court's grant of summary judgment in favor of the City. It began by stating, "[b]ecause administrative agencies have special expertise in making judgments concerning student progress, deference is particularly important when assessing an IEP's substantive adequacy." The court noted that the IHO and SHO did modify the IEP to include additional speech-therapy and parenting sessions, so the court found "no reason to second guess the reasonable, professional determinations of the IHO and SHO in this case." The procedural issue of whether an IEP needed to list the specific school where the services would be provided resulted in a more thorough analysis. The IDEA stated that "the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to…the identification, evaluation, and educational placement of the child." In addition, the Act defined an IEP as a statement that includes "the anticipated frequency, location, and duration of those services." The court concluded that the terms "placement" and "location" did not mean a specific school location, but, rather, the general environment of the program, relying on a federal Department of Education commentary as well as a Senate Report (both stated that these terms referred generally to an environment, such as a classroom, where the education would take place). Thus, an IEP's failure to identify a specific school location did not constitute a per se procedural violation of the IDEA. *T.Y. v. New York City Dept. of Educ.*, 584 F. 3d 412 (2d Cir. 2009).

Flag Display Ban

Due to previous incidents of racial tension and strife, Burleson High School in Texas had adopted a policy that prohibited the display of the Confederate flag on school grounds. The school district also had a dress code providing that there would "be no tolerance for clothing or accessories that ha[ve] inappropriate symbolism, especially that which discriminate[d] against other students based on race, religion, or sex." In the 2002-03 school year, prior to the policy, there were 35 reported instances of race-related problems, including situations where the Confederate flag was involved. Subsequently, when several students came to school with purses that had large images of the Confederate battle flag, school administrators treated the incident like any other dress code violation and gave each student the choice of leaving the purse in the administrative office until the end of the school day, or having a parent or someone else come and pick up the purse. Instead, the students chose to go home for the day. The students subsequently appealed the policy prohibiting displays of the flag using the school district's internal administrative procedures. The district superintendent denied the appeals on the basis that, if the ban was not enforced, "the number and types of confrontational incidents on campus would increase dramatically, resulting in material interference and substantial disruption of the educational environment." The students, for their part, had argued the flag represented, to them, their family history, "American history and a political symbol…of limited government and resistance to unconstitutional authority." They brought a Section 1983 action against the school and school district, alleging that the ban abridged their rights under the First and Fourteenth Amendments to freedom of speech and expression; that the dress code violated their due process rights under the Fourteenth Amendment because it was vague and overbroad; that they were deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment because the code was enforced against them while other students were permitted to wear attire with politically, racially and ethnically provocative symbols, and other grounds. The district court granted summary judgment in favor of the school defendants. On appeal, the U.S. Court of Appeals for the Fifth Circuit affirmed.

The court was persuaded by the fact that the policy was adopted after racial strife at the school, some of which resulted from students' displays of the Confederate flag, and accepted that the "Confederate flag in certain circumstances [was seen] as a symbol of racism and intolerance, regardless of whatever other meanings may be associated with it." Further, there was "ample, uncontroverted evidence that elements of the [school's] student body [had] continually manifested racial hostility and tension." Applying the standard in *Tinker v. Des Moines Ind. Community Sch. Dist.*, 393 U.S. 503 (1969) (students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," but school officials, nonetheless, retain some authority, consistent with constitutional safeguards, to prescribe and control conduct in the schools), the court found that the school officials reasonably anticipated that visible displays of the Confederate flag would cause "substantial disruption of or material interference with school activities." On the vagueness claim, the code was clear: it specifically prohibited visible displays of the Confederate battle flag. Further, the plaintiffs were never suspended (they voluntarily chose to go home), and "this light sanction militate[d] against their vagueness claim." The equal protection claims was also properly dismissed because the students failed to provide evidence that the ban was enforced unequally and because the prohibition on the flag was justified under *Tinker*. *A.M. ex rel. McAllum v. Cash*, 585 F. 3d 214 (5th Cir. 2009). ML

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