

THE RUTHERFORD INSTITUTE

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November 18, 2020

Via Email [REDACTED]

Re: Sixth grader suspended, reported to police for displaying toy gun while at home during Zoom virtual classroom

Dear Dr. Baker:

While the COVID-19 pandemic has undoubtedly introduced significant challenges for the schools, as they vacillate between holding classes online, in-person or a hybrid of the two, families are also being forced to contend with how best to meet their children's educational needs while balancing health, safety and privacy concerns.

As a national legal organization that works 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 is committed to ensuring that remote learning (by way of online or virtual classes) not be used to justify the expansion of draconian zero tolerance policies to encompass so-called "violations" that take place in students' homes and home environments.¹

We are particularly concerned that school officials at the [REDACTED] chose to suspend 11-year-old [REDACTED] for possessing weapons or weapons look-alikes and making threats when he displayed a toy gun during a "Trick or Treat" activity at the end of a Zoom class on October 27, 2020. We believe [REDACTED] suspension, which relates to conduct that occurred wholly outside of the Academy's grounds, constitutes a severe misapplication of the Academy's Student Code of Conduct and a violation of North Carolina law, which strictly limits the application of disciplinary rules to off-campus actions.

¹ The Rutherford Institute is a non-profit civil liberties organization that assists schools and community members in their efforts to balance safety concerns with the constitutional rights of families and students. The Institute also provides legal representation to individuals whose civil rights are threatened or infringed and educates the public about threats to its freedoms.

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Therefore, on behalf of ██████ parents, who have authorized The Rutherford Institute to intercede on their behalf, we ask that this disciplinary action be rescinded and that any record of the incident be removed from his records, which should not be unfairly tarnished because of actions that could in no way be considered a threat to the Academy community.

Background

The incident occurred on October 27 during a Chinese class that ██████, a sixth grader at the Academy, and other students were participating in remotely using the Zoom meeting application. At the time, ██████ was in his bedroom at the residence he lives in with his mother and father. In the course of the class, the teacher, ██████, asked the children to play a game of “Trick or Treat.” According to ██████, ██████ asked the children to each make a scary face when asked “Trick or Treat” in Chinese. When ██████ turn came, he pointed a broken toy gun at the computer screen. He said nothing in connection with his gesture and the display was momentary; the only time the toy gun appeared during the class was when ██████ turn came to respond to ██████ “trick or treat.” ██████ also saw or heard no unusual reaction to his “scary” gesture.

According to your formal written notice of the suspension, ██████ reported the incident and it was eventually brought to your attention. You not only contacted ██████ parents, but also contacted local police and asked for a “safety visit.” His parents were told that ██████ would be suspended immediately because of the “threat,” even though the parents confirmed that the item ██████ displayed was only a toy and protested that ██████ conduct could not be considered a threat. Thereafter, a police officer arrived at the ██████ residence and was allowed to enter. The officer was able to confirm that the item ██████ displayed was a toy gun.

The next day, a Zoom meeting was held between you and ██████ parents to discuss the incident and the disciplinary action. Although the parents insisted that ██████ did not threaten anyone by pointing the toy gun, you confirmed that ██████ would be suspended until November 2. This was further confirmed in writing in your October 28 letter describing the incident.² The letter asserts two grounds for ██████ suspension: (1) for possessing, handling or using any instrument that reasonably looks like a weapon; and (2) for making a threat to other students.

█████ Did Not Possess a Weapon in Violate of the Code of Conduct

Your October 28 letter asserts that ██████ violated the “Weapons” provision of the Student Code of Conduct. Specifically, it asserts ██████ was guilty of “[p]ossessing, handling, using, or transporting, whether concealed or open, any weapon, or any instrument that reasonably looks like a weapon or could be used as a weapon.”

² Although this letter indicates ██████ asked children to show a “silly” face during the “Trick or Treat” game, ██████ and other students recall being invited to make a scary face.

While not explicitly stated in the text of this provision, it is plainly evident that this provision applies only to possession or handling weapons *on school property*, and so does not apply to this incident. This weapons provision lists numerous items that are considered weapons, including pocket knives, BB guns, air rifles, fireworks, and any sharp or pointed instruments (such as box cutters or tools used for food preparation). It would be absurd to construe this provision as forbidding students from possessing *anywhere* and at *anytime* the listed items since many of them are common and ordinary objects that parents allow their children to handle and use. Yet your decision makes this unreasonable application of the rule by extending it to possession of a toy gun in his own home.

Moreover, this application of the weapons rule to is in direct conflict with a North Carolina law restricting the operation of school disciplinary rules to off-campus conduct. N.C. Gen. Stat. § 115C-390.2(c) provides:

Board policies may authorize suspension for conduct not occurring on educational property,³ but only if the student's conduct otherwise violates the Code of Student Conduct and the conduct has or is reasonably expected to have a direct and immediate impact on the orderly and efficient operation of the schools or the safety of individuals in the school environment.⁴

Even to the extent the Academy's weapons possession rule could be reasonably interpreted to apply to conduct in his room, § 115C-390.2(c) forbids its application in this case because there is no indication that display of the toy had or could be expected to have a "direct and immediate impact" on order, efficiency or safety within the Academy. North Carolina law thereby forbids the discipline imposed upon under the Academy's weapons policy.

Conduct Did Not Constitute a Threat

Your letter also imposed the suspension under the Academy's student conduct policy on threats. Although the policy does cover gestures communicated via the internet, application of the threat policy still must comply with the requirement of N.C. Gen. Stat. § 115C.390.2(c) because the conduct did not take place on "educational property." Again, there is no indication that the display of the toy gun had any impact on the operation or safety of the Academy, so application of the threat policy is forbidden by law.

But more fundamentally, the actions of cannot plausibly be considered a "threat" under any reasonable definition of that term. By statute, a threat requires action placing another in fear of physical injury "made in a manner and under circumstances which would cause a

³ "Educational property" is defined as "[a]ny school building or bus, school campus, grounds, recreational area, athletic field, or other property under the control of any local board of education or charter school." N.C. Gen. Stat. § 115C-390.1(b)(4).

⁴ Charter schools are required to comply with this statutory provision under N.C. Gen. Stat. § 115C-218.60

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reasonable person to believe that the threat is likely to be carried out[.]” N.C. Gen. Stat. § 14-277.1.

██████████ display of the toy gun was made in direct response to ██████████ request that he do something “scary” during the “Trick or Treat” game. Everyone watching during the Zoom class knew this was the reason and purpose of ██████████ action. He did or said nothing which could have led anyone watching to believe that he wanted to harm them, particularly since he was not in the presence of anyone taking the class. Thus, not only was there no actual offer to harm another person, but no reasonable person could believe that ██████████ meant to do so.

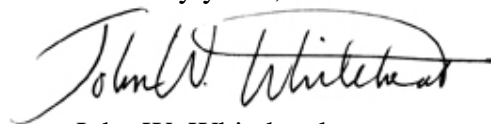
For the reasons stated above, the school’s suspension of ██████████ is unsupportable. His actions were clearly an innocent, playful moment that was done in response to his teacher’s instructions to do something scary as part of the class activity. The suspension he was given and the police investigation the Academy instigated were not only unjustified under the terms of the controlling Academy policies and state law but constitute an extreme overreaction to child-like behavior prompted by his teacher.

The serious interest administrators and educators have in making schools safe for children is in no way furthered by the draconian response taken in this particular case. Indeed, such a blatant overreaction by school administrators undermines the public’s confidence in the ability of school officials to act judiciously, while balancing safety concerns with an understanding of the rights of those involved.

██████████ should not suffer the stigma of this suspension for the remainder of his academic career. It will no doubt remain a part of his records and could have profound effects on his future given the implications of violence arising from purported violations of rules on possessing weapons and making threats. Therefore, we demand that the suspension imposed upon him as set forth in your October 28 letter be rescinded and that any and all record of that action be removed from his records maintained by the Academy.

In order that we might advise ██████████ parents about their legal options, we request a response to this letter by December 3, 2020

Sincerely yours,



John W. Whitehead
President

cc: ██████████