

# THE RUTHERFORD INSTITUTE

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February 14, 2012

## Via E-mail and U.S. Mail

Dr. Michael R. Webb, Associate Superintendent  
Union County Public Schools  
402 North Church Street  
Monroe, NC 28112

**Re: Long-Term Suspension of [REDACTED]**

Dear Dr. Webb:

As president of The Rutherford Institute,<sup>1</sup> I am gravely concerned over your administration's decision to seek to impose a long-term suspension upon [REDACTED], a 13-year-old student in the eighth grade at Cuthbertson Middle School, over allegations that he was in possession of the Italian herb, oregano. [REDACTED] played a joke on a fellow student who had spoken to him about marijuana—the students having discussed it in health class—by giving him a bag of oregano. As a result of his prank, [REDACTED] has been accused by school officials of being in possession of and having the intent to distribute an “illegal drug, counterfeit or synthetic drug” in violation of Policy 4-3(b) #9(d)(4).

As an organization that routinely intervenes to assist families whose children have been unwitting victims of school zero tolerance policies gone awry, ~~it is our belief~~ that school officials have grossly overreacted to a situation in which an immature student merely played a harmless schoolboy prank on a fellow student. This overreaction by school officials now stands to inflict serious, long-term harm upon [REDACTED]'s education. Moreover, please be aware that the school's application of its policies in this situation risks significant violations of [REDACTED]'s constitutional rights. On behalf of [REDACTED]'s mother, [REDACTED], we hereby request that the long-term suspension be revoked immediately in favor of a reasonable response that takes [REDACTED]'s best interests into account and avoids unnecessary interference with his education.

The facts of the situation are undisputed. On January 20, 2012, [REDACTED] brought a bag containing oregano to school and gave it to another student with whom he had been discussing marijuana the previous day. Despite the fact that [REDACTED]'s behavior was obviously nothing more than a

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

childish prank, he was shown “zero tolerance” by school officials, who initially imposed a 10-day suspension upon ██████ for alleged violation of the school’s policy against “Illegal Drugs, Counterfeit or Synthetic Drugs.” On February 1, 2012, you notified the ██████ family in writing that ██████ had been recommended for an astounding 45-day long-term suspension. The ██████ family filed a timely appeal of this action in writing on February 6, 2012.

While the school’s actions constitute a travesty of justice on several fronts, the punishment being applied here—a long-term suspension of 45 days following a 10-day suspension that has already been served—is unwarranted for a number of reasons.

First, oregano cannot properly be considered a “counterfeit or synthetic drug.” While the Student Code of Conduct appears to contain no definition of these terms, oregano does not meet the statutory definition of “counterfeit drug” as set forth in North Carolina General Stat. Ann. §106-121(4a). Thus, the imposition of a long-term suspension on the basis of ██████’s possession of the oregano would be in violation of ██████’s Fourteenth Amendment due process right to clear notice of prohibited conduct.<sup>2</sup> Pursuant to the statutory definition (which appears to be the only definition available),

The term “counterfeit drug” means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying maker, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to the product of or to have been packed or distributed by, such other drug manufacturer, processor, packer or distributor.

Clearly, oregano does not fall within this definition. Thus, ██████’s alleged possession and “distribution” of oregano cannot constitute a violation of the cited Student Code of Conduct provision, nor can he properly be subjected to long-term suspension thereunder.

Second, please be reminded that North Carolina law confers upon school officials the authority to issue long-term suspensions only when a student’s conduct demonstrates a willful violation of school policies.<sup>3</sup> Surely ██████’s conduct cannot legitimately be considered a “willful” violation of the Student Code of Conduct, inasmuch as said Code of conduct does not define his behavior in bringing oregano to school as an actual offense in the first instance. Even if school officials could stretch the verbiage of the Code of Conduct’s prohibition of counterfeit

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<sup>2</sup> See, e.g., *Stephenson v. Davenport Comm. Sch. Dist.*, 110 F.3d 1303, 1310 (8<sup>th</sup> Cir. 1997) (holding district regulation void because it failed “to provide adequate notice of prohibited conduct...”). *Monroe County Bd. of Ed. v. K. B.*, 62 So. 3d 513, 516 (Al. Civ. App. 2010) (“[R]ules and regulations governing the conduct of students ‘must be sufficiently definite to provide notice to reasonable students that they must conform their conduct to its requirements.’”) (quoting 67B Am. Jur. 2d *Schools* § 285 (2010)); *James P. v. Lemahieu*, 84 F.Supp.2d 1113, 1121 (D. Haw. 2000) (“[I]t is clear that the Due Process Clause requires statutes to clearly set forth the type of conduct that is forbidden by its provisions.”) (finding Plaintiffs likely to prevail on the merits of their due process claim because wording failed to provide fair notice to students regarding meaning of “possession” of alcohol).

<sup>3</sup> This requirement is explicit in both the former North Carolina General Stat. Ann. § 115C-391 and the replacement bill, NC LEGIS 2011-282 (2011), to be codified as § 115-390.7.

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or synthetic drugs to encompass a perfectly harmless, legal substance such as oregano (a prospect that does not appear promising) it is simply inconceivable to construe this conduct as a “willful” violation of school policies.

Finally, we are aware that North Carolina’s legislature recently passed legislation that requires local boards of education to:

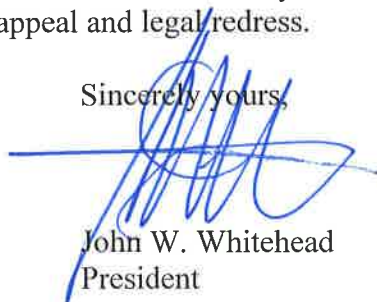
minimize the use of long-term suspension and expulsion by restricting the availability of long-term suspension or expulsion to those violations deemed to be serious violations of the board's Code of Student Conduct that either threaten the safety of students, staff, or school visitors or threaten to substantially disrupt the educational environment.<sup>4</sup>

It appears that, under the circumstances, your school district would be hard-pressed to demonstrate that [REDACTED]’s conduct either threatened the safety of the school community or substantially disrupted the school environment.

The Rutherford Institute is regularly contacted by concerned citizens who are alarmed by the blind application of “zero-tolerance” policies as a response to student behaviors that are unwise but present no real danger to the school community. We believe that suspension and expulsion should be reserved only for the most egregious disciplinary infractions and for those cases where that punishment is mandated by state or federal law. Most importantly, sanctions should be tailored to the individual circumstances of each student and not imputed in an artificial, “one-size-fits-all” approach. We hope that you will agree with this perspective and choose to respond to what was—at worst—the understandable indiscretion of a child with reason, proportionality, and compassion. Above all, we hope that you will base your decision on the long-term best interests of the affected students.

Based on these considerations, we hereby request a reversal of the decision to impose a long-term suspension upon [REDACTED], including, if necessary, an expungement of any reference to a long-term suspension from his academic record. In the event that you choose to sustain the suspension, we will pursue all legal means of appeal and legal redress.

Sincerely yours,



John W. Whitehead  
President

cc: Paul Whitfield, Esq.  
Affiliate Attorney with The Rutherford Institute

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<sup>4</sup> NC LEGIS 2011-282 (2011).