

THE RUTHERFORD INSTITUTE

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December 4, 2014

VIA EMAIL, CERTIFIED MAIL AND ELECTRONIC MAIL

Mr. Rod Schroder
Superintendent of Schools
Amarillo Independent School District
7200 Interstate 40 West
Amarillo, TX 79106
rod.schroder@amaisd.org

Re: Jacob Herrera / First Amendment Activity in Amarillo Independent School District

Dear Mr. Schroder:

Lori Martinez, the mother of Jacob Herrera, an eighth grader at Sam Houston Middle School (SHMS), has authorized The Rutherford Institute¹ to intervene on her behalf in resolving an incident that took place on October 29, 2014, wherein her son was forcibly arrested for wearing rosary beads to a school football game. Jacob's subsequent injuries resulting from the police officer's use of excessive force, which according to witnesses, involved slamming Jacob to the ground and laying on him until Jacob was gasping for air,² caused the teenager to be sent to the hospital.

According to Ms. Martinez, despite having been granted permission by the school principal to wear his rosary beads openly at the football game, her son Jacob was forcibly arrested by police while attending an Amarillo Independent School District (AISD)-sponsored football game because he was wearing rosary beads, which were a gift from his dead brother. Apparently, rosary beads, while not specifically prohibited by any AISD rule or policy, have been deemed "gang apparel" that is banned under AISD's Student Handbook.

¹ The Rutherford Institute is an international non-profit civil liberties organization headquartered in Charlottesville, Virginia. Our mission is to educate the public on civil rights issues and to provide free legal representation to those whose fundamental liberties have been threatened or infringed.

² "Student Arrested for Refusal to Remove 'Gang-Related' Rosary," available at <http://houston.cbslocal.com/2014/11/03/student-arrested-for-refusal-to-remove-gang-related-rosary/>.

It is our understanding that despite public outcry, the unwritten school policy that classifies and prohibits rosary beads as gang apparel remains in effect. On behalf of Ms. Martinez, Jacob, and other students whose rights are being violated by the ban on rosary beads, we demand that you rescind this prohibition, which violates the constitutional and statutory rights of Jacob and other students to engage in religious expression by wearing rosary beads.

Jacob's wearing of rosary beads is protected under the First Amendment

According to Ms. Martinez, the rosary beads Jacob wears were given to him by his deceased brother and have particular religious, spiritual, and sentimental value to him. Jacob is not affiliated with any gang and his wearing of the rosary beads is only an expression of his religious beliefs and his devotion to the memory of his lost brother. Indeed, the rosary is used in the Roman Catholic faith for prayers to the Virgin Mary and has clear religious significance.

Because of its significance to him, earlier this year Jacob sought permission from SHMS administrators to wear the rosary necklace to school. However, Jacob was told he had to wear the rosary inside his clothing during school hours, because rosary beads, while not specifically prohibited by any AISD rule or policy, have been deemed "gang apparel" that is banned under AISD's Student Handbook.

Although Jacob reluctantly complied with the directive that he not wear the rosary beads openly at school, prior to SHMS's October 29, 2014, football game, Jacob asked the school's principal for permission to display the beads while at the game and was told by the principal that he could do so. Nonetheless, while at the game that Wednesday evening, Jacob was approached by a police officer who ordered Jacob to either remove the rosary necklace or leave the property. When Jacob refused due to the principal's permission, the police officer reportedly slammed him to the ground, lay on him until Jacob was gasping for air,³ and forcibly arrested the teenager. Thereafter, Jacob was held in the detention center until following day, when he was released, but is still under restraints of his liberty due to conditions placed on his release by the County Court.

The school district's policy as to what constitutes gang apparel is unconstitutionally vague

None of this would have happened to Jacob if AISD's policies been in compliance with laws and constitutional provisions protecting the right to religious

³ "Student Arrested for Refusal to Remove 'Gang-Related' Rosary," available at <http://houston.cbslocal.com/2014/11/03/student-arrested-for-refusal-to-remove-gang-related-rosary/>.

expression. To the extent the “gang apparel” dress code policy extends to the display by Jacob of rosary beads, which is religious expression and seeks only to convey his faith and to honor his late brother, its application against him violates the First Amendment. It is well settled that public school students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” *Tinker v. Des Moines Ind. Community Sch. Dist.*, 393 U.S. 503, 506 (1969). A public school may not prohibit speech, unless it would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.” *Id.* at 509. An “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” *Id.* at 508.

School district bans on “gang apparel” that were used to prohibit rosary necklaces, and that were nearly identical to the AISD policy, have specifically been struck down for failing to meet the material interference standard. *See Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659 (S.D. Tex. 1997). Rosaries are considered to be “religious symbols,” which are entitled to First Amendment protection. *Id.* at 666. Thus, mere evidence that rosary necklaces have been worn by gang members outside of school is insufficient to establish a material “threat of interference with school safety.” *Id.* at 667. AISD’s application of the “gang apparel” ban to rosary beads clearly does not comply with the First Amendment.

In fact, it is established that a school dress code prohibition on “gang apparel” is void for vagueness in its entirety if the student handbook “lacks a sufficient definition for ‘gang-related apparel.’” *Id.* at 669. When a school dress code regulation “reaches First Amendment free speech and free exercise rights, ‘the doctrine demands a greater degree of specificity than in other contexts.’” *Id.* at 668. The AISD dress code policy, which restricts students’ ability to wear rosary necklaces based on its prohibition on “wearing either identified gang apparel or wearing clothing in a gang-style, as identified by law enforcement agencies,” unquestionably lacks the specificity that is required under the First Amendment.

The gang apparel policy violates the Texas Religious Freedom Restoration Act (TRFRA)

The “gang apparel” policy used to ban rosary necklaces is also in violation of the Texas Religious Freedom Restoration Act (TRFRA), which provides that “a government agency may not substantially burden a person’s free exercise of religion” unless the burden is in “furtherance of a compelling governmental interest” and is “the least restrictive means of furthering that interest.” Tex. Civ. Prac. & Rem. Code Ann. §§ 110.001-110.012. The Act defines the “free exercise of religion” as “an act or refusal to act that is substantially motivated by sincere religious belief,” but that need not be “motivated by a central part or central requirement of the person’s sincere religious belief.” *Id.* at § 110.001.

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A school dress code that substantially burdens a student's ability to engage in religiously motivated conduct will be subject to the TRFRA. *See A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248 (5th Cir. 2010). Wearing a rosary as a necklace constitutes "a sincere religious belief subject to First Amendment protections." *Chalifoux*, 976 F. Supp. at 670. There are also "a number of more effective means available" other than "a blanket ban on wearing rosaries" for schools to utilize in order to "control gang activity" and ensure "safety" in schools. *Id.* at 671.

Amarillo Independent School District's "gang apparel" policy, which creates an identical blanket restriction on students' ability to wear rosaries certainly is not the least restrictive means of furthering its interest in controlling gang activity at the school.

Conclusion

The dress code policy banning "gang apparel" that prevents Jacob from wearing a rosary necklace violates his First Amendment and statutory rights and resulted in the harm he suffered from his unreasonable arrest.

In order to rectify this situation, we ask that you do the following:

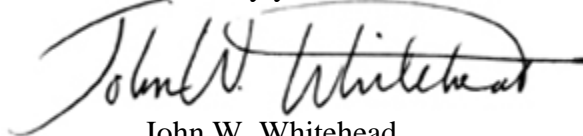
First, rescind the ban on wearing rosary beads as soon as possible to assure that the ongoing harm to the rights of Jacob and other students is prevented.

Second, communicate to law enforcement officials the school's belief that Jacob *not* be prosecuted for any of the unfounded charges being levied against him.

Third, issue a public statement that the AISD school district does not support or condone students being physically accosted in the manner Jacob was reportedly dealt with by the arresting officer, particularly where there was no threat of harm posed by the student and he was engaged in peaceful religious expression.

In order that we may advise Ms. Martinez of her options for protecting Jacob's rights in this matter, we will need a response to this letter on or before the close of business December 12, 2014.

Sincerely yours,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is written in a cursive style with a large, sweeping flourish over the name.

John W. Whitehead
President

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cc: Tammie Villarreal
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