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Student Free Speech Rights  
Mr. Faulhaber Class Period: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**White hoods, cross burning: Iowa students disciplined after photo surfaces**



CRESTON, Ia. — This is not the way any school district or small town wants to go viral.

But now Creston has no choice but to wrangle with the fallout after five high school students on the football team were photographed [wearing white hoods, brandishing a Confederate flag and rifle and standing in front of a burning cross.](http://www.desmoinesregister.com/story/news/2017/09/06/white-hoods-apparent-confederate-flag-iowa-students-disciplined-after-photo-surfaces/637953001/)

The image spread like wildfire across social media and instantly catapulted this Union County seat of 7,800 into the epicenter of our nation’s continuously churning debate on race.

Two of the school officials at the eye of the storm, high school principal Bill Messerole and Creston/Orient-Macksburg head football coach Brian Morrison, have spent the last two days dealing with the crisis.

Morrison, a 16-year veteran of the district who's in his eighth year as head coach, kicked the five players off his high school team in what has become his most difficult week as an educator.

The coach also ordered his athletes to stop commenting on the incident on social media and to work together to “move forward as a football team and be better from it.”

Morrison, wiping away tears as he spoke Thursday, said that he had agonized over whether to hold football practice Wednesday as the photo quickly spiraled into a national story.

But ultimately it was good for his students to return to some semblance of routine, he said, after spending time talking through the implications of what had happened.

“We met yesterday before practice and discussed as a team us moving forward, what this team means to the community,” said Morrison, who in 2014 took the squad to the Class 3A state semifinals at the UNI-Dome in Cedar Falls. “People look up to us. If we did not present ourselves in a positive manner … whether you do right or wrong, if you’re a part of it, you’re a reflection of our team and past players and former coaches.

"So we try to have a positive influence not only in the high school but also in the community.”

The high school football team of 74 players — now 69 — has four racial minority athletes, including its 16-year-old varsity quarterback.

The Creston/O-M Panthers are 1-1 heading into Friday's varsity game at Harlan, where there will be no official recognition of the incident.

“It’s not fair to the kids to keep reliving the past," Morrison said."If you’re a part of this program, you should feel like you’re a part of the family."

Creston's K-12 enrollment is nearly 90 percent white, 4.5 percent Hispanic and 1.6 percent African-American, according to the latest data from the Iowa Department of Education.

Even though this could happen anywhere, it happened here,” Messerole said. “So we’ve got to own this and move on in a positive way.”

He plans to implement school-wide sensitivity and diversity training, among other long-term efforts.

“I think we need to become a model of how to handle this,” he said.

“I don’t mean we’re going to get a speaker to come in one time and say, 'Hey, we’re doing something because we brought in a speaker.'"

Messerole, who declined to comment on the discipline of the five students beyond their dismissal from the football team, added that the school district has consulted its attorney.

[Some legal experts have weighed in](http://www.desmoinesregister.com/story/news/crime-and-courts/2017/09/06/discipline-punishment-against-creston-students-free-speech-violation/639628001/) on the photo, observing that although the image is offensive and racist, it may qualify as protected free speech off school grounds.

Messerole said that as an administrator weighing the boundaries of free speech rights, “that line probably is if it’s a material and substantial disruption to the school day.”

**Discipline against cross-burning students may be free-speech issue**

School leaders' decision to discipline Creston High School students who were pictured [wearing Ku Klux Klan-type hoods](http://www.desmoinesregister.com/story/news/2017/09/06/white-hoods-apparent-confederate-flag-iowa-students-disciplined-after-photo-surfaces/637953001/)beside what appears to be a burning cross may be overreaching, said Drake University Law Professor Mark Kende.

While the picture may be offensive, “this is a significant free speech issue,” said Kende, who specializes in constitutional law. “If they’re off school grounds and they’re doing it in their free time and they’re not targeting someone in school … then this is a form of expressive speech.”

Under the Constitution, hate speech is legal and protected, Kende said.

In Iowa, hate speech does not rise to a criminal offense unless it’s specifically targeted, which doesn’t appear to be the case in Creston, Kende said. There are also no state-specific laws regarding burning torches or wearing certain garb.

“The school district’s going to have an issue,” Kende said. “The issue is complicated by the fact that the school is reaching beyond its typical school (borders) to penalize them.”

However, the law get complicated when considering "school politics" and social media, Kende said.

For example, the disciplined students may have been required to sign documents to join extracurricular activities stating they won’t engage in certain behavior, Kende said.

He also said there may be more to the story than the image spreading around social media. He said there may be coded messages in the images the general public are unaware of, but school officials recognize.

"Is there a message that’s not explicit? If that message is clear enough, does it rise to the level of intimidation or threat?" Kende said. "From what I’ve heard so far, the answer doesn’t seem like it does, but the way schools work, there’s so much inside politics and inside turmoil within a school ... so there may be more to the story, but in general, people are allowed to engage in this country in this offensive speech."

The image also shows the students pictured alongside a firearm and a burning object. While these elements enhance the offensiveness of the image, they are still protected a free speech as long as nobody is targeted with the offensive speech, Kende said.

"It very well could be viewed, for lack of a better phrase, (as) really, really offensive racist free speech," Kende said.

**Answer the questions a Court would have to decide in this case using precedent and Constitutional principles:**  
  
1) Does school authority over student speech that substantially disrupts the school environment extend to non-school activities that are conducted outside school hours? If so, in what circumstances? If not, under what situation would schools be able to restrict student speech? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
EXTRA CREDIT EXTENSION: After explaining the scenario to my parent(s), guardian(s), adult(s) in my life I was told…  
  
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