



February 28, 2018

An Open Letter to Georgia Educators and Students:

As a child of the civil rights movement, I watched the adults around me – including my parents – plan, attend, and lead demonstrations that they knew would be opposed by local authorities. Many of these demonstrations included teenage high school students. Those high school students courageously demonstrated in order to achieve a change for their own lives when the conventional avenues for policy change had failed.

Students were critically important participants in the Birmingham protests that resulted in the successful passage of the Civil Rights Act of 1964. That law ended segregated public accommodations and protects us to this day from discrimination based on sex, race, color, religion, or national origin. It is a direct result of students who took responsibility to create social change.

Dr. Benjamin Mays, former President of Morehouse College and the first African American to head the Atlanta Board of Education, spoke of the goal of educational institutions: to produce “... honest men [and women]... who are sensitive to the wrongs, the sufferings, and the injustices of society and who are willing to accept responsibility for correcting the ills.”

I, myself, have learned that taking responsibility can sometimes mean being seen as radical in the eyes of others. Today’s educators — many of whom are the beneficiaries of those earlier student protests — must be mindful of their responsibility as educators. They should ask themselves: what lessons do we want our students to learn from our example in this moment?

Georgia educators may exemplify, in the spirit of civic responsibility, Georgia’s heritage of human rights that inspires people around the globe. Our state is the birthplace of two men who won the Nobel Prize for their work in promoting peace and human rights—Jimmy Carter and Martin Luther King, Jr. As Georgians, we are proud of our rich history in the struggle to create a more perfect union.

The high school students in Birmingham were not oblivious to the possible risks of their actions. They studied, practiced, and made a commitment to non-violence. Many went to jail for their actions. The legal landscape for the exercise of free speech has changed significantly since 1963, but there remain limitations. The rights of students to free speech and freedom of expression under the First Amendment to the Constitution are attached to this letter.



As we continue the fight to live out the true meaning of our Constitution, we should never forget the critical role that young people have always played as leaders in that fight. We must also remember the responsibilities that those of us who are beneficiaries of past battles now have in teaching our young leaders.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Young". The signature is written in a cursive, flowing style.

Andrea Young
Executive Director
Graduate of Atlanta Public Schools

STUDENTS' CONSTITUTIONAL RIGHTS

Students' free speech rights must be "scrupulously" protected if we are to have any hope of "educating the young for citizenship" and teaching students not to "discount important principles of our government as mere platitudes."

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943)

To the extent that students are contemplating walking out during class to protest, both educators and students should keep in mind the following **THREE Constitutional principles**.

1. PUBLIC SCHOOL STUDENTS HAVE RIGHTS to FREEDOM of SPEECH and EXPRESSION.

Both students and teachers have First Amendment rights, applied in light of the special characteristics of the school environment. The United States Supreme Court has long held that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 506 (1969)

2. The U.S. CONSTITUTION PROHIBITS VIEWPOINT DISCRIMINATION.

The First Amendment to the U.S. Constitution prohibits school officials from engaging in viewpoint discrimination or punishing students because of their expression. That means that to the extent that being absent from school to join a nationwide protest is considered an unexcused absence, such unexcused absences must be treated just like other unexcused absences. The consequences for a student who engages in civil disobedience by missing class to attend a protest must be the same as a student who misses class to go to the mall.

3. "MATERIAL" or "SUBSTANTIAL" DISRUPTION MAY BE PUNISHED.

Schools may only punish speech or expression at school if it has a "material" and "substantial" disruption on school activities or interferes with other students' rights. Decades ago, courts held that it was wrong for a school to categorically punish any student who wore "Freedom Buttons" to school during the civil rights movement without evidence that it would actually materially or substantially disrupt school activities.

See *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966); *Tinker*, 393 U.S. at 505 n.1 (citing *Burnside* with approval)

Similarly, it is not clear that any and all classroom walkouts will have a “material” or “substantial” disruption on school activities, and we in fact encourage teachers to plan for any silent classroom walkout so that it does not materially and substantially disrupt their classes. Thus, while a school may punish students for missing class on equal terms as it might punish students for any other unexcused absence, it would be constitutionally questionable to preemptively and categorically punish impost additional punishments for the mere act of walking out of class without evidence of material and substantial disruption.

To learn more about the ACLU of Georgia, go to acluga.org.

To download a copy of this information, go to acluga.org/studentsrights