

# THE RUTHERFORD INSTITUTE

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Via Email ([michaelfulton@smsd.org](mailto:michaelfulton@smsd.org))

Dr. Michael Fulton, Superintendent  
Shawnee Mission School District  
8200 W. 71st Street  
Shawnee Mission, KS 66204

## **Re: Middle school student arrested for wielding imaginary “finger gun”**

Dear Dr. Fulton:

At a time when schools are wrestling with legitimate concerns about violence on and off campus involving actual weapons, The Rutherford Institute<sup>1</sup> has grave concerns about the manner in which the Shawnee Mission School District handled an incident in which a 13-year-old girl used her hand to mimic/point an imaginary finger gun at classmates in response to a theoretical question<sup>2</sup> only to find herself handcuffed, arrested, transported to a juvenile detention center, charged with a felony, and criminally prosecuted.<sup>3</sup>

The hand gesture, which involves an individual using their hand to mimic an imaginary handgun, is commonly referred to as a “finger gun” and is widely seen throughout popular culture, in movies, TV shows, music videos, and on social media. Indeed, the finger gun gesture was even [employed by President Obama in a humorous 2015 promotional video](#) for his health care plan.<sup>4</sup> More recently, [President Trump used the finger gun gesture in a May 2018 speech](#).<sup>5</sup>

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<sup>1</sup> The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to individuals whose civil rights are threatened or infringed.

<sup>2</sup> Katie Shepherd, “‘She was just mouthing off:’ 13-year old who pointed a finger gun at four classmates faces felony charge,” *The Washington Post* (Oct. 11, 2019), <https://www.washingtonpost.com/nation/2019/10/11/year-old-finger-gun-felony-charges-kansas/>.

<sup>3</sup> Katie Shepherd, “‘She was just mouthing off:’ 13-year old who pointed a finger gun at four classmates faces felony charge,” *The Washington Post* (Oct. 11, 2019), <https://www.washingtonpost.com/nation/2019/10/11/year-old-finger-gun-felony-charges-kansas/>.

<sup>4</sup> Jessica Chasmar, “Piers Morgan: ‘Appalling’ Obama uses finger gun to promote health care,” *The Washington Times* (Feb. 15, 2015), <https://www.washingtontimes.com/news/2015/feb/15/piers-morgan-appalling-obama-uses-finger-gun-to-pr/>.

<sup>5</sup> Carter Sherman, “Donald Trump delivers important message to the NRA: Kanye West is good,” *Vice* (May 4, 2018), [https://www.vice.com/en\\_us/article/kzx4zx/donald-trump-really-wants-the-nra-to-know-he-loves-kanye-west](https://www.vice.com/en_us/article/kzx4zx/donald-trump-really-wants-the-nra-to-know-he-loves-kanye-west).

To harshly penalize a child for mimicking a widely used gesture, including by present and past presidents of the United States, sends a conflicting, confusing and hypocritical message. Moreover, such an overreaction by Westridge Middle School's resource officer and principal undermines the public's confidence in safety measures and the ability of school officials to distinguish between a dangerous act and one that is simply childish.

As a national legal organization that has worked with public schools throughout the country to ensure that students are afforded full constitutional protections under state and federal laws without compromising efforts to keep the schools safe from gun violence, The Rutherford Institute has followed, weighed in on, and litigated numerous cases involving similarly harsh school disciplinary policies that eschew careful reasoning in favor of rash decision-making that results in victimizing students.

We can vouch for the fact that the serious interest administrators and educators have in making schools safe for children is in no way furthered by such a draconian response to student discipline.

### Background

During a classroom discussion at Westridge Middle School on Sept. 18, 2019, a young girl was asked, theoretically, if she could kill any five people in the room, whom she would pick. The 13-year-old girl then pointed to four fellow students and herself, using her hand to mimic a "finger gun." She was subsequently sent to the principal's office, where the school resource officer recommended that she be arrested. With the principal's approval, the school resource officer then took the girl outside, handcuffed and arrested her, and transported her to a juvenile detention center, where she was detained until her mother arrived to arrange for her release.

School officials have suggested that the girl's act of pointing a finger gun might violate the district's policy against intimidation and bullying, yet little appears to have been done to protect this student from herself being bullied. Ironically, while this young girl is being punished harshly for supposedly "[unlawfully and feloniously communicat\[ing\] a threat to commit violence, with the intent to place another, in fear, or with the intent to cause the evacuation, lock down or disruption in regular, ongoing activities ...](#)" or just the risk of causing such fear, this girl was allegedly allowed to be bullied for some months prior by some of the very students involved in the incident.

According to the girl's mother, the young girl was punched in the face on a school bus; on another occasion, she was reduced to tears and left sobbing in the school lunchroom due to bullying.<sup>6</sup> Even though the bullying was reported to school authorities, it continued unabated.

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<sup>6</sup> Mara Rose Williams, "Overland Park 13-year-old who pointed finger gun might avoid original felony charge," *Kansas City Star* (Oct. 15, 2019), <https://www.kansascity.com/news/local/crime/article236209048.html>.

### Unequal, Arbitrary Application of Discipline

The manner in which the school responded to incidents in which this young girl was bullied by her classmates compared to its heavy-handed response to the young girl's imaginary "finger gun" shows the arbitrary manner in which the school has enforced bullying policies and rules of conduct. Incredibly, the girl was [charged with a felony for threatening a mass shooting](#),<sup>7</sup> which carries a penalty of up to a year in jail.

Contrast this with the punishment meted out to two 13-year-old students at the same middle school who, the previous month, brought actual guns to school in their backpacks.<sup>8</sup> Those [teenagers were charged with misdemeanors](#) as juveniles in possession of a firearm, a far less serious punishment than the felony charge levied against the young girl for wielding an imaginary finger gun.<sup>9</sup>

### Zero Tolerance Policies Are Misguided and Ultimately Harmful

Rather than addressing student behavioral issues through counseling and consultation with the parents, this young girl was treated like a criminal, subjected to unjustifiably harsh discipline and likely traumatized as a result.

Such an egregious abuse of power by school officials charged with teaching young people to exercise reason and value fairness is clearly inimical to not only the interest of this specific child but to all of the children within the school who are put in constant fear they too will be subjected to unreasonably severe penalties for innocent behavior. Moreover, the idea that harsh punishment of students will reduce problems in the school is [wholly misguided](#).

When school officials react in an overly-punitive manner, the school becomes an oppressive environment for children that is not conducive to learning or to fostering healthy self-esteem. Strict application of school conduct policies and meting out severe punishment has been found to result in higher rates of repeat offenders and dropout rates without making schools safer.<sup>10</sup> Indeed, a 2014 U.S. Department of Education report found that subjecting a student to

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<sup>7</sup> Joshua Bote, "Felony charge for girl, 13, who pointed finger-guns at other students, officials say," *USA Today* (Oct. 11, 2019), <https://www.usatoday.com/story/news/nation/2019/10/11/kansas-middle-school-girl-charged-felony-after-making-finger-guns/3944459002/>.

<sup>8</sup> Toriano Porter, "JoCo student with a finger gun faces felony charge. Kids with real guns don't. What?," *The Kansas City Star* (Oct. 10, 2019), <https://www.kansascity.com/opinion/opn-columns-blogs/toriano-porter/article235973302.html>.

<sup>9</sup> Mara Rose Williams, "Overland Park 13-year-old who pointed finger gun might avoid original felony charge," *Kansas City Star* (Oct. 15, 2019), <https://www.kansascity.com/news/local/crime/article236209048.html>.

<sup>10</sup> Stephanie Francis Ward, "Schools start to rethink zero tolerance policies," *ABA Journal* (Aug. 2014), [http://www.abajournal.com/magazine/article/schools\\_start\\_to\\_rethink\\_zero\\_tolerance\\_policies?icn=most\\_read](http://www.abajournal.com/magazine/article/schools_start_to_rethink_zero_tolerance_policies?icn=most_read).

overly harsh discipline counteracts the goals of American schools in educating young people and actually may harm the child for the rest of their life.<sup>11</sup>

Extreme application of strict discipline policies contributes to a “school-to-prison pipeline,” where the criminalization of children pushes them out of schools and into situations that lead to more arrests and involvement in the criminal justice system.<sup>12</sup> When school policies purportedly intended to make schools safer are administered in an unreasonable and arbitrary manner, they actually result in the inhumane treatment of students.

This unequal application of discipline undermines student respect for school administrators and the rules they enforce, and must be something schools fight against and not promote.<sup>13</sup> The more often these policies are used to criminalize what everyone would consider childish behavior, the less the school becomes a place of education. Students instead see schools as police states or prisons and view teachers and administrators as police and guards walking the halls.

When a school is akin to a prison it leads to more contentious incidents of conflict, not fewer. But when a school treats children humanely and in a supportive way instead of as criminals, such incidents decrease, sometimes up to 90 percent as was the case when excessive surveillance and police officers were reduced at a school.<sup>14</sup> Additionally, it has been found that school resource officers assigned to schools with the intent of increasing safety, often lack sufficient training. This leads to more arrests for innocent acts on school campuses, even for such minor offenses as dress code violations or, as in this case pointing a “finger gun.”<sup>15</sup>

### Childish Behavior Does Not Warrant Arrest and Felony Charges

While in the present environment the schools might have a heightened sensitivity to gun-related activity, the childish act of pointing a finger gun—a harmless gesture commonly used in playground games such as cops and robbers—clearly does not warrant arrest and felony charges.

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<sup>11</sup> : U.S. Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, Washington, D.C., 2014.

<sup>12</sup> Mary Ellen Flannery, “The School-to-Prison Pipeline: Time to Shut It Down,” *NEA Today* (NEA Today, January 5, 2015), <http://neatoday.org/2015/01/05/school-prison-pipeline-time-shut/>.

<sup>13</sup> Allie Bidwell, “Report: Schools Should Reduce Use of 'Zero Tolerance' Discipline Policies,” *U.S. News & World Report* (U.S. News & World Report, June 3, 2014), <https://www.usnews.com/news/articles/2014/06/03/report-schools-should-reduce-use-of-zero-tolerance-discipline-policies>.

<sup>14</sup> Jeff Deeney, “A Philadelphia School's Big Bet on Nonviolence,” *The Atlantic* (Atlantic Media Company, July 18, 2013), <https://www.theatlantic.com/national/archive/2013/07/a-philadelphia-schools-big-bet-on-nonviolence/277893/>.

<sup>15</sup> Susan Ferriss, “Controversy over Cops in Schools Flares Anew,” *Center for Public Integrity* (Center for Public Integrity, May 19, 2014), <https://publicintegrity.org/education/controversy-over-cops-in-schools-flares-anew/>.

A police officer noting that the unclear guidelines and training for these school police officers, leads to their involvement even in minor incidents and the less involvement actually drives incidents in a school down.

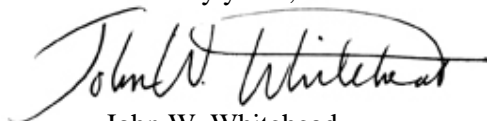
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Unfortunately, this child has now been traumatized, stigmatized and must deal with the future ramifications from being labeled a criminal because school officials who should have known better opted to overreact to nonviolent, childish behavior. Her permanent record will now indicate that she was accused of felony threat offense, a charge that will no doubt follow her throughout her school years and for the rest of her life. Thus, as a result of the irrational decisions of government officials, the girl's educational and career opportunities will be jeopardized.

We urge you and others within the school district and community to work to mitigate the harm already done to this student by the mishandling of a small incident. This would include calling on the prosecuting officials to drop the charge that has been filed against this student, the elimination of any reference to the criminal charge from government records, as well as a review your school district's policies to implement limits on the punitive actions taken for minor offenses by children.

We also would be glad to assist the Shawnee Mission School District in re-shaping its policies to ensure that student disciplinary matters are handled in a more appropriate, constructive manner going forward.

Sincerely yours,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

John W. Whitehead  
President

cc: Steve Howe, Johnson County District Attorney