

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

**TYRON AND DELENE WHITE, et.  
al.,**

**Plaintiffs,**

v.

**RICKY NICHOLS and DEXTER  
RUTHERFORD,**

**Defendants.**

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**Case No.: 5:02-CV-1712-RDP**

**MEMORANDUM OPINION**

The court has before it Defendants' Motion for Summary Judgment (Doc. # 49) and Defendants' Motion to Strike (Doc. # 63). The above-referenced motions have been fully briefed and were under submission as of January 25, 2005. (Docs. # 47, 55).

The only remaining Plaintiffs in this case are Doyle Grimes, who brought suit on behalf of Cody Grimes ("Cody"), a minor and a student at Lawrence County High School ("LCHS"), and Blake Grimes ("Blake"), who was a minor at the time this case was filed but is now the age of majority and a graduate of LCHS. (B. Grimes Depo. p. 8).<sup>1</sup> Plaintiffs have sued Defendant Ricky Nichols, the principal of LCHS, and Defendant Dexter Rutherford, superintendent of the Lawrence County, Alabama School System, under 42 U.S.C. § 1983 and claim those Defendants have violated their rights in the following ways: they have (1) deprived Plaintiffs of their rights under the First Amendment to the Constitution of the United States; (2) discriminated against Plaintiffs on the basis of national origin in violation of their rights to equal protection under the Fourteenth Amendment;

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<sup>1</sup> All other Plaintiffs have voluntarily dismissed their claims. (Docs. # 68, 69). At the time of the incident made the basis of this lawsuit Blake was an eleventh grade student at LCHS (B. Grimes Depo. pp. 38-39), and Cody was an eighth grade student at LCHS. (C. Grimes Depo. pp. 10, 108).

(3) discriminated against Plaintiffs on the basis of race in violation of their rights to Equal Protection under the Fourteenth Amendment; and (4) deprived Plaintiffs of their rights to due process under the Fourteenth Amendment. (Doc. # 16). In addition to presenting certain arguments on the merits in response to Plaintiffs' claims, Defendants have asserted that Plaintiff Blake Grimes lacks standing to pursue his claims and that both Defendants are due the protection of qualified immunity.

For the reasons outlined below, Defendants' Motion for Summary Judgment is due to be granted because there are no disputed issues of material fact and Defendants have demonstrated that they are entitled to judgment as a matter of law. Defendants' Motion to Strike will be denied.<sup>2</sup>

#### **I. Legal Standards for Evaluating a Summary Judgment Motion**

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party asking for summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the pleadings or filings which it believes demonstrate the absence of a genuine issue of material fact. *See id.* at 323. Once the moving party has met his burden, Rule 56(e) requires the non-moving party to go beyond the pleadings and by his own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific

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<sup>2</sup> The court has reviewed Defendants' motion to strike and will assume, without deciding, for the purposes of summary judgment only, that it is due to be denied and that the evidence sought to be stricken is properly considered by the court in its summary judgment analysis. As the court is granting summary judgment in favor of Defendants, it finds that, even considering the evidence sought to be stricken, when the proper summary judgment standard is applied, Plaintiffs have not met their burden to refute the Defendants' motion for summary judgment.

facts showing that there is a genuine issue for trial. *See id.* at 324.

The substantive law will identify which facts are material and which are irrelevant. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). All reasonable doubts about the facts and all justifiable inferences are resolved in favor of the non-movant. *See Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted. *See id.* 249.

## II. Relevant Undisputed Facts<sup>3</sup>

On Friday, October 12, 2001, Principal Nichols announced over the school intercom system at LCHS that, as of the following Monday, students would no longer be permitted to wear clothing displaying the Confederate flag. (Nichols Depo. p. 101-103).<sup>4</sup> Nichols had contacted Superintendent Rutherford before announcing the ban and informed him of his intention. (Nichols Depo. p. 87).<sup>5</sup> The ban applied only to LCHS; students at the Lawrence County School’s Vo-Tech facility were permitted to wear Confederate symbols. (B. Grimes Depo. p. 55). Eighty-six (86) students signed

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<sup>3</sup> If facts are in dispute, they are stated in the manner most favorable to the Plaintiffs. *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993).

<sup>4</sup> Although Plaintiffs initially thought that the ban included all Confederate symbols (B. Grimes Depo., p. 105; D. Grimes Depo., p. 69), Rutherford and Nichols have clarified that the ban covered just Confederate clothing. (Rutherford Depo., p. 118; Nichols Depo., p. 103). In fact, class rings with Confederate flag symbols were available for purchase at LCHS (through sales by third parties) and it is undisputed that the ban does not extend to jewelry/class rings or other non-clothing items. (Rutherford Depo., p 118; D. Grimes Depo., p. 39, 69; Nichols Depo., p 135).

<sup>5</sup> Nichols’ decision was subject to review by Superintendent Rutherford. (Nichols Depo. p. 35-36).

a petition protesting the ban on Confederate symbols. (Doc. # 59, Ex. 7 C; 8 c, at p.1).

On the following Monday, a number of students wore Confederate flag shirts in violation of the rule. (Nichols Depo. p. 104-106). Principal Nichols asked each student wearing Confederate flag clothing if he or she was aware of the ban, and those who were not aware were permitted to change clothes or cover their Confederate flag shirts for the remainder of the day. (Nichols Depo. p. 104-106). Those who admitted that they were aware of the rule were suspended from school. (Nichols Depo. p. 104-106).

Plaintiff Blake Grimes was one of the students who admittedly was aware of the ban but nonetheless planned with other students to deliberately defy it. (B. Grimes Depo. p. 48-49, 50-51, 140).<sup>6</sup> On Monday, October 15, Principal Nichols called Blake to his office to meet about the Dixie Outfitters Confederate flag shirt he had worn that day, and Blake was allowed to explain his reasons for wearing the shirt in violation of the ban. (B. Grimes Depo. p. 81, 92-93).<sup>7</sup> Blake admitted that he was aware of the rule, and he was suspended from school for three days. (B. Grimes Depo., p. 83-84; Nichols Depo. 104).

Blake and his parents also met with Superintendent Rutherford about the ban on Confederate clothing and Blake's suspension. (B. Grimes Depo. p. 94-95; D. Grimes Depo. pp. 24-25). As a result of the meeting with Rutherford, Blake's suspension from school was removed from, or never entered on, his permanent record. (B. Grimes Depo. p. 95-96). Also, as a result of the meeting Blake

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<sup>6</sup> Blake told his parents on Sunday night that he intended to wear a Confederate flag shirt on Monday to protest the ban, and although his mother advised him against it, she did not forbid it. (B. Grimes Depo. p. 66).

<sup>7</sup> Blake's mother was a substitute teacher at LCHS, and when he Principal Nichols called him to his office, his mother went with him. (B. Grimes Depo. p. 81).

was allowed to make up any missed school work during the suspension, including a math test that he missed. (B. Grimes Depo. p. 97). Blake and his parents also attended the next regularly scheduled board meeting. (B. Grimes Depo. pp. 101-102).<sup>8</sup>

Cody Grimes also learned about the ban when Principal Nichols announced it over the intercom system at LCHS on October 12. (C. Grimes Depo. p. 29). Although Cody wore a Confederate flag shirt to school the following Monday, he removed it when he learned that other students were being suspended for violating the ban. (C. Grimes Depo. p. 46). Therefore, Cody was not suspended from school. (C. Grimes Depo. p. 36). Cody testified that he had not planned with other students to protest the ban but wore the shirt to defend his Southern heritage. (C. Grimes Depo. p. 48-49).

At the time of the ban, the demographic composition of the student population at LCHS was (approximately) less than 1% Hispanic, 12% African American, 23% Native American and the remainder Caucasian. (Nichols Depo. p. 53-54). Principal Nichols testified that based upon his observations at LCHS, there was a link between racial tension, interracial incidents, and students wearing the Confederate flag. (Nichols Depo. p. 138-139). Prior to the ban, an African-American female student and a White male student wearing a tee-shirt depicting a skull wearing a Confederate flag “do-rag” were involved in an incident in which racial slurs were spoken to the minority student. (Nichols Depo. p. 69-71; Doc. # 58, Ex. 5; Grimes Aff., p. 2 ¶¶ 1, 4).

Nichols also reported that in the Fall of 2001, the mother of an African-American female student at LCHS complained to him that African-American students were concerned about the

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<sup>8</sup> Plaintiffs’ attorneys also have met with Rutherford and the Lawrence County Board of Education in an attempt to persuade the school to rescind the ban on Confederate flag clothing. (Rutherford Depo. p. 126-129).

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