



May 1, 2017

Reginald Mayo
Interim Superintendent of Schools
New Haven Public Schools Central Office
54 Meadow Street
New Haven, CT 06519

Re: Student Searches at Celentano

Dear Mr. Mayo:

On Wednesday, April 12, 2017, with the support and authorization of Principal Keisha Redd-Hannans, New Haven Public Schools officials conducted random, suspicionless searches of students' personal belongings and bodies at Celentano Biotech, Health and Medical Magnate School, and they did so without parental consent or disclosure. Purportedly, NHPS officials are conducting these searches at various schools throughout the district on a rotating basis. This is disconcerting for at least three reasons. First, random, suspicionless searches violate students' civil rights under the Fourth Amendment. Second, they often engender mistrust between students and school officials and thus deteriorate the academic environment. Empirical research suggests that the implementation of such strict security measures actually *increases* misbehavior and crime. Third, they are often discriminatory in nature. Primary source data demonstrates that many school districts disproportionately conduct these searches at schools with higher percentages of minority students, a disparity that perpetuates racial inequalities. This letter calls on NHPS to cease conducting these searches at all schools throughout the district and strongly encourages the implementation of alternative safety measures that will both maintain students' dignity and help students understand the value of their constitutional rights.

As students entered Celentano at the start of the school day, NHPS officials brusquely demanded that they open their personal belongings, including backpacks and purses, and set them on tables to be searched. According to a letter signed by Principal Redd-Hannans and sent home with students on the same day the searches occurred, the "bookbag inspections" were conducted as a "security measure that is in place across the [NHPS] district." The school justified these searches under the rubric of safety and security: "The security team will continue to rotate to various schools throughout the district. These measures are proactive safety procedures that will hopefully continue to ensure that our children learn in a safe environment." Additionally, the NHPS security team officials randomly frisked students' bodies, a fact that Principal Redd-Hannans failed to disclose to parents in her letter.

Under the heading "Student Searches," the NHPS *Student/Parent Handbook 2016-2017* enumerates the district's policies regarding searches of students' personal belongings and bodies. A careful perusal of these policies reveals that nothing in their wording suggests that NHPS officials have the right to conduct full-scale searches of students' personal belongings or bodies. To the contrary, the policies are very specific in nature and do not afford NHPS officials the right to

conduct unwarranted, full-scale searches at a given institution, except in the case that there is evidence or reason to believe that such searches will protect against an *immediate* threat. In fact, only one of the eleven policies, Policy 11, specifically states that a *group of students* may be searched, and then only “if there is a *reasonable suspicion* of conduct *immediately* harmful to students, staff or school property” (italics added). Likewise, Policy 1 states: “A student [singular] may be searched if there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. *The scope of the search must be reasonably related to the objectives of the search and not excessively intrusive* in light of the age and sex of the student and the nature of the infraction” (italics added).

The random, suspicionless searches NHPS officials conducted at Celentano directly contravene the specific nature of these policies. In her letter to parents, Principal Redd-Hannans wrote the following:

The security team from NHPS visited our school this morning to perform bookbag searches. These inspections were conducted as part of a visitor entrance protocol. . . . Please know that there has not been any reported security threat to our students, parents, or staff. The security team will continue to rotate to various schools throughout the district. These measures are proactive safety procedures that will hopefully continue to ensure that our children learn in a safe environment.

New Haven Public Schools does not possess the legal right to randomly search students’ personal belongings and bodies as a general safety measure. Because there had not been “any reported security threat” to students, parents, or staff, the full-scale searches NHPS officials conducted were warrantless and violated student’s rights under the Fourth Amendment. To make the matter worse, Principal Redd-Hannans failed to disclose to parents in her letter that NHPS officials randomly frisked students’ bodies, writing only that a security team “visited our school this morning to perform bookbag searches.” This is a gross violation not only of NHPS student search policies but also of students’ legitimate expectation of privacy. The one *Student/Parent Handbook* policy that covers the frisking or patting down of students’ bodies states: “Searches may include, if school authorities think necessary, a frisk or pat down of student clothing.” On what grounds did NHPS officials think it necessary to frisk students’ bodies absent any *immediate* security threat?

Students do not relinquish their Fourth Amendment rights upon entering a public school. While the Supreme court has not directly determined all circumstances under which schools may conduct random, suspicionless searches of students’ personal belongings and bodies, an analysis of Court precedent reveals that school officials “should have particularized evidence of a substance abuse or weapons problem to justify performing these intrusive searches, unless the school official reasonably believes that students are in *immediate danger*.”¹ In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the Supreme Court determined that (1) “The Fourth Amendment’s prohibition on unreasonable searches and seizures applies to searches conducted by public school officials” (333–337); and (2) “Schoolchildren have legitimate expectations of privacy. They may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no

¹ Jason P. Nance, “Random, Suspicionless Searches of Students’ Belongings: A Legal, Empirical, and Normative Analysis,” *University of Colorado Law Review* 84, no. 2 (2013): 391, <http://scholarship.law.ufl.edu/facultypub/285/> (italics added).

reason to conclude that they have necessarily waived all rights to privacy in such items by bringing them onto school grounds” (337–343).

More recently, in *Doe Doe 1999–2000 v. Little Rock School District*, 380 F.3d 349 (2004), the Eighth Circuit Court of Appeals directly addressed the issue of a school district’s practice of conducting random, suspicionless searches of students’ personal belongings; the circumstances of the case examined by the Eighth Circuit exactly mirror those under which NHPS officials conducted searches of students’ personal belongings and bodies at Celentano on April 12, 2017. The Court concluded that “such searches violate the students’ [Fourth Amendment] rights because they unreasonably invade their legitimate expectations of privacy.”² It also concluded that “Students presumptively have a legitimate, though limited, expectation of privacy in the personal belongings that they bring into public schools. Because subjecting students to full-scale, suspicionless searches eliminates virtually all of their privacy in their belongings, . . . we hold that the search practice is unconstitutional.”³

Specialists in the fields of education, sociology, and psychology have long noted that the implementation of strict security measures in schools deteriorates the learning environment and adversely affects students. In her article, “Scan This: Examining Student Resistance to School Surveillance,” Jen Weiss notes that strict security measures cause students to feel constantly watched and to distrust, hide from, and avoid school authority figures. Instead of helping students feel more secure at school, she argues, such measures actually cause students to feel disillusioned and scared.⁴ She also notes, “Students in these schools experience, firsthand, what it is to be monitored, contained, and harassed, all in the name of safety and protection.”⁵ According to a number of parents who brought their children to Celentano on the morning of the searches, many of the students were visibly apprehensive of being searched by the NHPS security team officials. Worse, rather than informing students or their parents that they possess the legal right to refuse to allow their belongings or bodies to be searched, the NHPS security team officials conducted their searches as though the students had no option but to accede to their demands; such unforthcoming conduct amounts to institutional abuse of power.

Additionally, strict security measures are often an essential feature of an exclusionary ethos designed to “push low-performing and disruptive students out of schools to make more resources available to students who school officials believe have a better chance to succeed.”⁶ While this letter cannot address all of the consequentially negative aspects of implementing strict security measures in schools, it should be noted that such measures can, and often do, distort students’ perceptions of the value of their own constitutional rights, which include the right to privacy. In *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), the Supreme Court stated: “That [schools] are educating the young for citizenship is reason for scrupulous protection of

² 380 F.3d 349, § 1, <http://openjurist.org/380/f3d/349/doe-doe-1999-2000-v-little-rock-school-district>.

³ 380 F.3d 349, § I.7.

⁴ Jen Weiss, “Scan This: Examining Student Resistance to School Surveillance,” in *Schools Under Surveillance: Cultures of Control in Public Education*, ed. Torin Monahan and Rodolfo D. Torres (Piscataway, N.J.: Rutgers University Press, 2010), 213.

⁵ Weiss, “Scan This,” 213.

⁶ Nance, “Random, Suspicionless Searches,” 397.

Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach you to discount important principles of our government as mere platitudes.”⁷

A number of studies also suggest that school districts often disproportionately implement strict security measures in schools with higher percentages of minority students, even after taking into account such considerations as school crime, neighborhood crime, and school disorder.⁸ This is harmful for at least two reasons. First, minority students in particular already tend to mistrust school officials; the perceived unfair application of strict security measures tends to exacerbate this mistrust. Second, such inconsistency often perpetuates racial inequalities, particularly when school districts implement these measures at schools with higher percentages of minority students from low-income families. Paul Hirschfield argues that, while the purpose of strict security measures may be laudable, such measures stand as a “daily reminder of how little power students have over those in whom they entrust their futures and, in turn, how powerless their trusted guardians are to secure for the students a dignified, timely, and safe passage into school (and adulthood).”⁹

As a parent who has four children attending two schools in the NHPS district, I am concerned that NHPS is violating students’ rights under the Fourth Amendment by conducting full-scale, suspicionless searches of students’ personal belongings and bodies without requisite justification. I am also concerned that NHPS may be conducting these searches in a discriminatory manner. In her letter to parents, Principal Redd-Hannans stated that NHPS conducted the “bookbag inspections” as part of a “visitor entrance protocol” and as a “security measure that is in place across the [NHPS] district.” She also stated that “[t]he security team will continue to rotate to various schools throughout the district.” On the day following the searches (April 13), I contacted Principal Evelyn Robles-Rivas at Worthington Hooker School, where my three daughters attend, to ask her whether NHPS had ever conducted a full-scale, suspicionless search of students’ personal belongings and bodies at the school. In response, she informed me that, during her twelve years as principal, NHPS has never conducted such a search at Worthington Hooker School. She also informed me that she had been unaware that NHPS is conducting such searches at various schools throughout the district. This leads me to question whether NHPS is conducting these searches in a non-discriminatory manner. It would be helpful if you could provide me with information regarding the district’s scheduling of the searches it has conducted and plans to conduct at all its schools.

In conclusion, this letter calls on NHPS to cease conducting random, suspicionless searches at all schools throughout the district. It also strongly encourages NHPS to implement alternative safety measures that will both maintain students’ dignity and help students understand the value of their constitutional rights. The *New Haven Public Schools Safe School Climate Plan* handbook states:

⁷ 319 U.S. 624 (1943), 637, <https://supreme.justia.com/cases/federal/us/319/624/case.html>.

⁸ Nance, “Random, Suspicionless Searches,” 402.

⁹ Paul Hirschfield, “School Surveillance in America: Disparate and Unequal,” in *Schools Under Surveillance: Cultures of Control in Public Education*, ed. Torin Monahan and Rodolfo D. Torres (Piscataway, N.J.: Rutgers University Press, 2010), 51.

The vision of New Haven Public Schools is to ensure that all students will learn, succeed, think independently and value all people. We also strive to provide nurturing, healthy, and safe environments in school, at school events and to and from school. New Haven Public Schools aim to teach respect, trust, understanding acceptance and appreciation of individual differences among all students through quality teaching and effective leadership. We also work to make sure that family and community engagement as well as an equitable system of supports and resources is provided to everyone.

New Haven Public Schools officials can effectively teach students about “respect, trust, understanding[,] acceptance[,] and appreciation of individual differences” by both genuinely respecting students’ right to privacy and ensuring that all students understand the value of their constitutional rights. I have every confidence that you and all members of the New Haven Board of Education will work with me and other parents to ensure that NHPS ceases conducting random, suspicionless searches at all schools throughout the district so that our children can continue to learn and develop in a safe and healthy academic environment. Please feel at liberty to reach out to me if I can assist you in this matter.

Sincerely,

A handwritten signature in blue ink that reads "H. Carl Moerschbacher". The signature is fluid and cursive, with a long horizontal line extending to the right.

H. Carl Moerschbacher
Yale Divinity School



cc: New Haven Board of Education members:

Carlos Antonio Torre, *Chair: Teaching and Learning Committee*
Che Dawson, *Chair: Governance Committee*
Daisy Y. Gonzalez, *Co-Chair: Finance and Operations Committee*
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