



May 7, 2025

Via E-mail & U.S. Mail

Superintendent Dr. Laura McDermott
Whitley County Consolidated Schools
107 North Walnut Street
Columbia City, IN 46725-2021
mcdermottla@wccsonline.com

Subj: Heather Nicole Graves (Divine) No-Trespass Letter

Dear Superintendent McDermott,

We represent Heather Nicole Graves (Divine), a mother of an Indian Springs Middle School student. On May 28, 2024, your office sent Ms. Graves a No Trespass Order, a copy of which is enclosed as Exhibit 1. We understand that you sent this No Trespass Order in the form of a letter to Ms. Graves after she recorded a meeting with the Indian Springs Middle School principal.

In the letter, you assert that Ms. Graves violated school policy by recording a meeting between her and the school principal. The meeting involved an incident report filed by Ms. Graves' child regarding inappropriate conduct by a school employee.

Your letter prohibits (1) Ms. Graves from showing up at any Whitley County Consolidated Schools District (WCCS) school building to attend any voluntary activity, such as sports, contests, concerts, plays etc., without written permission from the Superintendent's office at least 24 hours in advance; and (2) Ms. Graves from contacting *any WCCS staff member* without first contacting the Superintendent's office. The letter also mandates that all communications with staff members take place over written format. Your office has taken no official step to revoke the No Trespass Order sent to Ms. Graves by letter on May 28, 2024.

The prohibitions set out in your letter violate Ms. Graves' right to free expression as protected by the First Amendment as well as her parental rights under the Fourteenth Amendment.

The First Amendment protects both speech and conduct that is inherently expressive. Indeed, several federal circuits, including the U.S. Court of Appeals for the Seventh Circuit, have squarely held that the First Amendment's protections extend to recording government officials. *See Brown v. Kemp*, 86 F.4th 745, 763 (7th Cir. 2023) ("The act of making an audio or

audiovisual recording is necessarily included within the First Amendment's guarantee of speech and press rights." (Citation and internal quotations omitted).

Because Mrs. Graves engaged in protected speech in recording the meeting with the principal, the punishments announced in the May 28, 2024 letter amount to First Amendment retaliation. A school district engages in retaliation under the First Amendment when (1) a parent engages in constitutionally protected speech, (2) the school takes adverse actions against that parent, and (3) that the adverse actions were motivated by a parent's protected speech. *Springer v. Durflinger*, 518 F.3d 479 (7th Cir. 2008).

That is exactly what happened here. In this case, Ms. Graves, a parent, recorded a meeting with a school principal about her child—an activity protected by the First Amendment. Ms. Graves was then banned from school grounds and prohibited from communicating with staff without notifying the Superintendent and submitting all such communications in writing, which are clearly adverse actions. As set forth in your letter, this action was based entirely on Ms. Graves' constitutionally protected activity: recording a meeting with a school official about her own child.

Ms. Graves also has a fundamental right to direct and control the education and upbringing of her child under the Fourteenth Amendment. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Troxel v. Granville*, 530 U.S. 57, 66 (2000). ("[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.").

This fundamental right bolsters Ms. Graves' First Amendment rights because the conversation she sought to record cannot be separated from the parental-child relationship and the restriction on her communication with school officials who have direct contact with her minor child.

Further, a parent cannot meaningfully exercise their parental rights to determine how best to direct the education and upbringing of their child without access to necessary information. This includes information about incidents that occur between a student and an adult employee or contractor of the school district. Here, there is no policy that requires parents to be notified of such an incident. There is no indication that Ms. Graves ever would have been informed about the incident by the responsible school officials. By not informing Ms. Graves about the incident report filed by her daughter alleging misconduct by a school employee or contractor, WCCS interfered with Ms. Graves' right to determine the best educational opportunity for her child.

To prevent ongoing and future violations of Ms. Graves constitutional rights and the possibility of a lawsuit seeking to enforce those rights, we respectfully request the following: (1) an official termination of the order preventing Ms. Graves from showing up at any WCCS school building to attend any voluntary activity, such as sports, contests, concerts, plays etc., without written permission from the Superintendent's office; (2) an official termination of the restriction on Ms. Graves that prohibits her from not making contact with any WCCS staff

members without first contacting the Superintendent's office and requiring *any communication* with staff member(s) occur only in a written format; (3) and repeal any policy that prohibits a parent from recording a meeting with a school staff member about the parent's child without the permission of the building administrator, including Policy 2410 – Audio and Videotaping of Meetings; and (4) an official clarification of the District's policy that requires parental notification when a student files an incident report alleging misconduct by an adult employee or contractor of the district.

Our staff is available at any time to discuss the constitutional issues raised by the banning of Ms. Graves from any WCCS school building because of her speech, restricting her speech with adults that have frequent contact with her children, and the lack of a policy that requires notice to parents of incidents involving misconduct by adults as it deprives parents of the information necessary to evaluate the safety of the learning environment for their child.

We appreciate your prompt and thoughtful consideration of these matters and look forward to receiving confirmation that the Whitley County Consolidated Schools has taken actions to bring its policies into compliance with the United States Constitution.

Should you have any questions regarding this matter, please do not hesitate to contact me directly.

Regards,



Adam Shelton
Staff Attorney
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

cc via email only:

David Smith
President - Board of School Trustees
smithde@wccsonline.com

Mary Ann Schaefer
Vice President - Board of School Trustees
schaeferm@wccsonline.com

Jill Western
Secretary - Board of School Trustees
westernje@wccsonline.com

Superintendent Dr. Laura McDermott
May 7, 2025
Page 4 of 5

Chad Moore
Member
mooreca@wccsonline.com

Kate Method
Member
methodke@wccsonline.com

Lisa Doehrman
Member
doehrmanla@wccsonline.com

James Renbarger
Member
renbargerje@wccsonline.com

Heather Shively
Member
shivelyhm@wccsonline.com

Thomas Rentschler
Member
rentschlertw@wccsonline.com

Morgan P. Cleary
Associate
MCleary@kdlegal.com

Tom Costakis
Partner
tcostakis@kdlegal.com