

LDB Urges Stoughton Public Schools Not to Punish Teachers for Speaking Out Against Anti-Semitism

Washington, D.C., September 25th: On September 26 - the midpoint of the "Days of Awe" between the Jewish high holidays of Rosh Hashanah and Yom Kippur - Stoughton high school teacher Stella Martin will stand in judgment during an arbitration hearing. Ms. Martin's alleged transgression is that she tried to educate her students about anti-Semitism after one of their classmates engaged in anti-Semitic activity. Today, on the eve of Ms. Martin's hearing, the Louis D. Brandeis Center for Human Right Under Law (www.brandeiscenter.com) sent Stoughton Public Schools Superintendent Marguerite Rizzi a strongly written letter supporting Ms. Martin and urging her to retract the reprimand that has been imposed on her.

"It is disgraceful that the Stoughton Public Schools are disciplining a teacher who did the right thing by responding firmly to anti-Semitism," said LDB President Kenneth L. Marcus. "Ms. Martin did what teachers should do, responding promptly and firmly. Superintendent Rizzi should be honoring Stella Martin, rather than punishing her. By mistreating Ms. Martin and her colleagues in this manner, Superintendent Rizzi is sending an awful message that the Stoughton Public Schools will tolerate anti-Semitism but punish teachers who speak out against it."

In its letter to the Stoughton Public Schools, the Brandeis Center urged Dr. Rizzi and the Stoughton School Council to revoke the disciplinary action against Ms. Martin, who followed best practices for addressing bigotry and anti-Semitism, engaged her students in an educational, age-appropriate discussion, and who made no inappropriate statements about the student offender.

On November 22, 2016, a male student posted a swastika on the Senior "Spirit Wall." When another student asked him to remove the symbol, he made an offensive and disturbing comment about taking down and burning the swastika, "the way they burned the Jews." Other students reported his actions, and he served a six-day suspension.

The next class day, Ms. Martin's Honors English class, a small class of eight seniors, entered her classroom heavily engaged in discussion about the incident and distracted from the class lesson. Ms. Martin spent ten to fifteen minutes engaging the students in a discussion about anti-Semitic symbolism, the Holocaust, and hate speech. She did not mention the name of the offending student, which she did not know, and she made no statements about him.

The mother of the offending student accused Ms. Martin of bullying her son, although Ms. Martin had never spoken to him nor mentioned his name. The accusation was based entirely on this classroom discussion. Although the school district found - as it must - that Ms. Martin had not bullied the boy, she was still disciplined for engaging in conduct that they deemed "unbecoming of a teacher."

In the letter, the Brandeis Center argued that Ms. Martin did what educators should do in response to anti-Semitism and every other form of bigotry: she held an age and maturity-appropriate discussion with her students about hatred, hate speech, and the ramifications of uncivility in adult society. She recognized a teaching moment, and she used it to teach.

The Brandeis Center also argued that the disciplinary action against Ms. Martin violates the First Amendment, under *Ward v. Hickey*, 996 F.2d 448, 452 (1st Cir. 1993), and *Mailloux v. Kiley*, 448 F.2d 1242, 1243 (1st Cir. 1971).

"In moments of hate, we must support those who promote tolerance," added LDB's Kenneth Marcus, a renowned anti-Semitism scholar who served as the head of the U.S. Department of Education's Office for Civil Rights before launching LDB in 2011. "The Louis D. Brandeis Center thus stands with Stella Martin and the Stoughton teachers."

The administration's failure to acknowledge the incident as anti-Semitic as such points to a larger problem: the incident reflects follows a dramatic jump in anti-Semitic incidents in the state of Massachusetts, and elsewhere across the country.

"We at the Brandeis Center are concerned that, by example, the school is teaching its students that the better option is to withdraw from speaking about hatred and discrimination in our community, and that words and symbols of hate directed at Jews and other minorities are somehow not 'hate speech,'" added Brandeis Center Senior Civil Rights Legal Fellow Jennie Gross, referring to communications from the school that denied that the incident involved hate speech.

Marcus also noted, "all students are entitled to a safe learning environment, which can only be achieved in an atmosphere that allows for meaningful and appropriate discussions of the nature of hate speech such as anti-Semitic rhetoric. For the administration to punish these educators curtails efforts to prevent discrimination and religious intolerance in the educational system."

The Brandeis Center hopes that in extending its support to Ms. Martin, the administration will reverse its current position, retract its reprimand against Ms. Martin, issue her an apology, and take similar measures to support other Stoughton teachers who have been punished for speaking out against anti-Semitism

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About The Louis D. Brandeis Center: The Louis D. Brandeis Center, Inc., or LDB, is an independent, nonprofit organization established to advance the civil and human rights of the Jewish people and promote justice for all. The Brandeis Center conducts research, education, and advocacy to combat the resurgence of anti-Semitism on college and university campuses. It is not affiliated with the Massachusetts university, the Kentucky law school, or any of the other institutions that share the name and honor the memory of the late U.S. Supreme Court justice.

The text of the letter is as follows:

Dear Ms. Rizzi and Members of the Stoughton School Council:

We write on behalf of the Louis D. Brandeis Center for Human Rights Under Law ("the Brandeis Center") in support of Stoughton High School ("Stoughton") teacher Stella Martin, who was formally reprimanded

for holding a classroom discussion about an anti-Semitic incident at Stoughton. The Brandeis Center is a national public interest advocacy organization dedicated to fighting anti-Semitism in education through legal advocacy, best practices, and policy initiatives. We bring unique expertise to such matters: our President and founder, Kenneth L. Marcus, served as Staff Director at the U.S. Commission on Civil Rights and was delegated the authority of Assistant Secretary of Education for Civil Rights. Mr. Marcus is also a noted expert on anti-Semitism and the author of *The Definition of Anti-Semitism* (Oxford University Press: 2015) and *Jewish Identity and Civil Rights in America* (Cambridge University Press: 2010).

We followed the events at Stoughton High School in late 2016 and early 2017, and are concerned about school's handling of anti-Semitic incidents, including the punishment of Ms. Martin for holding an age-appropriate discussion about anti-Semitism with her Senior Honors English class, and the punishment of two other teachers, Jamie Regan and Hillary Moll, for related reasons.[1] We believe that Ms. Martin responded both appropriately and admirably, and that her discussion with her students is protected by the First Amendment. It is of particular concern to us that punishing Ms. Martin will have a chilling effect on other teachers when faced with anti-Semitism and other forms of discrimination. We are also concerned that, by example, the school is teaching its students that the better option is to withdraw from speaking about hatred and discrimination in our community, and that words and symbols of hate directed at Jews (or people of any race, ethnicity, religion, gender, or sexual orientation) are somehow not "hate speech" - and excusable - if the speaker "only" intended it as a joke.

I. The Discussion in Ms. Martin's Senior Honors English Class was both Appropriate and necessary.

The underlying facts, as reported to us, are as follows.[2] On November 22, 2016, several students were decorating the "Spirit Wall," part of an annual tradition at Stoughton, when one student ("John Doe"), displayed a swastika made of tape in the room full of students. Another student was upset by the swastika and told him to take it down. John Doe responded that he should take the swastika down and burn it, the way they burned the Jews.[3] Another student sought out a teacher to report the incident, the teacher reported the incident to the administration, and John Doe served a six-day suspension.

As will happen in a high school, news of the incident spread. The swastika was displayed in public and was observed by other students, who were free to discuss the incident with each other, and did so. Thus, the incident was not a secret among the students, nor was John Doe's identity, or his punishment.

Indeed, it was students who told Ms. Martin about the incident - specifically, her Senior Honors English class, who were talking about the incident in her classroom as they entered and settled down for class. Ms. Martin did not know the name of the student who was responsible for the incident, nor did she know the details of his punishment, but she was aware that the students were fully engaged in debate about John Doe's actions and punishment, distracting from the daily lesson.

Ms. Martin spent about ten to fifteen minutes engaging the students in a discussion about anti-Semitic symbolism, the Holocaust, and hate speech. It was a small class - eight honors students, who knew each other well, and who all knew about the incident. Class discussion was a regular and integral part of the small Honors English class, and the students were seated in a semi-circle, as they had sat every day.

They had strong views about John Doe's actions and punishment before they entered her classroom. Some were very angry and offended by what John Doe had done, and believed that he had not been punished severely enough. At least one student said that he should have been expelled. Others - primarily personal friends of John Doe - subscribed to the view that it was only "a joke" and that he was unfairly punished. These opinions, on both sides, came from the students, not from Ms. Martin, who did not know the details of this particular incident, and spoke only generally about bigotry, hate speech, and anti-Semitism.[4] She did, accurately and fairly, explain to her class that engaging in hate speech could bring about ramifications that interfere with one's education and professional future.

Ms. Martin sought to lead a productive, educational conversation among the students. She did not lecture them. She had no knowledge about the young man or the incident to share with the students. She also did not mention John Doe's name, which she did not know.

Ms. Martin acted appropriately and commendably. She held an age and maturity-appropriate discussion about the Holocaust, anti-Semitism, and the ramifications of hate speech in adult society. She recognized a teaching moment, and she used it to teach. As she explained to us:

[M]y intention in having a conversation with my students was motivated by their talking about the incident in my class to the point of distraction. This was my 12 Honors class that has only 8 students enrolled.

I felt that this was a teaching/learning moment to help them understand the seriousness of the situation. Engaging students in vigorous discussion which can be related to their own experience is one of the standards for the Common Core Curriculum in Massachusetts. I felt it was appropriate and worthwhile to do this, then move on to what I had planned for this class that day. . . .

When Ms. Martin talked about history, hate, and civility in this context, she taught her students - she did her job, and did it well. She further explained:

All of my students know him and used his name freely at this time. They revealed his punishment which was a six-day suspension. I attempted to sway the conversation towards what the swastika symbolizes as hate and an offensive threat to everyone especially Jewish people. I discussed with them the casualties of Jews, Hitler's "Final Solution," the atrocities of concentration camps, and the historical fact that six million Jews had been murdered just because of their religion under the symbolic death threat of the Third Reich. I also tried to remind them that just because seventy plus years has passed since the end of WW II, this symbol survives today as representing evil harmful practices directed at Jews. . . .

This discussion lasted about ten minutes. I then redirected the class back to my intended lesson plan.

We stand behind Ms. Martin's discussion with this small honors class. In our view, this is a conversation that should have taken place in more Stoughton classrooms.

According to his mother, John Doe became upset when he realized the extent to which his actions and punishment were the topic of discussion at Stoughton and that many students were offended by and condemned his actions. John Doe's mother made a formal complaint accusing Ms. Martin of "bullying" John Doe, apparently alleging that Ms. Martin had somehow caused her son this embarrassment, although Ms. Martin did not know John Doe, had never met him, and did not tell her students anything about the boy or the incident. Indeed, she learned about the incident from them.

We do not question that John Doe may be embarrassed, regret his actions, or that he is upset that his classmates have criticized his behavior. But his was an act done in public, and likely one that was intended to attract attention. One does not display a swastika in a room full of students decorating a "Spirit Wall" with the intention that no one see it. There is no right to privacy regarding a public act like this one, even if the actor regrets and is embarrassed over his behavior. This is particularly true with respect to the posting of controversial hate speech, such as a swastika.

The school correctly realized that the bullying charge was entirely inapplicable to Ms. Martin and dismissed that charge. However, the investigator determined that "Ms. Martin failed to perform the roles and responsibilities of a teacher as defined in the SHS handbook when she participated in a group discussion" about the incident, and that is doing so, "she was not providing an educational climate conducive to student engagement and learning." (Ryan Investigative Report at p. 6.) A letter of reprimand was placed in her file.

In our view, Ms. Martin responded admirably to the incident. The disciplinary action appears to be a ham-handed attempt to mollify a parent who (understandably) wishes that her son's serious, anti-Semitic acts could remain secret. But John Doe committed these acts in full view of others, and apparently he has discussed it with other students as well. He is responsible for any shame or embarrassment he incurred. It is not only unfair to punish Ms. Martin; it is also, in our view, a violation of the First Amendment. And, most importantly to the Brandeis Center, the message that this discipline sends to the students and other teachers at Stoughton - that a swastika is not "hate speech" and that it is better not to stand up to discrimination - may have long-term, undesirable effects.

II. The First Amendment Protects Ms. Martin's Statements in the Classroom Discussion.

Public school teachers retain their right to free speech, even in the school setting. *Ward v. Hickey*, 996 F.2d 448, 452 (1st Cir. 1993), citing *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969). It is also true that a school district "may limit classroom speech to promote education goals." *Id.* at 452. In *Ward*, the First Circuit set forth the following standard for resolving questions that invoke both the teacher's First Amendment rights and the school district's authority to regulate classroom speech:

In light of these competing principles, we find that a school committee may regulate a teacher's classroom speech if: (1) the regulation is reasonably related to a legitimate pedagogical concern [citation]; and (2) the school provided the teacher with notice of what conduct was prohibited, see *Keyishian v. Board of Regents*, 385 U.S. 589, 604 (1967).

996 F.2d at 452. With respect to the first prong of the test set forth in *Ward* - whether regulated classroom speech is "reasonably related to a legitimate pedagogical concern" - the court held, "we have determined the propriety of school regulations by considering circumstances such as age and sophistication of students, relationship between teaching method and valid educational objectives, and context and manner of presentation." *Id.* at 452, citing *Mailloux v. Kiley*, 448 F.2d 1242, 1243 (1st Cir. 1971).

We struggle to understand how punishing Ms. Martin for this discussion "is reasonably related to a legitimate pedagogical concern." High school seniors in a small honors class are sophisticated enough to

discuss the Holocaust, bigotry, and the ramifications for acts of anti-Semitism and hate speech. If not these honors English students, there are simply no students at Stoughton or any other high school that any teacher can discuss these issues with - and that is inapposite to every effective program for addressing anti-Semitism, racism, and hate speech we know of.

Moreover, if it is the role of the teacher to prepare high school seniors for college or for the work force, it is not only reasonable to discuss issues of civility - it is also necessary. There are ramifications for hate speech and other acts of incivility. It would not be surprising for a person to lose his or her job for posting a Swastika in the workplace. Ms. Martin, who sought to explain the ramification of hate speech to her students, was not only within her First Amendment rights. She was actually performing the function that she was hired to do.

The second prong of *Ward v. Hickey* requires that "the school provided the teacher with notice of what conduct was prohibited." 996 F.2d at 452. "The relevant inquiry is: based on existing regulations, policies, discussions, and other forms of communication between school administration and teachers, was it reasonable for the school to expect the teacher to know that her conduct was prohibited?" *Id.* at 453-54. "Even if under the above test a school may prohibit a teacher's statement . . . it is not entitled to retaliate against speech that it never prohibited." *Id.* at 453 ("this circuit has long recognized a teacher's right to notice of what classroom conduct is prohibited," citing *Mailloux*, 448 F.2d at 1243).

Stella Martin is disciplined only for violating the following sentence in the Stoughton Employee Handbook: "As leaders and educators in the Stoughton Public Schools, we are committed to providing an educational climate that is conducive to student engagement and learning." The language referenced, particularly taken in the context of its placement in the Handbook, does not provide adequate notice that the statements at issue were impermissible.

We first assumed that this was a specific provision in the Stoughton Employee Code of Conduct. Even if it had been, the language is both too broad and too vague to provide reasonable notice that the conversations at issue would be deemed prohibited. *Mailloux*, 448 F.2d at 1243 ("As notice to the plaintiff that he should not have engaged in the act in question, this standard, although laudable, is impermissibly vague[and s]anctions in this circumstance would be a denial of due process").

However, this sentence in the handbook is not a specific provision in the employee code of conduct. It is an explanatory sentence in the introduction to the section titled, "Bullying Prevention and Intervention Plan." Read in context, that sentence clearly refers to how teachers should handle a classroom when student-on-student bullying occurs. Nothing in or near that language would suggest that it is intended to regulate any of the speech at issue here.

Under *Ward*, a teacher must be given notice of the type of speech that would violate a regulation before she is punished for violating that regulation. *Id.* at 453. In our view, Ms. Martin could not have possibly known that the discussion with her class violated any regulation from the inclusion of this sentence in the bullying section of the employee handbook; moreover, even if she somehow understood that the sentence might apply to speech by teachers outside of the context of a student being bullied in their classroom, the language is too broad and too vague to provide reasonable notice that the conversations at issue would be deemed prohibited. *Mailloux*, 448 F.2d at 1243.

III. Conclusion

The Brandeis Center reiterates our support for Ms. Martin and commend her appropriate response to the anti-Semitic incident that took place at Stoughton. We are particularly concerned about the potential chilling effect of her punishment on others in the Stoughton community. Best practices for addressing anti-Semitism include the school's acknowledgement and condemnation of the anti-Semitic acts, and an open dialogue in the school community. When a teacher is punished for engaging in such dialogue, we can expect that the next time an anti-Semitic or other act of hatred occurs, teachers will be less likely to follow best practices, students will be less likely to report such behavior, and the bigotry is rewarded. As the Court in *Ward* held: "Few subjects lack controversy. If teachers must fear retaliation for every utterance, they will fear teaching." 996 F.2d at 453.

We hope that Stoughton will retract Ms. Martin's punishment, not only because it is fair and right, but so that other teachers will not fear teaching about the role of hate and bigotry in history, the responsibility of adults in civil society, and the ramifications of uncivil acts.

[1] We understand that arbitration hearings for Ms. Regan and Ms. Moll are scheduled for November and December.

[2] Aside from the information reported to us, we also reviewed correspondence from the school district, news reports, and other primary and secondary documents, including a document by Regina M. Ryan, Discrimination and Harassment Solutions, LLC, "Investigation of a Complaint by Cheri Ferreira, Findings of Fact, Conclusions and Recommendations" (January 11, 2017), recommending formal reprimand of Ms. Martin (hereinafter, Ryan Investigation Report).

[3] These facts are taken from the investigation report, except for the description of the comment, which is left out of this and all documents and correspondence from Stoughton, which simply say that the offending student "made a comment." (Ryan Investigation Report at p.3, §V(7).) To say the offending student simply "made a comment" greatly understates the nature of the incident.

[4] There are suggestions in the Ryan Investigative Report that Ms. Martin made specific statements about John Doe (e.g., that "he had ruined his whole life and would never amount to anything," and that he should have been expelled). These suggestions apparently come from John Doe's mother's complaint. Apparently this "information" was reported to her by John Doe, who told his mother that another student told him that Ms. Martin made these personal and specific comments about John Doe. Ms. Martin told us, and we understand that she also told Ms. Ryan, that she did not make these or any personal or specific comments about John Doe. Given that Ms. Ryan did not interview a single student in the class, or any witness to the classroom discussion, we disregard these accusations, as there is no evidence to support them other than the a third-hand claim from Ms. Martin's accuser.