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May 18, 2011

Via E-mail and U.S. Mail

Ms. Monica Heinsohn, President
Talbot County Board of Education
12 Magnolia Street
Easton, MD 21601

Re: Appeal of Suspension of Graham Dennis and Casey Edsall

Dear Ms. Heinsohn:

The Rutherford Institute¹ is writing on behalf of Graham Dennis and Casey Edsall, who were recently suspended from Easton High School upon being found to possess with their other lacrosse equipment a small penknife and lighter used for making routine repairs to their lacrosse equipment. On behalf of the families of these two boys, we hereby appeal their suspensions and demand that their academic records be completely expunged of references to the incident.

The facts of the situation are undisputed. On April 13th, school officials initiated a search of the school bus carrying Easton's lacrosse team to an away game. Graham and Casey informed their principal that their bags contained a pocketknife and lighter, respectively. When those items were in fact found, law enforcement officers were called to the scene. Graham was handcuffed, fingerprinted, and charged as a juvenile in possession of a deadly weapon. School officials ultimately suspended Casey for one (1) day and Graham for ten (10) days.

Importantly, neither boy used either of the items as a "weapon" or intended to use it as such at any time. It is undisputed that the sole reason the items were in their possession on campus was for their use as tools for maintaining lacrosse equipment.

¹ The Rutherford Institute is a civil liberties organization that provides legal representation at no charge to those whose civil rights are threatened or infringed.

While the school's actions constitute a travesty of justice on several fronts, the suspensions applied here are unwarranted for the following reasons.

The Penknife and Lighter Do Not Constitute "Weapons"

It is a fundamental tenet of due process that one may not be punished for conduct unless it was absolutely clear that the conduct was wrongful.² In this case, neither boy had reason to understand that their possession of the items in question for the purposes of repairing lacrosse equipment was wrongful. Thus, this case involves serious questions as to whether the boys' respective suspensions comport with the requirements of due process of law under the Fourteenth Amendment to the United States Constitution.³

First, possession of the items in question does not appear to be prohibited by any rule contained in the Student Handbook for Easton High School. While the list of "infractions for which students may be . . . given suspension..." on page 15 of the Student Handbook includes possession of "Dangerous Weapons," a reasonable interpretation of that term cannot be said to include either the lighter or the small penknife. The term appears to be undefined in the Student Handbook itself, but two separate Maryland statutory definitions (which appear to be the only potentially applicable definitions) indicate that these items do not qualify as "dangerous weapons."

The Code of Maryland Regulations provision dealing with discipline of students with disabilities adopts the United States Code's definition of "dangerous weapons," and that definition specifically excludes pocket knives with blades less than 2 ½ inches long.⁴ Likewise, under Maryland's criminal code, a penknife without a switchblade is specifically excluded from the term "weapon."⁵ There is absolutely no basis under any provision we have found for considering a lighter to be any sort of "weapon."

Second, Maryland courts have held, in no uncertain terms, that individuals may not be punished for carrying a "weapon" unless they are found to have had at least a general intent to carry the alleged weapon for its use as such, either offensively or defensively.⁶ Here, it is undisputed that neither boy ever had any intent to use or possess the items as "weapons," as opposed to mere tools. Surely it is apparent that the standards applied to assess the behaviors of adolescent boys should err toward even greater leniency than those applied to adult defendants in the criminal justice system.

² See, e.g., *United States v. Williams*, 553 U.S. 285, 304 (2008).

³ See *Goss v. Lopez*, 419 U.S. 565, 579 (1974) ("The State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.")

⁴ COMAR 13A.08.03.02; 18 U.S.C. § 930(g)(2).

⁵ Md. Criminal Law Code Ann. § 4-101(a)(5)(ii)(2).

⁶ *Anderson v. State*, 328 Md. 426 (1992).

What is abundantly clear is that Graham and Casey had no intent to violate the rules or policies of Easton High School or Talbot County Public Schools, nor, based on our legal assessment, did they actually do so. In short, school officials simply cannot discipline either boy for possession of weapons under these circumstances without effecting a dramatic extension of existing rules and policies, and thus doing violence to the very nature of due process.

The Boys' Suspensions Contravene School District Policy

The policies of Talbot County Public Schools manifest a commitment to "Effective communication of rules/regulations" and "Recognition of Student Rights (Due Process)." Yet, as we have explained, neither of these values has been observed in the handling of this incident.

According to Talbot County Public Schools policies, the removal of a student from school "should represent a last resort effort."⁷ The policy specifically states that unless a student's presence poses a physical danger to other students or staff or seriously disrupts the educational process for other students, "suspensions should be used only in discipline cases of repeated rule infraction, and after all other available disciplinary means have been exhausted."⁸

In this case, the boys' presence at school obviously did not pose any danger to anyone in the school community or disrupt the educational process. There certainly was no "repeated rule infraction." Indeed, as explained above, there has not been any "rule infraction" to date inasmuch as school rules do not appear to prohibit the possession of these particular items.

Thus, school officials' suspension of Graham and Casey represents a direct violation of the school district's own policies as well as a violation of the boys' basic right to due process of law.

Fourth Amendment Concerns

A final matter of concern is school officials' initial decision to conduct the search of student belongings on the bus. As you know, school officials' searches of students and their belongings are subject to the strictures of the Fourth Amendment to the United States Constitution, which prohibits unreasonable searches and seizures.⁹

While we understand that school officials conducted the search in question on the basis of an "anonymous tip," we have serious doubts as to whether or not such an unsubstantiated "tip" constitutes the requisite reasonable suspicion to support the invasive search of the boys' personal belongings by school officials. We submit that from both legal and public policy perspectives,

⁷ Talbot County Public Schools Policy Code 10.22(I).

⁸ Talbot County Public Schools Police Code 10.22(I), (II).

⁹ *New Jersey v. T. L. O.*, 469 U.S. 325 (1985).

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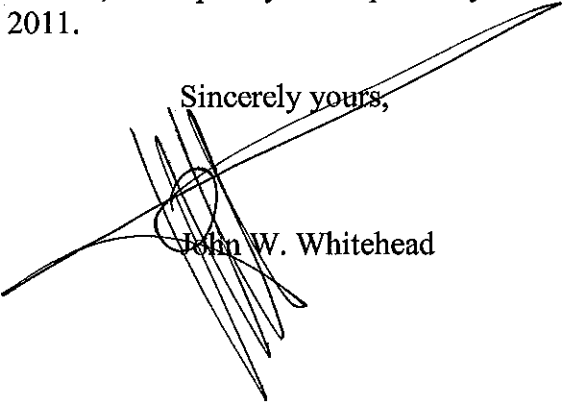
further investigation of the matter in a more civil, cooperative form should have preceded this type of intrusion upon the boys' privacy, which has undoubtedly produced lasting scars on their psychological well-being, their self-image, and their reputations. In our view, this sort of handling of students should be reserved for extreme instances in which immediate safety concerns are present. This was certainly not the case with Graham and Casey.

Conclusion

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 may be deemed unwise but present no real danger to the school community. We believe—as your own policies profess—that suspension from school should be reserved only for the most egregious disciplinary infractions. 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 correct the considerable injustice that has been done to Graham Dennis and Casey Edsall.

Based on these considerations, we hereby request a reversal of the decision to suspend Graham and Casey and a complete expungement of this incident from their academic records. In light of the time-sensitive nature of this matter, we request your response by no later than the close of business on Monday, May 23, 2011.

Sincerely yours,



John W. Whitehead

cc: Laurie Dennis
Douglas Edsall
Roy Cowdrey, Esq.