

October 14, 2022

Dr. Stacy Chambers (Delivered via email and in-person)
Superintendent
Florida State University Schools
3000 School House Road
Tallahassee, FL 32311

FORMAL APPEAL

Dear Dr. Chambers:

The Southern Poverty Law Center represents ██████████, a student enrolled in Florida State University Schools (FSUS), and his parents, Dr. Cecilia Chouhy Algorta and Mr. Martin Wiedemann Vazquez. ██████████ is currently subject to a “Withdrawal of Invitation” to attend FSUS. In accordance with the 2022-2023 FSUS Code of Student Conduct (“Code of Student Conduct”), ██████████ and his parents submit this appeal of the school’s decision and request a formal hearing.¹

██████████ alleged actions do not violate the school’s “Zero Tolerance Policy” provisions that were loosely referenced in the “Withdrawal of Invitation Recommendation” (See p. 1 of “Withdrawal Documents” attached). Further, FSUS has failed to comply with the Withdrawal of Invitation process in the 2022-2023 FSUS Code of Student Conduct. FSUS conflates the “Withdrawal of Invitation” with an expulsion, while not providing ██████████ with the proper constitutional and statutory due process protections required in an expulsion proceeding.

The school’s decision is arbitrary and capricious, contrary to law and due process, an abuse of discretion, and lacks sufficient evidence. After the alleged incident, ██████████ was placed on administrative leave with no hearing or serious consideration of the circumstances surrounding the alleged incident. This is a violation of his due process rights. And the school should rescind the decision to withdraw ██████████ invitation. The policies in the Code of Student Conduct should be corrected for the benefit of all students and FSUS legal compliance. Finally, ██████████ and his family request a meeting with school leaders to ensure that ██████████ receives a safe, appropriate, and restorative learning experience consistent with state and federal law.²

¹ While a formal hearing is appropriate under the circumstances, there are significant questions regarding the impartiality and due process protections that would be afforded to ██████████ in such a hearing. Dr. Chouhy was told by Dr. Chambers that the outcome of such a hearing was going to be the same as their previous meeting, meaning it was predetermined. This would be a preemptive violation of ██████████ due process rights.

² This appeal does not constitute an exhaustive list of defenses and arguments related to the alleged disciplinary incident involving ██████████ Wiedemann, nor to his potential withdrawal, removal, and/or expulsion from Florida State University Schools. ██████████ does not waive any legal or procedural rights, claims, and defenses, and preserves all legal or procedural rights, claims, and defenses even if not specifically identified in this appeal.

Per page 64 of the Code of Student Conduct:

A student or his/her parent may request a review by the Director of any disciplinary action taken by FSUS. Such requests must be submitted in writing to the Director within ten (10) days of the imposition of disciplinary action.

Dr. Chouhy was provided the decision to withdraw in writing along with the corresponding memorandum and form for Dr. Chouhy to sign via email on Friday, October 7, 2022 (See “Withdrawal Documents”). That form identified [REDACTED] withdrawal date as October 7, 2022 (See p. 3 of “Withdrawal Documents”). Counsel for the school has confirmed in writing that the deadline to submit this appeal is October 17, 2022, and this appeal is submitted timely.

The Withdrawal of Invitation is Not Proper Under the Code of Student Conduct

The plain language of the Code of Student Conduct confirms that the withdrawal of invitation is improper. Page 63 of the Code of Student Conduct states:

when a student's behavior is repeatedly inappropriate to others or continues to exhibit absolute disregard for the conditions of behavior set by the school...a meeting will be held and the Administration may recommend to the Director permanent withdrawal of FSUS invitation.

[REDACTED] behavior cannot be categorized as “repeatedly inappropriate.” This was [REDACTED] first alleged disciplinary incident at FSUS. [REDACTED] has not previously been subject to any disciplinary actions by the school, including after school detention, Saturday detention, lunch detention, withdrawing privileges, “Administrative Contract,” In-School Suspension (ISS), Out-of-School Suspension (OSS), alternative daytime educational program, or administrative leave. This was the first time [REDACTED] was placed on administrative leave. He continues to be on administrative leave, 15 school days and counting after the alleged incident.

Expulsion Under a ‘Zero Tolerance Policy’ is Not Proper

FSUS appears to be effectively expelling [REDACTED] from school, not withdrawing his invitation to attend. This is problematic for a multitude of reasons, chief among them that FSUS has failed to show the basic elements that would trigger expulsion under the Zero Tolerance Policy provisions included in the Code of Student Conduct. FSUS has also failed to provide [REDACTED] with sufficient due process as required by federal and state law.

The “Withdrawal of Invitation Recommendation” alleged that [REDACTED] “violate[d] our Zero Tolerance Provisions on page 36 of the Code of Student Conduct” (See Page 1 of Withdrawal Documents, attached). The Code of Student Conduct explains that the “Zero Tolerance Policy shall require students found to have committed one of the following offenses to be expelled.” The school’s claim that [REDACTED] invitation has been withdrawn is simply expulsion by another name seemingly to circumvent the disciplinary process spelled out in its own policies. Although the Zero Tolerance Policy on page 36 of the Code of Student Conduct is referenced in the “Withdrawal of Invitation Recommendation” provided to [REDACTED] parents, a “withdraw of invitation” is not referenced as a disciplinary outcome in the Zero-Tolerance Provisions in the Code of Student Conduct.

The “Withdrawal of Invitation Recommendation” also fails to give notice of which section of the “Zero Tolerance Policy” provisions ██████ is being accused of violating. It is important to note that, under Florida law, ██████ is incapable of committing or being charged with a battery. The Kaia Rolle Act states that in Florida, “a child younger than 7 years of age may not be taken into custody, arrested, charged, or adjudicated delinquent for an act or violation of law based on an act occurring before he or she reaches 7 years of age, unless the violation is a forcible felony” (See Florida Statutes, Chapter 985.031.) Under Florida law, “forcible felony” means “treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.” No reasonable person would conclude that what allegedly occurred constituted a forcible felony. Since ██████ did not “intentionally or knowingly cause great bodily harm, permanent disability, or permanent disfigurement or use a deadly weapon,” he did not commit an aggravated battery and therefore did not commit a forcible felony. Since ██████ did not commit a forcible felony, he could not be charged with a crime for the alleged incident.

There are striking similarities between the alleged incident here and the incident involving Kaia Rolle, whose arrest garnered national attention and led Florida legislators to change the law to ensure that young children facing discipline in school were treated in an age-appropriate matter. Like ██████ Kaia also attended a charter school in Florida and was accused of physical contact with an educator. And like Kaia, the alleged incident here did not justify the extreme and unnecessary response of seeking to expel a student which has long-term damaging effects to the education and well-being of young children.

FSUS Violated ██████ Due Process Rights

The process of ██████ “Withdrawal of Invitation” - an expulsion by another name- has been devoid of constitutional and statutory due process protections recognized by the Code of Student Conduct. The Supreme Court of the United States has recognized that students have a constitutionally protected entitlement to their public education. *Goss v. Lopez*, 419 U.S. 565, 574 (1975). A public school cannot constitutionally exclude a student from his or her education without first providing a student with sufficient due process protections. *Id.* Fourteenth Amendment due process and equal protections also apply to students attending public charter schools. See *Peltier v. Charter Day School*, 37 F.4th 104, 130 (4th Cir. 2022).

As the Code of Student Conduct states, “proper procedures shall be followed in all student expulsion proceedings as required by Florida Statutes, and Board rules.” The “Board rules” mentioned in the Code of Student Conduct presumably refer to the Leon County Board of Education rules that are detailed in the Leon County Student Code of Student Conduct adopted by the Leon County Board of Education for the current school year (See excerpt attached). On page 28 of the Leon County Student Code of Student Conduct, a detailed process for an expulsion hearing is explained. That process has not been followed here. And ██████ ongoing administrative leave without sufficient notice or a hearing is an ongoing violation of his due process rights. FSUS has failed to comply with statutory and constitutional due process through his forced withdrawal/expulsion meriting immediate rescission and reversal of this decision.

Mitigating Circumstances Surrounding the Alleged Incident Exist

When deciding the most appropriate outcome and disciplinary action in response to the alleged incident, FSUS should consider the various mitigating circumstances. As mentioned earlier, this is the first alleged significant behavior issue pertaining to [REDACTED]. There are alternative pedagogical disciplinary responses that are age appropriate which could be used by FSUS and would not cause significant and detrimental harm on [REDACTED] education progress like an expulsion or school removal.

At the same time, [REDACTED] has been subject to a hostile environment that undermined his feeling of safety at FSUS. On the second day of the current school year, [REDACTED] reported to his parents that his teacher screamed at students and that everyone was 'behaving badly all the time.' The teacher modeled aggressive behavior towards her students. [REDACTED] also reported to his parents that he was being bullied by other students. [REDACTED] reported to his parents that he was pushed by a student during recess on Friday, September 9th. When Dr. Chouhy reached out to the teacher with concerns through the Dojo app on Monday, September 12, documenting that he was being treated harshly by his peers and nervous about going to school, the teacher did not respond.

The bullying that [REDACTED] endured continued for two weeks after Dr. Chouhy contacted his teacher. [REDACTED] frequently reported that classmates called him names and that he felt targeted specifically by another student. The Wednesday prior to the alleged incident, [REDACTED] reported to his parents that a student had removed a shoe from him and dropped it on the other side of the classroom.

Beyond being a victim of persistent bullying in a classroom, [REDACTED] also struggles to read. This has increased his anxiety about completing work and has impacted his self-esteem. He reports that he is made to read in a group and that his fellow students do not wait for him or help him. At no point has [REDACTED] teacher identified this issue or offered testing and support services for learning disabilities such as dyslexia. FSUS is obligated to comply with the "Child Find" requirements of the Individuals with Disabilities Education Act (IDEA) and all other legal requirements under federal law. [REDACTED] parents have requested these services both in person and in writing and renew their request for [REDACTED] to be evaluated for any potential disabilities that may be impacting his learning.

Conclusion

[REDACTED] "Withdrawal of Invitation" should be rescinded and reversed immediately, and his administrative leave terminated. The decision remains unsupported by evidence, contrary to law, arbitrary, capricious, an abuse of discretion, and in violation of due process. If [REDACTED] "Withdrawal of Invitation" is not immediately rescinded, [REDACTED] must be granted a formal appeal hearing that guarantees his due process rights. That hearing is already untimely, and [REDACTED] does not waive any claims pertaining to FSUS's failure to comply with its legal requirements. [REDACTED] should be allowed to return to FSUS and placed in a different first grade classroom. There should also be a thorough review of FSUS policies and procedures, including but not limited to the Code of Student Conduct, to ensure future incidents are handled in a fair, effective, and legally compliant manner. A meeting should be scheduled to discuss and initiate services in response to [REDACTED] request for a special education evaluation.

Respectfully,

/s:/ Abel S. Delgado
Abel S. Delgado
Senior Staff Attorney, Children's Rights
Southern Poverty Law Center