



Georgia

P.O. Box 77208, Atlanta, GA 30357
770.303.8111 | syoung@acluga.org

March 7, 2018

Principal Toriano Gilbert
Bradwell Institute
100 Pafford Street
Hinesville, GA 31313
tgilbert@k12.ga.us

Superintendent Franklin Perry
Liberty County School System
200 Bradwell Street
Hinesville, GA 31313
fperry@liberty.k12.ga.us

Via Certified Mail and E-mail

Re: Discipline in Potential Violation of Student's First Amendment Right to Free Speech

Dear Principal Gilbert and Superintendent Perry:

Nearly 80 years ago, the United States Supreme Court held that students' free speech rights must be "scrupulously" protected if we are to have any hope of "educating the young for citizenship" and teaching students not to "discount important principles of our government as mere platitudes." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). For that reason, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503, 506 (1969).

These timeless principles are just as important today, especially in the wake of the tragic Parkland shooting that have left many students feeling vulnerable and angry at the older generations who they feel have failed to protect them. One of those students is Amari Ewing, a sophomore at Bradwell Institute, who received a wildly disproportionate five-day suspension for walking out of school during the break between classes for 17 minutes on March 2, 2018. For the reasons below, the ACLU of Georgia demands that you immediately cancel Amari's suspension so that she can attend school this week and fully expunge this discipline from her record, or reduce her punishment to the equivalent punishment that any other student would receive for being absent from school without excuse for less than an hour.

On March 2, 2018, to support her advocacy for increased security at her school after the events of Parkland, Amari walked out of school during the break between classes and across the street to protest for 17 minutes—one minute for every person killed at Marjory Stoneman Douglas High School. In response to the exercise of Amari's First Amendment rights, you suspended her for five days from March 5 to March 9. According to the Notice of Disciplinary Action, Amari was punished for the offense of "A33 *Other: Student Incivility – Insubordination," and because she "walked out of school after a week of conferencing with BI [Bradwell Institute] admin and central office staff," "inciting school disruption." *See Exhibit A.* We are told that during these conferences, Bradwell Institute staff sought to persuade Amari to express her speech in ways that were more palatable to the school.

This disproportionate punishment is likely unconstitutional for at least three reasons.

First, it is unconstitutional to punish a student who peacefully walks out in protest more severely than any other student who is absent from school for 17 minutes or some other short period of time without excuse, for whatever reason. Punishing a student who walks out of school in protest more severely than a student who walks out of school, say, to go to the mall, is viewpoint discrimination. This is anathema to the First Amendment. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” *Barnette*, 319 U.S. at 642.

According to Keysha Ewing, Amari’s mother, when she asked Principal Gilbert what the typical punishment was for an unexcused absence, she was told that an unexcused absence results in *only one day* of in-school suspension. If this is true, then punishing Amari *five times more severely* for being absent for only 17 minutes is blatantly unconstitutional. If you dispute this account, please identify the neutral rule that authorizes your imposition of a five-day suspension for walking out of school for less than an hour. “A33 *Other: Student Incivility – Insubordination” does not appear anywhere in the Liberty County Code of Conduct. While you did discourage students from walking out of class and refused to allow the school to “participate in any kind of walk out”—which is your right—nowhere in the e-mail did you state that any students who walked out of class for any reason would be punished with five days suspension. *See Exhibit B.*¹

Second, perhaps more disturbingly, the stated reason for punishing Amari was “insubordination,” after she refused to listen to how Bradwell Institute staff wanted her to engage in her protest. But refusing to speak exactly in the way that government authorities want you to speak is not called “insubordination,” it is called free expression, and it is protected by the First Amendment. Nothing obligated Amari to meet with school administrators to discuss in advance how she should exercise her speech, and nothing obligated Amari to agree with how the school would have preferred that she exercise her speech. *See generally Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209 (11th Cir. 2017) (prior restraints on speech with unbridled government discretion to prevent it are unconstitutional). “School officials do not possess absolute authority over their students,” *Tinker*, 393 U.S. at 511, especially with regards to how students should exercise their free speech rights.

Keysha Ewing claims that when she pressed you to explain this discipline, Principal Gilbert responded that the school had received a threat that any student who walked out of school would be shot. If this was the explanation you gave, it seems implausible on its face. If the school had actually received such a credible threat, it is curious that such an important fact is not mentioned in the Notice of Disciplinary Action. Such a dangerous threat also would have been immediately communicated to all parents and students, which it was not. If you indeed informed

¹ And even if you did, the timing of such an e-mail would raise serious constitutional concerns, as it would appear to have been motivated by the intent to suppress this particular form of free expression. It is not plausible that any student who is absent from school without excuse for even a day, for whatever reason, would be automatically punished with five days’ of suspension. *See generally Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

all parents and students about the threat that anyone who walked out of school would be shot, please let us know.

Third, you allege that that Amari's walking out of school "incit[ed] school disruption" but provide no evidence whatsoever to support that claim. *See Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966) (unconstitutional to forbid students from wearing "freedom buttons" without evidence that it would cause substantial disruption). Under the First Amendment, "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Tinker*, 393 U.S. at 508. Furthermore, schools cannot punish every slight disruption; only conduct that "materially and substantially" disrupts school may be punishable. *Id.* at 513.

A student who quietly and hurriedly leaves class to go to the bathroom can hardly be said to cause a "material and substantial" disruption to class. Nor does a student who gets called to go to the principal's office in the middle of class. It is hardly clear how Amari's leaving school during the break between classes without fanfare has caused a material and substantial disruption to school. If you have such evidence, we ask that you provide it immediately. Absent such evidence, the school's overreaction to Amari's expression appears to be nothing more than "an urgent wish to avoid the controversy which might result from the expression." *Tinker*, 393 U.S. at 510. That is not a legitimate justification.

In order to remedy this unconstitutional violation, the discipline imposed on Amari Ewing must be immediately suspended so she can go to class this week, and the discipline should be expunged from her student record. Alternatively, you should reduce her punishment to the equivalent punishment that any other student would receive for being absent from school without excuse for less than an hour, and if Amari has already served that punishment, she should be allowed to return to class immediately.

We understand that school principals have an exceptionally difficult job, as you strive to ensure that all students are able to learn in a safe environment. But a five-day suspension for 17 minutes of peaceful protest is way out of line. If you do not agree to these demands, please provide a detailed, written justification for your actions in light of the potential constitutional problems identified above, no later than Monday, March 12, 2018. You are also welcome to reach us by phone. If you do not respond, we reserve the right to bring legal action.

Sincerely,



Sean J. Young
Legal Director
ACLU of Georgia

EXHIBIT A

Notice of Disciplinary Action

March 2, 2018

Bradwell Institute
100 Pafford Street
Hinesville, Georgia 31313

Dear Parent/Guardian,

Your daughter, Amari Ewing, has received her 1st office referral for her behavior at school.

Date/Time: March 2, 2018 at 11:05 AM

Location: Unspecified

Offense: A33 *Other: Student Incivility – Insubordination; student walked out of school after a week of conferencing with BI admin and central office staff. Student left campus and went across the street to protest with other students during school hours without permission, inciting school disruption.

Reported By: Kenyatta Gilmore on 03/02/2018

Actions Taken

5-Day *30 Out-of-School Suspension (3/5/18 Full Day, 3/6/18 Full Day, 3/7/18 Full Day, 3/8/18 Full Day, 3/9/18 Full Day)

Assigned By: Bernadette Crow on 03/02/2018

Please discuss this behavior with Amari and follow through with any consequences you feel are appropriate.

If you have any questions, please contact the school at (912) 876-6121.

Please sign below and return this letter to the school with your daughter.

Thank you for your help and cooperation,



Sadie Boone, Assistant Principal

Bradwell Institute

EXHIBIT B

Sean J Young

From: Keysha Ewing <kykellyewing@aol.com>
Sent: Wednesday, March 07, 2018 8:29 AM
To: Sean J Young
Subject: Fwd: Official Statement on Canceled Student Walk Out

Follow Up Flag: Follow up
Flag Status: Flagged

-----Original Message-----

From: Gilbert, Toriano <mail@notify.onecallnow.com>
To: Ewing, Amari <Kykellyewing@aol.com>
Sent: Wed, Feb 28, 2018 5:05 pm
Subject: Official Statement on Canceled Student Walk Out

Notification from: **Bradwell Institute High**

The Liberty County School District places a great deal of importance on the safety of its students and staff. There must be an engagement of students, staff, parents and community members in the development of a trusting and supporting relationship when dealing with school safety. While the District acknowledges individuals have rights to demonstrate in support of a cause, such demonstrations during the instructional day are disruptive and are not in the best interest of the educational process. Furthermore, protests such as walk outs, have the potential of placing individuals in a less than safe environment and therefore the District will not participate in any type of walk out. Thank you for joining the Liberty County School System in doing everything we can to promote a safe and secure learning environment.

To ensure that you continue to receive these emails, please add mail@notify.onecallnow.com to your Email Address Book.

To unsubscribe to notifications from **Bradwell Institute High**, please [click here](#).

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