

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 07-3099

B.W.A., a Minor; Marc Archambo, *
individually and as Next Friend of *
B.W.A. , A Minor; Tamra Archambo, *
individually and as Next Friend of *
B.W.A. , A Minor; R.S., a Minor; *
Opal Scaggs, as Next Friend of R.S.; *
S.B., a Minor; Patricia Hill, as Next *
Friend of S.B., *

Plaintiffs - Appellants, *

v. *

Farmington R-7 School District; *
W. L. Sanders, in his official Capacity *
as Superintendent of Farmington R-7 *
School District; Judith Delaney, in her *
official Capacity as Assistant *
Superintendent of Farmington R-7 *
School District; Mark Kraus, in his *
official capacity as Teacher/Instructor *
of Farmington R-7 School District; *
Susan Barber, in her official capacity *
as Assistant Principal of Farmington *
R-7 School District; Todd McKinney, *
in his official capacity as Dean of *
Students of Farmington R-7 School *
District, *

Defendants - Appellees. *

Appeal from the United States
District Court for the
Eastern District of Missouri.

United States of America, *
*
Amicus on Behalf of *
Appellee. *

Submitted: September 22, 2008
Filed: January 30, 2009

Before LOKEN, Chief Judge, WOLLMAN and SMITH, Circuit Judges.

SMITH, Circuit Judge.

B.W.A., a minor and student at Farmington High School ("Farmington High"), along with fellow students R.S. and S.B., brought this First Amendment action against Farmington R-7 School District ("the District") and its school officials after they were sent home for refusing to remove items of clothing depicting the Confederate flag symbol. After extensive discovery, the district court¹ granted the District's motion for summary judgment on the ground that Farmington High school officials had reason to believe that students displaying the Confederate flag would cause a substantial and material disruption. We affirm.

I. *Background*

B.W.A., R.S., and S.B. were students at Farmington High,² which is part of the District. They were suspended during the 2006-2007 school year for wearing clothing

¹The Honorable Jean C. Hamilton, United States District Judge for the Eastern District of Missouri.

²Approximately 1,100 students attend Farmington High and only 15 to 20 are black.

depicting the Confederate flag. Prior to their suspensions, several racially-charged incidents occurred in the District during the preceding school year.

In the first incident, a white student urinated on a black student while allegedly saying "that is what black people deserve." As a result, the black student withdrew from school and moved to another district. A second incident occurred when white students—one carrying an aluminum baseball bat—showed up at a black student's home. They made racial comments such as "anything that is not white is beneath them." When the black student's mother tried to separate the students, one of the white students struck her in the eye. A melee ensued involving her son and the white students. Later, "people" drove around the black student's home screaming racial epithets and threatening to burn down the home. A few days later, a group of white students surrounded the same black student and confronted him at Farmington High. As a result, the black student withdrew from school, and his family moved out of the District.

A third incident occurred during a basketball tournament hosted by the Central School District when a heated confrontation erupted during a game between Farmington High and Festus Senior High School.³ During the game, a skirmish broke out after two Farmington High players allegedly used racial slurs against two black players from Festus. Shortly after the incident, the two Festus students filed a complaint with the Missouri State High School Activities Association, complaining that the two Festus students were the victims of racial slurs throughout the game with Farmington High. In that same time period, supporters of the Festus students distributed flyers accusing school administrators of not doing anything to prevent or stop the racial slurs. The flyer also noted that a Confederate flag was hanging in the hallway near the locker rooms during the game. The Festus students also reported the

³According to a Farmington official, Festus has a "greater African American population than . . . Farmington."

incident to the United States Department of Justice's Office of Civil Rights (OCR), which conducted an investigation. As a result of the incident, the two teams no longer play each other unless required to by their athletic conference.

Following the aforementioned incidents, the superintendent, relying on his authority to prevent disruption to the education of high school students, banned students from wearing clothing that depicted the Confederate flag.⁴ The superintendent based his decision on the belief that the incidents within the District were race-related.

After the District banned clothing depicting the Confederate flag, additional racial incidents occurred prior to the 2006-2007 school year, including a white student

⁴In 1995, the District adopted a student dress code. This dress code states:

The Board of Education recognizes the value of allowing individual student expression as well as the necessity of protecting student health and safety and maintaining an atmosphere conducive to education. Student dress code procedures must be designed with the goal of balancing these competing interests.

All dress code procedures will adhere to health and safety codes and comply with applicable law. Dress that materially disrupts the education environment will be prohibited. No procedure will impose dress and grooming rules based on gender in violation of Title IX. District procedures will specifically define ambiguous terms, and examples will be provided when practical.

The Farmington High School Student and Parent Information Guide, which every student received at the beginning of the 2006-2007 school year, contained this dress code.

drawing swastikas and writing "white power" song lyrics in his notebook.⁵ Additionally, school officials punished students for making racial slurs. Also, a white student told his teacher that the "n*gg*rs [are] here" while pointing at a visiting track team. This student also drew a swastika on the chalkboard.

During the 2006-2007 school year, B.W.A. wore a baseball cap to school bearing the Confederate flag with the words "C.S.A., Rebel Pride, 1861" written on it. A Farmington teacher advised B.W.A. that he had to remove the hat and keep it in his backpack the rest of the day. The next day, B.W.A. wore a T-shirt and belt buckle containing an image of the Confederate flag and the words "Dixie Classic." An assistant principal at Farmington requested that he remove the items. When B.W.A. refused, the assistant principal suspended B.W.A. for the remainder of the day. That same day, B.W.A. withdrew from school.

After B.W.A. withdrew from Farmington High, parents and other community members began gathering across the street from the school, protesting and displaying a Confederate flag. Some students believed that these protests increased the racial tension inside of Farmington High. Students complained to the principal that they felt that the Confederate Flag was offensive and would lead to more disruptive behavior. Farmington High was also subjected to racial vandalism and property damage. These events resulted in the District permitting a black student to leave Farmington High because he was "uncomfortable due to the racial tension."

Approximately four months later, R.S. wore a shirt to school depicting an image of the Confederate flag and the words "The South was right[,] Our school is wrong." R.S. was suspended for the rest of the day for refusing to remove the shirt. The next day, R.S. wore a shirt to school with the slogan "Our school supports freedom of

⁵Specifically, the lyrics stated that "whites are superior, n*gg*rs are less;" "n*gg*rs will fall;" and "n*gg*rs faces will be a mess."

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.