



DETROIT AND MICHIGAN CHAPTER
NATIONAL LAWYERS GUILD
ESTABLISHED 1937



April 26, 2012

Hand-Delivered

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Re: Student Protest Against Cutbacks and School Closings

I am writing as President of the Detroit and Michigan Chapter of the National Lawyers Guild (NLG) regarding the institutional response of the Detroit Public Schools to the recent protest by Western High school students against the planned school closure of Southwestern High School and other cutbacks in educational programs. . The media has reported that the DPS leadership has implemented serious disciplinary action against approximately 180 students, who are perceived as involved in the protest. I write to propose a cautious and measured response.

My concern extends to all the students who have been disciplined in any way; but in particular relates to actions taken against specific students whom I have received reports concerning, including Western International High School senior Fernando Parraz; Natalie Rivera; and Rachel Gafford. It is my understanding that prior to the protest Parraz was approached by school officials and threatened with disciplinary action, and that Gafford and Rivera were likewise later threatened. I am particularly concerned with reports that DPS police officers used their power to wrongfully confiscate the cell phones of many students, including Parraz, and then searched them without a search warrant or any legal authority in order to review the substance of text messages recorded on these phones. The conduct of these officers in confiscating, and reviewing the contents of the phones of many students, including Parraz, is deeply troubling. The officers' conduct impinged on the protected 1st Amendment rights of Parraz and the other students, both as to their communication with others and as to their association with others. Any use of the information gleaned from the phones of these students will be unlawful.

As important as the 1st Amendment issues are, I also want to address a more practical and fundamental question, that is, how should the DPS relate to students who have evidenced their own fierce determination to secure an education? While of course, I and the NLG recognize the legitimate need of the DPS leadership to maintain order in the schools, these young people were not engaged in some willful and pointless misconduct. The students were seeking, in a time honored and constitutionally protected fashion, to make known to the public their firmly held belief that they, and their siblings and neighbors, are about to lose their chance for a quality

education. I understand that Parraz in particular is an exemplary young man, a leader, and an honors student, about to graduate at the end of this semester.

It would be a pointless exercise in retribution for DPS to take any significant action which would disrupt the futures of these sincere young people.

I feel it is incumbent to note that the Courts have recognized that students have constitutionally protected rights, which must be protected, and not infringed, by public school authorities. For example, in Beussink v. Woodland, 30 F.Supp 2d 1175, 1180 (ED Missouri, 1998), the federal court explained:

The United States Supreme Court has made it clear that students do not shed their First Amendment rights at the schoolhouse gate. Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969). It is equally clear, however, that a student's right to free speech is not without limitation. *Id.* at 509, 89 S.Ct. 733. Schools may limit student speech. *Id.* But, any limitation on student speech is permissible only in narrowly defined circumstances. *Id.* In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition can not be sustained. *Id.* at 509, 89 S.Ct. 733 (emphasis added).

Because I am a lawyer, I also feel obliged to raise the potential liabilities faced by DPS. I am not unfamiliar with prior usages of DPS police in 1st Amendment settings, under prior administrations. I and other NLG lawyers represented the now-retired DPS teacher William Gilbreth after he was arrested and criminally charged following his involvement in 1ST Amendment activity. The DPS, under different leadership, insisted on pursuing the matter, even though, on my advice, Gilbreth offered to waive all claims if the DPS would similarly drop the matter. Instead, DPS ultimately paid several hundred thousand dollars in damages and attorney fees, which could have been better spent in the classroom.

Similarly, in the case DPS (Conn-Miller), 22 MPER 89 (2009), the DPS chose to punish two teachers for taking part in a protest and rally against school closings, similar to the actions of the students who protested on April 25. Once again, the DPS was ultimately held liable for hundreds of thousands of dollars in damages. Significantly, and a particular caution for the present case, the Conn-Miller decision was premised in part on the factual finding that the DPS has, when it has suited its perceived interests, not only tolerated but actively encouraged student

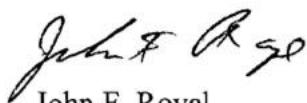
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participation in walkouts to protest the closing of particular schools. It would be the height of hypocrisy to take action against some students for engaging in the same sort of conduct engaged in by students at other DPS facilities with the encouragement and ratification of the DPS leadership.

Most recently, about one year ago, DPS police officers arrested an independent documentary maker who was in the process of attempting to record a similar walkout and demonstration related to the then-planned closure of the Catherine Ferguson School. Again DPS persisted in attempting to prosecute those claims against the filmmaker. It is only the intervention of the City of Detroit Law Department in voluntarily refusing to prosecute the criminal charges, and the generosity of the targeted filmmaker, that shielded DPS from again facing civil liability.

Again, I implore you to stop the precipitous disciplinary actions regarding these well-motivated and exceptional students. I strongly urge you to rescind all suspensions, and remove all references to the suspensions from the students school records. As a formality, I must advise you that these students are entitled to, and demand, formal hearings prior to any significant action by DPS. The NLG, and likely the ACLU, will be called upon to provide representation, as they have in the past under the similar circumstances described above. The goal of this letter is to avoid that necessity.

Sincerely,



John F. Royal
President

The Detroit and Michigan Chapter of the National Lawyers Guild

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