirmed that students' speech cannot cause "material and substantial" disruption of normal school activities or impinge on the rights of others.

The federal Fourth Circuit, in which Maryland resides, has held that a student could be prohibited from wearing any of her collection of fourteen Confederate flag and related protest t-shirts with captions accompanying the Confederate flag (*Hardwick v. Heyward*, 711 F.3d 426 (4th Cir. 2013)). The Court found the school's action justified in light of the demonstrated racial tension existing in the Latta, South Carolina schools and concluded that 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'".

Under the constitutional cases and standards described above, MABE respectfully requests continued deference of local boards of education in considering and adopting local policies and regulations reflecting the intent of this legislation, without enacting uniform statewide legislation.

For these reasons, MABE requests an unfavorable report on House Bill 418.