

# THE RUTHERFORD INSTITUTE

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December 4, 2013

Via Email and U.S. Mail

Superintendent Rona Kaufmann  
South Eastern School District  
South Eastern Middle School – East  
Fawn Grove, PA 17321

*Re: Suspension of Johnny Jones*

Dear Superintendent Kaufmann:

The Rutherford Institute<sup>1</sup> has been contacted by the parents of 5th grader, Johnny Jones, a student at South Eastern Middle School, who was summarily suspended under your school's draconian "zero tolerance" policy.

As we understand the facts of Johnny's case, during the week of October 14th, Johnny asked his teacher for a pencil during class. He walked to the front of the classroom to retrieve the pencil, and during his walk back to his seat, a classmate and friend of Johnny's held his folder like an imaginary gun and "shot" at Johnny. Johnny playfully used his hands to draw the bowstrings on a completely imaginary "bow" and "shot" an arrow back at the friend. The two children laughed. Seeing this, another girl in the class reported to the teacher that the boys were shooting at each other. The teacher took both Johnny and the other boy into the hall and lectured them about disruption. This is exactly where the story should end. Instead, however, the teacher sent an email to Johnny's mother, Beverly Jones, alerting her to the seriousness of the violation because the children were using "firearms" in their horseplay, noting that Johnny was issued a referral to the Principal. Principal John Horton contacted Ms. Jones soon thereafter, and asserted that Johnny's behavior was a serious offense that could result in expulsion, although Mr. Horton offered to "merely" require that Johnny serve a one day in-office suspension. When Ms. Jones asked Mr. Horton what policy Johnny had violated, Mr. Horton replied that Johnny had "made a threat" to another student using a "replica or representation of a firearm," through his use of an imaginary bow and arrow.

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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.

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Reviewing South Eastern Middle School's 2013-2014 Student Code of Conduct reveals that Mr. Horton's determination that Johnny should be suspended was baseless. The provisions of "Weapons, Ammunition and other Hazardous Items" found on page 10 of the Code of Conduct, prohibit the possession of "weapons," which is defined in 24 P.S. § 13-1317.2 as including any "knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury."<sup>3</sup> The Student Code further prohibits any "replica" or "look-alike" weapon, and requires that the school Principal immediately contact the appropriate police department, complete an incident report to file with the school Superintendent, and begin the process of mandatory expulsion immediately.<sup>4</sup>

No reasonable argument can be made that the imaginings from the mind of a 10-year old boy, completely lacking any actual, tangible device, represented a "replica" or a "look-alike" of an actual gun. There is little doubt that the narrowly worded "replica or look-alike" language was intended to prohibit physical devices that could meaningfully resemble actual weapons, such as air pistols, air rifles, BB guns, and the like. To interpret such a provision to apply to Johnny's conduct represents a gross misapplication of the Code of Conduct, and finds no support in the language of the Code or in 24 P.S. § 13-1317.2. To conclude otherwise by suspending Johnny is utterly beyond the pale. The application of such a policy intended to prevent serious tragedies on public school campuses in such a ludicrous manner undermines the sober and serious nature of actual weapons possession violations.

This atrocious misapplication of rules originally intended to protect students while on school grounds is foolish and actually damages the futures of the children meant to be protected. While we all have an interest in ensuring school safety, these zero tolerance policies, which the American Bar Association (ABA) has rightly condemned as "a one-size-fits-all solution to all the problems that schools confront," have proven ineffective at discouraging actual criminal, violent behavior in the schools.<sup>5</sup>

Moreover, Johnny's rights were trampled without the due consideration. He was immediately threatened with expulsion, and thereafter summarily suspended without adequate justification. Even if Johnny's conduct somehow violated the Code of Student Conduct the application of the school's policy to him was unduly and unnecessarily punitive in nature, and not meant to protect against any real harm or threat of harm.

It is our belief that Johnny was deprived of adequate procedural safeguards in the Principal's unilateral and misguided application of the zero tolerance policy against him. No

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<sup>3</sup> South Eastern School District: Student Code of Conduct, 2013-2014 at 10, <http://www.sesdweb.net/cms/lib06/PA01000019/Centricity/Domain/224/StudentCodeofConduct%2013-14.pdf>.

<sup>4</sup> South Eastern School District: Student Code of Conduct, 2013-2014 at 10, <http://www.sesdweb.net/cms/lib06/PA01000019/Centricity/Domain/224/StudentCodeofConduct%2013-14.pdf>.

<sup>5</sup> ABA Juvenile Justice Committee, ZERO TOLERANCE POLICY: REPORT (Feb. 2011).

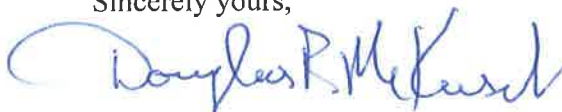
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actual gun, “replica” or “look-alike” was ever presented in any physical form, and Johnny’s conduct amounted to nothing more than the kind of horseplay typical of children his age.

For this reason, we request that you rescind the suspension and *immediately* remove all reference to it from Johnny’s permanent school record. There is no reason that Johnny should be stigmatized and branded a miscreant due to the school’s unreasonable application of its zero tolerance policy against him. We strongly urge you to follow the guidance of the ABA’s recommendations and not further such policies that “eliminate the common sense that comes with discretion and, at great cost to society and to children and families, do little to improve school safety.”<sup>8</sup>

In order that we may advise Johnny’s parents how to proceed in this matter, please provide a response to this letter on or before the close of business December 13, 2013.

Sincerely yours,

A handwritten signature in blue ink that reads "Douglas R. McKusick". The signature is fluid and cursive, with a large initial "D" and "M".

Douglas R. McKusick  
Senior Staff Attorney

Cc: Beverly Jones  
John W. Whitehead

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<sup>8</sup> ABA Juvenile Justice Committee, ZERO TOLERANCE POLICY: REPORT (Feb. 2011).