

# THE RUTHERFORD INSTITUTE

Post Office Box 7482  
Charlottesville, Virginia 22906-7482

TELEPHONE: (434) 978 – 3888 | EMAIL: [staff@rutherford.org](mailto:staff@rutherford.org)  
[www.rutherford.org](http://www.rutherford.org)

JOHN W. WHITEHEAD  
Founder and President

September 9, 2022

By Electronic Mail

████████████████████  
████████████████████  
████████████████████  
Mathews, NC ██████████

**Re: Incorrect Suspension Record of ██████████**

Dear ██████████:

As a civil liberties organization which works to ensure that school safety protocols and concerns do not override longstanding constitutional protections, The Rutherford Institute has been particularly vocal about the harms imposed by school zero tolerance policies that penalize students for engaging in childish, non-violent behavior.

We are especially concerned that ██████████, through its past and present actions relating to an improper discipline of ██████████, may be found in violation of the Federal Educational Rights and Privacy Act (FERPA) and N.C. Gen. Stat. § 115C-218.95(a).

In 2020, ██████████ agreed to remove a suspension and incident from sixth grader ██████████ school records after being challenged by The Rutherford Institute<sup>1</sup> over its improper and unlawful suspension of the ██████████ for briefly displaying a toy Nerf gun during an online Zoom class as part of an assignment to make a scary face.<sup>2</sup> However, we have since learned that ██████████ violated that agreement by not only failing to remove the suspension and incident from ██████████ records but also shared details about the incident in his cumulative folder with ██████████, resulting in irreparable harm to his academic opportunities.

Once again, we demand that *any and all* records of ██████████ suspension be removed from his records maintained by ██████████ and not be distributed again. We further ask that you take the initiative to contact ██████████ in writing, with a copy to us and ██████████

---

<sup>1</sup> The Rutherford Institute is a nonprofit civil liberties organization which seeks to protect individuals' constitutional rights and educate the public about threats to their freedoms.

<sup>2</sup> See attached letter of November 18, 2020.

parents, to correct this error so that [REDACTED] can once again be eligible for enrollment at [REDACTED].

### Background

On November 18, 2020, The Rutherford Institute contacted [REDACTED] regarding the school's improper suspension of [REDACTED]. During a remote school session close to Halloween in which students were attending online Zoom classes as part of nationwide COVID-19 protocols, [REDACTED] teacher had asked each student to make a scary face as part of a game. When it was his turn, [REDACTED], situated at home and over a Zoom call, briefly and playfully displayed a toy Nerf gun on camera. In response, school officials then called the police on the [REDACTED] and suspended [REDACTED] for displaying the toy during the Zoom class.

As we explained in our 2020 letter, the school's suspension of [REDACTED] was unjustified and a violation of North Carolina law in part because [REDACTED] conduct had no direct and immediate impact on the orderly and efficient operation of the school or the safety of the individuals in the school environment.<sup>3</sup> A 2014 U.S. Department of Education report indicated that such suspensions are counterproductive because "research shows that attempting to maintain order by unnecessarily relying on suspensions or expulsions for minor misbehaviors may undermine a school's ability to help students improve behavior, fail to improve the safety or productivity of the school's learning environment, and seriously and negatively impact individual and school-wide academic outcomes."<sup>4</sup>

Recognizing that school officials had, indeed, overreacted, on November 20, 2020, school officials agreed to The Rutherford Institute's demands, acknowledging in writing their willingness to rescind [REDACTED] suspension and remove any and all record of the suspension and incident from his records. The concern, of course, in having the suspension and incident removed from [REDACTED] records arose in relation to information about that incident being shared with other schools and unfairly coloring [REDACTED] future academic opportunities.

### A violated agreement resulting in irreparable harm

Despite its prior written agreement to remove any and all record of the improper, unlawful suspension and incident from [REDACTED] records, in June 2022, after [REDACTED] was selected for enrollment at [REDACTED], a copy of [REDACTED] cumulative folder, including

---

<sup>3</sup> N.C. Gen. Stat. §115C-390.2(c) provides that "Board policies may authorize suspension for conduct not occurring on educational property, *but only if* the student's conduct otherwise violates the Code of Student Conduct and the conduct has or is reasonably expected to have a direct and immediate impact on the orderly and efficient operation of the schools or the safety of individuals in the school environment" (emphasis added). This applies to charter schools as well under N.C. Gen. Stat. § 115C-218.60.

<sup>4</sup> U.S. Department of Education, Guiding Principles: A Resource Guide for Improving School Climate and Discipline, p. 14, Washington, D.C., 2014 (rescinded in 2018 and currently under review), <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> (citing American Academy of Pediatrics Committee on School Health. (2013). "Out-of-School Suspension and Expulsion." *Pediatrics*, 131(3), 1000–07. Retrieved from <http://pediatrics.aappublications.org/content/131/3/e1000.full.pdf>).

an October 28, 2020, suspension letter from the Zoom class incident, was sent by officials at ██████████ to ██████████.<sup>5</sup> Based upon the information in the suspension letter, ██████████ then denied ██████████ admission to their school.

Distributing information about that improper suspension to other schools creates a false characterization of the incident and gives the impression that ██████████ was properly suspended even though ██████████ had agreed to remove the suspension from ██████████ records within days of being contacted about the matter.

It is my understanding that, upon being informed of ██████████ denial based upon receiving the suspension letter, ██████████ officials confirmed that there is nothing on ██████████ permanent record in PowerSchool, an online student information system that manages a wide range of information, including grades, attendance, tests, demographics, activities, courses, and photos. However, as this recent debacle with ██████████ makes clear, the removal of the incident from the PowerSchool database means nothing if the suspension letter remains in ██████████ cumulative folder, giving the false impression that ██████████ was justifiably suspended.

In order for this to not recur, ██████████ must correct the situation and remove the suspension letter from ██████████ cumulative folder.

Failure to rectify the situation could open ██████████ up to legal action

Retaining and disclosing inaccurate and misleading documents in ██████████ education records is a violation of the Federal Educational Rights and Privacy Act (FERPA),<sup>6</sup> which ██████████ is required to follow pursuant to paragraphs 5.1 and 12.4 of the Charter Agreement with the North Carolina State Board of Education. A violation of these conditions and standards could result in nonrenewal or termination of the charter for ██████████ by the State Board of Education pursuant to N.C. Gen. Stat. § 115C-218.95(a).

Additionally, because ██████████ may be sued under N.C. Gen. Stat. § 115C-218.20(a), it could possibly be subject to damages for defamation due to negligently distributing the suspension letter which was known to be false because the suspension was improper in violation of North Carolina law and which school officials had agreed to remove from ██████████ files.<sup>7</sup>

This caused ██████████ a loss of standing and reputation in the community, inconvenience, loss of enjoyment, and other harms.

---

<sup>5</sup> See attached letter.

<sup>6</sup> 20 U.S.C § 1232g.

<sup>7</sup> See, e.g., *Boyce & Isley, PLLC v. Cooper*, 568 S.E.2d 893, 897 (N.C. App. 2002) (“to recover for defamation, a plaintiff must allege that the defendant caused injury to the plaintiff by making false, defamatory statements of or concerning the plaintiff, which were published to a third person”).


████████████████████  
September 9, 2022

Page 4

Faced with the possibility of legal action, we hope that ██████████ will act in a timely manner to rectify this situation and remove *any and all* records of ██████ suspension from his records maintained by ██████████, ensuring that they cannot be distributed again. We further ask that you contact ██████████ in writing, with a copy to ██████ parents and The Rutherford Institute, to correct this error so that ██████ can once again be eligible for enrollment at ██████████.

We would appreciate the courtesy of a response by September 26, 2022, so we may advise ██████████.

Sincerely yours,

A handwritten signature in cursive script that reads "John W. Whitehead". The signature is written in black ink and is positioned above the printed name and title.

John W. Whitehead  
President

Enclosures