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Barrington Public Schools' Statement regarding the Appeal in the: Barrington Public Schools vs Council on Elementary and Secondary Education, and Student E. Doe

On October 8, 2019, the Barrington School Committee filed an appeal in Superior Court challenging the decision of the Council on Elementary and Secondary Education to uphold the ruling of the Commissioner of Education in the case of *E. Doe v. Barrington School Committee*. In that decision, the Commissioner ruled that the Committee had violated the law by imposing a three-day-out of school suspension on E. Doe, a middle school student who, on February 28, 2018, had participated in a conversation with three other students in the school cafeteria about what they would do if they were the shooter in an event like the one that had taken place in Parkland, Florida at the Marjory Stoneman Douglas High School just a few weeks before.

The conversation made reference to grenades, like the ones used in *Fortnite*, a video game. E. Doe reported at hearing that although he did not present any "new ideas or directly state anything," he did agree with the others that if he were the shooter, "he would come through the front door." Another student overheard the conversation. That student reported it to their parent, who called the Barrington Police Department. That night, the Police officials questioned the students at their homes, and the next morning, searched their lockers at school. A substantial police presence occupied the school that morning while this search took place. After the Police Department left, school administrators interviewed each of the students individually and conducted a risk assessment to determine whether the student's admitted participation in a conversation about "shooting up a school" only weeks after the Parkland tragedy warranted further evaluation and intervention by mental health professionals. The Principal thereafter imposed the 3-day out of school suspension on each of the four students as a consequence for the frightening and disruptive effect of their conversation on the school community.

The Superintendent endorsed the Principal's decision, but the Commissioner ruled that the suspension was unlawful and ordered that all records in any way related to the suspension, including the threat assessment conducted by the school social worker, be permanently expunged from E. Doe's records.

The Committee believes that the Commissioner's decision, which the Council endorsed in full, undermines the safety and welfare of the school community.

The Commissioner held, in effect, that school districts may not impose an out of school suspension on any student for a threat made in school unless that threat amounts to a "true threat" within the meaning of the criminal law.

This is neither the law nor common sense.

If the conversation at issue were a true threat, the issue of an out of school suspension would be moot and public safety would mandate a more powerful response than the modest consequence imposed here. Moreover, the well-established constitutional law permits public schools to impose consequences on students (including out of school suspensions) on speech that makes reference to violence or other unlawful conduct regardless of the intent of the student either to carry out the threat or even put a specific individual in fear.

Here, the conversation by E. Doe and friends so frightened another student in the cafeteria that it prompted late night interventions by Barrington Police Department officers at the students' homes and a police presence to conduct a search of school property the following morning. The impact of the prior day's lunch conversation was far from trivial – and plainly caused a "material and substantial" disruption in the school community, which is the standard long ago articulated by the United States Supreme Court for imposing consequences on student speech. The ACLU misleads when it claims that the Commissioner "found no evidence that the conversation . . . was disruptive." Instead, the Commissioner found no evidence that E. Doe himself was a "disruptive" student within the meaning of state law, that is, one "who exhibits persistent conduct which substantially impedes the ability of other students to learn" and "who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators." At no time did the Committee claim that E. Doe was a "disruptive student." Yet there can be no dispute that the E. Doe's conversation with the three others caused a powerful – and undeniably – material and substantial disruption to the school and collided with the right of at least one other student to feel safe.

The Commissioner also ruled that the school administration should not have conducted a threat assessment of E. Doe once the Police Department completed its search of the school lockers. He even ordered that the documentary and electronic record of that threat assessment, conducted to ensure that the students did not present a "true threat," be permanently eradicated from their school records. This part of the decision not only directly undermines public safety but runs contrary to the state mandate which requires that school committees adopt and implement written policies establishing threat assessment teams, comprised of persons with expertise, who shall be tasked with conducting assessments to ensure that students such as E. Doe are truly "just kidding."

The ACLU complains that the Committee should not be seeking legal fees from the parents. The Committee is not. The request for legal fees is a standard request in court filings, and to the extent the reviewing court were to award such fees, the Committee would seek them from Council and not E. Doe or E. Doe's parents. In the Committee's view, it is the Council, a state body, which has endorsed a mistaken decision that compromises school safety and security through the State. E. Doe is joined as a party under the state procedural law because the student has an interest in the litigation and a right to participate in it. The Committee's purpose in filing the appeal, however, is in no way to discourage challenges to discipline but rather to advance a point of view and public interest different

from that advanced by the ACLU. That is the nature of free and open discussion on controversial topics, a point made not without irony.

Just last year, the Commissioner of the New York Education Department upheld a five-day suspension of a fifteen-year old student who made a joke about "shooting up a school pep rally." As in this case, the school determined that the student did not pose a true threat to the school community. As in this case, the student said his comments were in jest. Nevertheless, the Commissioner looked to the impact of the comment on the school community and deemed the 5-day out of school suspension appropriate.

The ruling by the Commissioner and its endorsement by the Council does not address or even consider the applicable and controlling constitutional law on this important topic, which sadly is gaining more relevance as school violence becomes more common. More importantly, the Commissioner's ruling overlooks the impact of the event here on the Barrington school community – which began with a child who heard something frightening – only weeks after one of the most horrific school massacres in United States history.