

# THE RUTHERFORD INSTITUTE

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August 7, 2020

Via Email

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## **Re: Violation of Freedom of Speech / Suspensions for Photographs**

Dear Dr. Otott and Mr. Carmona:

With every community and segment of our country forced to grapple with the myriad problems posed by the COVID-19 pandemic, the need to protect and foster freedom of speech has perhaps never been more essential than it is now.

As such, it is essential that our public schools be at the forefront of reflecting the commitment to freedom of speech. The First Amendment's highest purpose is to allow for a free and uncensored flow of information in order to foster government transparency and ensure that that the citizenry and public servants in government—those elected and appointed to represent the citizenry—can make informed choices about the challenges before them.<sup>1</sup>

As a national legal organization that has worked with public schools throughout the country to ensure that students' constitutional rights are protected, The Rutherford Institute<sup>2</sup> was troubled by the decision of administrators within the Paulding County School District to suspend

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<sup>1</sup> Patrick M. Garry, "Self-government Rationale," *The First Amendment Encyclopedia*, <https://www.mtsu.edu/first-amendment/article/1018/self-government-rationale>.

<sup>2</sup>The Rutherford Institute is a non-profit legal and educational organization that assists individuals whose civil liberties are threatened or infringed and works to safeguard the constitutional and human rights of all persons.

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students for disseminating pictures of the crowded conditions in North Paulding High School.<sup>3</sup> The fact that those particular disciplinary measures have since been withdrawn<sup>4</sup> does not undo the harmful and chilling effect of Principal Carmona’s warning that any “negative” social media posts by students will have “consequences.”<sup>5</sup>

High school students plainly have a First Amendment right to speak out and share information about the conditions in their school, a right that may be restricted or sanctioned only if it materially and substantially disrupts school operations.<sup>6</sup> There is no indication that the students’ actions caused disruption, other than to cast the school and district in a negative light, and they should not be punished for speaking the truth.

At a time when communities around the country are grappling with decisions on whether and how to open schools, the pictures shared by the North Paulding High students are precisely the kind of information parents, teachers and school administrators must be aware of in order to make intelligent decisions about school reopening.

By revealing conditions in a public school that raise significant health and safety concerns—concerns that the public is entitled to know about—the students essentially acted as “whistleblowers” in the greatest tradition of the First Amendment. The District should make clear that heretofore students will not suffer “consequences” for engaging in similar protected acts of expression.

### Background

When Paulding County School District re-opened its schools the week of August 3 after closing in March 2020 due to the coronavirus health emergency, students became concerned about conditions in the school in light of the continuing pandemic. Two pictures were posted on Twitter depicting a hallway in North Paulding High School on August 3<sup>7</sup> and August 4, 2020.<sup>8</sup> Each picture showed students crowded together in the hallway, with few wearing masks or other

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<sup>3</sup> Lateshia Beachum, “Georgia teens shared photos of maskless students in crowded hallways. Now they’re suspended.” *The Washington Post* (Aug. 7, 2020), <https://www.washingtonpost.com/education/2020/08/06/georgia-teens-shared-photos-maskless-students-crowded-hallways-now-theyre-suspended/>.

<sup>4</sup> Giulia McDonnell and Nieto del Rio, “Suspension Lifted of Georgia Student Who Posted Photos of Crowded Hall,” *The New York Times* (Aug. 7, 2020), <https://www.nytimes.com/2020/08/06/us/north-paulding-high-school-coronavirus-georgia.html>.

<sup>5</sup> [https://twitter.com/Jamie\\_S\\_Kennedy/status/1291197907446636545](https://twitter.com/Jamie_S_Kennedy/status/1291197907446636545).

<sup>6</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508-09 (1969).

<sup>7</sup> <https://twitter.com/Freeyourmindkid/status/1290626349426671617>.

<sup>8</sup> <https://twitter.com/ihateiceman/status/1290728743263252480>.

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face coverings. These pictures went “viral” on social media and were widely covered in the press as depicting a “chaotic first week back in U.S. classrooms.”<sup>9</sup>

The District responded with a letter from the Superintendent asserting that the photos were being used by the media out of context to criticize the school and its reopening. The letter stressed the difficulties of reopening and controlling student crowding during period changes, that state guidelines require limiting student crowding “to the extent practicable,” and that mask wearing is a personal choice for students but would be “strongly encouraged.” But the letter also admitted that the photos and the conditions they depicted “did not look good” and that adjustments to school operations may need to be made.<sup>10</sup>

However, the district’s response also included retaliation against the students who posted the pictures. Hannah Watters, who captured and posted the August 4<sup>th</sup> picture, was given a five-day out-of-school suspension for her actions under school policies that limit the use of cellphones in the school and the posting pictures taken at school. A second student, who has chosen to remain anonymous, is also facing suspension for a social media photo posting depicting North Paulding High’s crowded hallway.<sup>11</sup>

Additionally, Principal Carmona announced to North Paulding High students that “[a]nything that’s going on social media that’s negative or alike without permission, photography, that’s video or anything, there will be consequences[.]”<sup>12</sup>

### Violation of First Amendment

This retaliation for posting images that did “not look good” and reflected “negatively” on the school and district is wholly contrary to these students’ constitutional right to free speech.

It is beyond question that students do not lose their First Amendment rights at the schoolhouse gate. Indeed, the Supreme Court has made that principle clear in its decisions:

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. . . . They may not be confined to the expression of those sentiments that are officially

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<sup>9</sup> Giulia McDonnell and Nieto del Rio, “Georgia Student Suspended Over Photo of Crowded Hall,” *The New York Times* (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/north-paulding-high-school-coronavirus-georgia.html>.

<sup>10</sup> “Message from Dr. Otott,” available at <https://dam.tnz.com/document/a6/o/2020/08/04/a64748a740a84d25abbaf08e5be5e9be.pdf>.

<sup>11</sup> Lauren Strapagiel, “Two Students Say They Were Suspended From Their Georgia High School For Posting Photos Of Crowded Hallways,” *BuzzFeedNews* (Aug. 6, 2020), <https://www.buzzfeednews.com/article/laurenstrapagiel/north-paulding-high-school-suspensions-for-hallway-photos>.

<sup>12</sup> [https://twitter.com/Jamie\\_S\\_Kennedy/status/1291197907446636545](https://twitter.com/Jamie_S_Kennedy/status/1291197907446636545).

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approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.<sup>13</sup>

While student speech may be restricted or sanctioned if it results in material and substantial disruption of the school environment,<sup>14</sup> there is no indication that was the case here. Instead, all indications are that the students were charged with violations because their postings made the school look “bad” and reflected “negatively” on the school and its decision to reopen.

Plainly, this is no basis for penalizing Hannah or any other student—the First Amendment does not permit the government to impose special prohibitions on speech it disfavors.<sup>15</sup> Furthermore, school administrators may not punish or censor student speech because of a desire to avoid discomfort or unpleasantness.<sup>16</sup>

Any attempt to justify the discipline based on school rules regulating the use of electronic devices must be rejected as an obvious pretext. In the case of Hannah Watters, her use of a cellphone during class change time is permitted under school policies, and her use of social media was while she was out of school and so not covered by rules on such use while in school.<sup>17</sup> And any violation of rules relating use of recording devices was minor and should not have resulted in an out-of-school suspension.<sup>18</sup>

As shown by your concern about the school looking bad and the warning against social media posts that reflect negatively on the school, the discipline is based on the message of the students and not on their conduct or disruption they caused within the school.

Far from being penalized for their speech, these students should be commended for bringing to light matters of great public concern, both locally and nationally.

Whatever one thinks of the wisdom of opening schools or wearing masks, the pictures Hannah and the other student shared showed exactly what conditions will be in schools at a time when nearly every region of the nation is trying to control the spread of the coronavirus. It is information that the public is entitled to know when making grave choices about how to balance public health and the need to educate children.

Hannah and her schoolmate acted in the best tradition of whistleblowers by bringing to light information that must be considered in making these difficult choices.

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<sup>13</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

<sup>14</sup> *Id.* at 506.

<sup>15</sup> *RAV v. City of St. Paul*, 505 U.S. 377, 391 (1992).

<sup>16</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969).

<sup>17</sup> Paulding County School District Administrative Regulation JD-R(3), III.F.

<sup>18</sup> Paulding County School District Administrative Regulation JD-R(3), I.A.

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By contrast, the decision to punish these students and the continuing threat of “consequences” from posts that reflect negatively on the school fail to reflect the values and lessons about fundamental rights that public education should be imparting. It sends a signal to all students that if they dare to tell truths that are uncomfortable for authorities, they will suffer consequence.

The free speech rights of students should be scrupulously protected lest, as the U.S. Supreme Court has warned, we “strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”<sup>19</sup>

We urge you to use this as an opportunity to affirm for students that the school values their rights under the First Amendment and the vital role that whistleblowers play in ensuring that the government plays by the rules of the Constitution. To this end, we also urge you to renounce any threat of disciplinary action against students for social media posts that relate to matters of public concern.

Should Paulding County School District be interested in developing a robust constitutional program that educates students about their free speech rights and is proactive in protecting those rights, The Rutherford Institute stands ready to offer its assistance and expertise.

Sincerely yours,

A handwritten signature in cursive script that reads "John W. Whitehead". The signature is written in black ink and has a long horizontal flourish extending to the right.

John W. Whitehead  
President

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<sup>19</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)