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March 19, 2013

Via Email

The Honorable Joan Carter Conway, Chair
Maryland Senate Education, Health & Environmental Affairs Committee
Miller Senate Office Building, 2 West Wing
11 Bladen St.
Annapolis, MD 21401 - 1991

Re: SB 1058, The Reasonable School Discipline Act of 2013

Dear Senator Conway:

As president of The Rutherford Institute,¹ a national civil liberties organization that has been at the forefront of an ongoing effort to defend young people victimized by overzealous zero tolerance policies in the public schools, I can personally attest to the need for legislation such as The Reasonable School Discipline Act of 2013 (SB 1058), which aims to establish straightforward guidelines for meting out discipline appropriate to an infraction without overreacting or unnecessarily and permanently marring a student's academic record.

Indeed, in the wake of the Columbine school shootings, The Rutherford Institute has been called on to intervene in hundreds of cases involving young people who were suspended, expelled, and even arrested for violating school zero tolerance policies that criminalize childish behavior and punish all offenses severely, no matter how minor or non-threatening the so-called infraction may have been. In many cases, the offense is nothing more than students playing cops and robbers on the playground, drawing pictures of soldiers, and writing ghoulish creative stories.²

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

² "Censoring artistic expression," *First Amendment Center*, (<http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/Silencing-36-76.pdf>).

While we all have an interest in ensuring school safety, these zero tolerance policies, which the American Bar Association has rightly condemned as being “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.

Maryland is no stranger to egregious zero tolerance policies. In their well-intentioned zeal to make the schools safer, school officials have succumbed to a near-maniacal paranoia about anything even remotely connected to guns and violence, such that a child who brings a piece of paper loosely shaped like a gun to school is treated as harshly as the youngster who brings an actual gun. Such was the case in two separate incidents which recently played out in two separate Maryland elementary schools, where students were suspended for pretending their fingers were guns in a game of cops and robbers on the school playground.³

The administrative response to these incidents rightly inspired outrage among parents and legislators alike, resulting in SB 1058, which is noteworthy for its recognition of the need for cooler heads to prevail when attempting to distinguish between behavior in the schools that is merely childish and nonthreatening versus behavior that is violent and poses a clear danger.

In adopting this legislation, Maryland would lead the way in setting an example for other state legislatures and educational bodies to follow. Certainly, the Maryland State Board of Education has shown itself to be cognizant of the need for a more balanced approach to such matters.

For example, in April 2012, the Maryland State Board of Education, in response to an appeal filed by The Rutherford Institute, agreed to reverse the suspensions of two Easton High School lacrosse players targeted under school zero tolerance policies for keeping tools, namely a penknife and a lighter, for maintaining their sporting equipment in their lacrosse bags. The Board’s ruling came after local school officials and the Talbot County Board of Education elected not to reverse the suspensions and expunge the players’ academic records. In coming to the defense of the two boys, The Rutherford Institute challenged the suspensions as violating fundamental principles of due process of law and insisting that the students’ academic records be completely expunged of the incident.⁴

³ “Playing cops and robbers gets 6-year-old suspended,” *WTSP*, (January 18, 2013), <http://www.wtsp.com/news/national/article/292543/81/Playing-cops-and-robbers-gets-6-year-old-suspended>.

⁴ “Zero Tolerance Victory: Md. Board of Ed. Reverses Suspension of H.S. Lacrosse Players for Possession of Deadly Weapons (Penknife, Lighter),” The Rutherford Institute (April 11, 2012), https://www.rutherford.org/publications_resources/Press%20Release/zero_tolerance_victory_md_board_of_ed_reverses_suspension_of_hs_lacross/.

To our detriment, the courts have done little to improve conditions for young people who are the unfortunate casualties in the schools' so-called quest for "student safety." Indeed, with each school shooting, the climate of intolerance for "unacceptable" behavior such as getting into food fights, playing tag, doodling, hugging, kicking, and throwing temper tantrums only intensifies. And as surveillance cameras, metal detectors, police patrols, zero tolerance policies, lock downs, drug sniffing dogs and strip searches become the norm in elementary, middle and high schools across the nation, the punishments being meted out for childish behavior grow harsher.

Whereas in the past minor behavioral infractions at school such as shooting spitwads may have warranted a trip to the principal's office, in-school detention or a phone call to one's parents, today, they are elevated to the level of criminal behavior with all that implies. Consequently, young people are now being forcibly removed by police officers from the classroom, strip searched, arrested, handcuffed, transported in the back of police squad cars, and placed in police holding cells until their frantic parents can get them out. For those unlucky enough to be targeted for such punishment, the experience will stay with them long after they are allowed back at school. In fact, it will stay with them for the rest of their lives in the form of a criminal record.

The following incidents provide just a small glimpse into the growing problem posed by school officials doling out increasingly harsh punishments and investigative tactics on young people for engaging in childish behavior or for daring to challenge their authority.

- Wilson Reyes, a seven-year-old elementary school student from the Bronx, got into a scuffle with a classmate over a \$5 bill. Reyes was arrested, transported to a police station and allegedly handcuffed to a wall and interrogated for *ten hours* about the location of the money. His family is in the midst of pursuing a lawsuit against the police and the city for their egregious behavior.⁵
- A North Carolina public school allegedly strip-searched a 10-year-old boy in search of a \$20 bill lost by another student, despite the fact that the boy twice told school officials he did not have the missing money. The missing money was later found in the school cafeteria.⁶
- In Chicago, a 15-year-old boy accused by an anonymous tipster of holding drugs was taken to a locker room by two security guards, a Chicago police

⁵ Ben Waldron, "7-Year-Old Handcuffed Over \$5, Says Suit," *ABC News*, (January 30, 2013), <http://gma.yahoo.com/blogs/abc-blogs/7-old-handcuffed-over-5-says-suit-232812597--abc-news-topstories.html>.

⁶ "Mom Angry After 3rd Grader Strip-Searches Over \$20," *KTLA Los Angeles*, (June 20, 2012), <http://www.ktla.com/news/landing/ktla-third-grader-strip-searched,0,7844144.story>.

officer, and a female assistant principal, and made to stand against a wall and drop his pants while one of the security guards inspected his genitals. No drugs were found.⁷

- Even the most innocuous “infractions” are being shown no leniency, with school officials expelling a 6-year-old girl for bringing a clear plastic toy gun to school, issuing a disciplinary warning to a 5-year-old boy who brought a toy gun built out of Legos to class, and expelling a fifth-grade girl who had a “paper” gun with her in class.⁸ The six-year-old kindergarten student in South Carolina was classified as such a threat that she’s not even allowed on school grounds. “She cannot even be in my vehicle when I go to pick up my other children,” said the girl’s mom, Angela McKinney.⁹
- Other cases include nine-year-old Patrick Timoney¹⁰ being sent to the principal’s office and threatened with suspension after school officials discovered that one of his Legos, a policeman, was holding a 2-inch toy gun.
- David Morales,¹¹ an 8-year-old Rhode Island student, ran afoul of his school’s zero tolerance policies after he wore a hat to school decorated with an American flag and tiny plastic Army figures in honor of American troops.
- A 7-year-old New Jersey boy,¹² described by school officials as “a nice kid” and “a good student,” was reported to the police and charged with possessing an imitation firearm after he brought a toy Nerf-style gun to school. The gun shoots soft ping pong-type balls.

⁷ “Parents Of Teen Strip-Searched At School Sue Assistant Principal, Police,” CBS Chicago (Dec. 5, 2012), <http://chicago.cbslocal.com/2012/12/05/parents-of-teen-strip-searched-at-school-sue-assistant-principal-police/>.

⁸ Erik Ortiz, “Overreaction? 6-year-old South Carolina girl is expelled from school after bringing plastic toy gun to class,” *NY Daily News* (Jan. 31, 2013), <http://www.nydailynews.com/news/national/s-student-6-expelled-plastic-toy-gun-article-1.1252179#ixzz2JwpYP0Mb>.

⁹ Erik Ortiz, “Overreaction? 6-year-old South Carolina girl is expelled from school after bringing plastic toy gun to class,” *NY Daily News* (Jan. 31, 2013), <http://www.nydailynews.com/news/national/s-student-6-expelled-plastic-toy-gun-article-1.1252179#ixzz2JwpYP0Mb>.

¹⁰ Carlin DeGuerin Miller, “Two-Inch LEGO Gun Gets 4th-Grader Patrick Timoney in Trouble; Where’s the NRA?” *CBS News*, (February 4, 2010), http://www.cbsnews.com/8301-504083_162-6173526-504083.html.

¹¹ “Rhode Island school will reverse the ban on student’s toy soldier hat,” *Cleveland.com*, (June 20, 2010), http://www.cleveland.com/nation/index.ssf/2010/06/rhode_island_school_will_rever.html.

¹² “Seven-year-old charged after bringing toy ‘Nerf’ gun to school,” *Daily Mail*, (February 3, 2011), <http://www.dailymail.co.uk/news/article-1353233/Boy-7-charged-police-bringing-toy-Nerf-gun-school.html#ixzz1CvXi3vrI>.

- Four little boys at a New Jersey school were suspended for pretending their fingers were guns.¹³ In another instance, officials at a California elementary school called the police when a little boy was caught playing cops and robbers at recess. The principal told the child's parents their child was a terrorist.
- And in Oklahoma, school officials suspended a first grader simply for using his hand to simulate a gun.¹⁴

Things have gotten so bad that it doesn't even take a toy gun, pretend or otherwise, to raise the ire of school officials.

- A high school sophomore was suspended for violating the school's no-cell-phone policy after he took a call from his father,¹⁵ a master sergeant in the U.S. Army who was serving in Iraq at the time.
- A 12-year-old New York student was hauled out of school in handcuffs for doodling on her desk with an erasable marker.¹⁶
- In Houston, an 8th grader was suspended for wearing rosary beads¹⁷ to school in memory of her grandmother (the school has a zero tolerance policy against the rosary, which the school insists can be interpreted as a sign of gang involvement).

With the distinctions between student offenses erased, and all offenses expellable, we now find ourselves in the midst of what *Time* magazine described as a "national crackdown on Alka-Seltzer."¹⁸

- Indeed, at least 20 children in four states have been suspended from school for possession of the fizzy tablets in violation of zero tolerance drug policies. In some jurisdictions, carrying cough drops, wearing black lipstick or dying your hair blue are actually expellable offenses.

¹³ Julie Foster, "Zero Tolerance Policies Victimize Good Kids," *World Net Daily*, (June 7, 2000), <http://www.wnd.com/2000/06/4522/>.

¹⁴ Meredith Jessup, "'Gun' Hand Gesture Gets Oklahoma 1st-Grader Suspended," (January 21, 2011), <http://www.theblaze.com/stories/2011/01/21/gun-hand-gesture-gets-oklahoma-1st-grader-suspended/>.

¹⁵ CJ Grisham, "Boy Suspended for Talking with Deployed Father," *A Soldier's Perspective*, (April 23, 2008), <http://asp.militarygear.com/2008/04/23/boy-suspended-for-talking-with-deployed-father/>.

¹⁶ Stephanie Chen, "Girl's arrest for doodling raises concerns about zero tolerance," *CNN*, (February 18, 2010), <http://www.cnn.com/2010/CRIME/02/18/new.york.doodle.arrest/index.html>.

¹⁷ Judy Molland, "8th Grader Suspended For Wearing Rosary Beads," *Care2*, (January 14, 2011), <http://www.care2.com/causes/8th-grader-suspended-for-wearing-rosary-beads.html>.

¹⁸ John Cloud, "The Columbine Effect," *TIME*, (December 6, 1999), <http://www.time.com/time/magazine/article/0,9171,992754,00.html>.

- Students have also been penalized for such inane “crimes” as bringing nail clippers to school, using Listerine or Scope, and carrying fold-out combs that resemble switchblades.
- A 9-year-old boy in Manassas, Virginia, who gave a Certs breath mint to a classmate, was actually suspended,¹⁹ while a 12-year-old boy who said he brought powdered sugar to school for a science project was charged with a felony for possessing a look-alike drug.²⁰
- Another 12-year-old was handcuffed and jailed after he stomped in a puddle, splashing classmates.²¹
- After students at a Texas school were assigned to write a “scary” Halloween story, one 13-year-old chose to write about shooting up a school. Although he received a passing grade on the story, school officials reported him to the police, resulting in his spending six days in jail before it was determined that no crime had been committed.²²

These incidents, while appalling, are the byproducts of an age that values security over freedom, where police have relatively limitless powers to search individuals and homes by virtue of their badge, and where the Constitution is increasingly treated as a historic relic rather than a bulwark against government abuses.

However, by majoring in minors, as it were, treating all students as suspects and harshly punishing kids for innocent mistakes, the schools are setting themselves and their students up for failure—not only by focusing on the wrong individuals and allowing true threats to go undetected but also by treating young people as if they have no rights, thereby laying the groundwork for future generations that are altogether ignorant of their rights as citizens and unprepared to defend them.

As Professor David Elkind of Tufts University has noted, “children do not organize, have no access to the media, and do not vote. They are relatively powerless to improve their own condition. Children need adults who will advocate for them.”

¹⁹ “Pupil suspended in candy rap,” *Reading Eagle*, (September 23, 1997), <http://news.google.com/newspapers?nid=1955&dat=19970923&id=e-IxAAAAIIBAJ&sjid=XqYFAAAAIBAJ&pg=1230,4467416>.

²⁰ “Boy charged with felony for carrying sugar,” *Free Republic*, (February 11, 2006), <http://www.freerepublic.com/focus/f-news/1576762/posts>.

²¹ “THE FAILED EDUCATION “REFORMS” (12-year old cuffed for puddle jumping),” *Free Republic*, (April 13, 2003), <http://www.freerepublic.com/focus/news/892483/posts>.

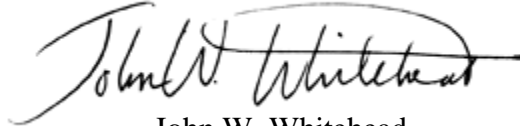
²² “Censoring artistic expression,” *First Amendment Center*, (<http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/Silencing-36-76.pdf>).

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Thus, it falls to state representatives like yourselves to lead the way in sending a strong message to the schools that criminalizing childish behavior will not result in safer schools. It is our hope that SB 1058 will be a positive first step in pushing back against the tyranny of zero tolerance policies in our nation's schools by excluding childish behavior from punishment while also targeting malicious intention as the crucial factor in determining appropriate discipline.

If I can be of further service, please do not hesitate to contact me.

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 flourish extending to the right.

John W. Whitehead
President

cc: Members of the Maryland Senate Education, Health & Environmental Affairs
Committee