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February 10, 2014

BY EMAIL

Mr. Scott Holcomb, Principal - [SHolcomb@Naschools.net](mailto:SHolcomb@Naschools.net)  
Ms. Lee Anne Todd, Asst. Principal - [LATodd@naschools.net](mailto:LATodd@naschools.net)  
North Attleborough High School  
1 Wilson W. Whitty Way  
North Attleborough, MA 02760

Re: Nick Barbieri

Dear Mr. Holcomb and Ms. Todd:

I am writing on behalf of Nick Barbieri, an 18 year old senior at your school. Your administration has disciplined Nick for posting a tweet, from outside of school, that re-tweeted a notice of school cancellation along with the addition of a line of comment containing one expletive in common usage. Because Nick's speech was expression protected by the First Amendment to the U.S. Constitution as well as by the Massachusetts Student Freedom of Expression Act, G.L. c. 71, § 82, I am asking that you rescind the discipline, remove it from Nick's record, and ensure that school employees understand the important free speech principles that you are charged with teaching students about by word and deed.

The facts as I understand them are as follows. Ms. Todd called Nick at home on February 5, 2014 and demanded that he remove a tweet from his twitter site. The offending tweet was a retweet of a school tweet announcing "no school tomorrow -- see you in June!", although with the addition of the line "Fuck off #seniors#nomakeup#chirpchirp." Nick immediately removed the offending tweet, although he believed that Ms. Todd's demand violated his right to freedom of speech.

When he returned to school on February 7, Nick was pulled out of class three times that day for discussions about the tweet and his punishment. He was given a conduct referral charging him with "Inappro lang/comment" with the location of the incident described as "Outside". The description of the offending conduct was "Nick tweeted @NorthHigh1 "Fuck Off".

Ms. Todd informed Nick that he could receive a five day out-of-school suspension if he did not cooperate and she also required him to delete three other tweets that contained no profanity but only mentioned the school's response to his tweet. In the end, Nick was given two three-hour detentions to be served Tuesday and Thursday after school this week. He was pulled out of class for a fourth time today for a further discussion of this matter and questioned about the possible involvement of the ACLU of Massachusetts on his behalf.

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I am writing to request that these two detentions be delayed pending our resolution of the legal issues involved. Schools officials simply do not have the authority, consistent with the First Amendment, to punish students for their speech outside of school, even if it relates to the school. Without evidence of a substantial disruption of school, not present here, the administration may not lawfully discipline a student because it does not approve of his speech.

Our willingness to defer to the schoolmaster's expertise in administering school discipline rests, in large measure, upon the supposition that the arm of authority does not reach beyond the schoolhouse gate. When an educator seeks to extend his dominion beyond these bounds, therefore, he must answer to the same constitutional commands that bind all other institutions of government.

*Thomas v. Board of Education, Granville Central School District*, 607 F.2d 1043, 1044-1045 (2nd Cir. 1979). See also *Beussink v. Woodland R-IV School District*, 30 F.Supp. 2d 1175 (E.D. Mo. 1998) (granting preliminary injunction against suspension of student for crude, vulgar language concerning the school on Internet web page created at home on his own computer during non-school hours); *Killion v. Franklin Regional School District*, 136 F. Supp. 2d 446, 456-57(W.D. Penn. 2001) ("lewd and obscene speech occurring off school grounds" without extraordinary circumstances cannot be punished by school officials).

Assuming that the law governing student speech in school applies here (and not the greater protections from government censorship for any person's speech outside of a school), *Tinker v. Des Moines Ind. School Dist.*, 393 U.S. 503 (1969) and the state student freedom of expression statute provide that students in the public schools may not be punished for their speech unless it materially and substantially disrupts the school. See *Pyle v. School Comm. of S. Hadley*, 423 Mass. 283 (1996) (non-disruptive vulgar speech in school protected under state statute even if not protected by First Amendment). It would be improper to impose any punishment on Nick because his tweet did not materially and substantially disrupt the school. The only disruption that occurred here was the disruption of Nick's education, caused by school administrators having him leave class four times.

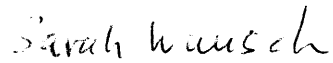
While school officials have a right to control the conduct of students in class and at other school activities, they cannot possibly punish teenagers for their personal conversations and comments about the school, especially outside of school. It is quite simply mindboggling to contemplate schools imposing discipline for every use of a swear word in relation to the school that a young person posts on Facebook, Twitter, or other social media. Simply because social media may make these comments more widely available does not change the basic rules protecting the freedom of speech of students outside of school.

This is one of those instances where an apology to a student is warranted. Nick is an excellent student in three A.P. classes. This is the first time he has been disciplined for anything, and his understanding of freedom of speech is correct. Certainly, school administrators and

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teachers can have a conversation with a student about the way he is expressing himself, but discipline in the context of this matter is impermissible. I hope to hear from you before Nick is required to spend several hours at detention tomorrow and look forward to discussing this matter with you more fully soon.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Wunsch".

Sarah Wunsch

cc: Nick Barbieri (by email)