ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Texas

February 10, 2025

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F. Mike Miles, Superintendent
Houston ISD ("HISD")

Claudia Garza, Principal
Northside High School

Via E-mail

Re: Student Discipline for Protest Participation

Dear Houston ISD Board of Trustees and Superintendent Miles,

We write to express concerns about reports of large numbers of your students being expelled or suspended for participating in recent protests.[1] It is imperative that school districts uphold their students' constitutional rights by not targeting disfavored speech for harsher punishment. District officials must also exercise caution when administering exclusionary discipline, which has been shown to severely impact students' academic outcomes and mental health.

Last week, students on multiple HISD campuses organized protests against federal immigration policy and called for Immigrations and Customs Enforcement (ICE) agents to be

[1] *See, e.g.*, Todd Travon Rogers, *Northside HS parents demand HISD deny ICE agents access to any school in district*, CW39 Houston (Feb. 10, 2025), https://cw39.com/news/local/northside-hs-parents-demand/; Holly Galvan Posey, *Houston ISD parents demand school drop expulsions for students who protested in walk-out*, Click2Houston (Feb. 10, 2025), https://www.click2houston.com/news/local/2025/02/10/houston-isd-parents-demand-school-drop-expulsions-for-students-who-protested-in-walk-out/.

barred from district campuses.[2] Reports have since emerged that some of the students who participated in these protests—particularly those at Northside High School—have been either suspended or threatened with expulsion for their participation.

While school districts may discipline student protestors who substantially disrupt the functioning of the school or who violate content-neutral rules on speech, they may not discipline students more harshly for the political content of their speech, because they disagree with their students' viewpoints on a topic, or because certain students are disfavored by the administration. In this case, based on the currently available reporting, it appears that student protestors at some campuses were harshly punished while there is no indication that student protestors at other campuses were punished at all.[3] These potential discrepancies raise the concern that certain students were targeted for punishment for non-content-neutral reasons, which could violate their constitutional rights to freedom of expression.[4]

Further, it appears the district is suspending approximately ***half*** of the 100 students who protested at Northside High school for "bec[oming] very disruptive to the learning environment."[5] It appears that these punishments may be out of line with HISD's code of student conduct. The code of conduct does not make any specific mention of walk-outs, protests, or demonstrations.[6] But were the District to view such expression as falling under the code's purview, exclusionary discipline is seemingly unwarranted by any Level of offense under which such expression might be categorized. For example, depending on the facts at hand, a walk-out protest could constitute a Level I offense—such as "Disrupting the orderly classroom process," "Refusing to participate in classroom activities or fulfill assignments," or "Running, making excessive noise or other disruptions in halls, buildings, classrooms, or other supervised

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[2] Claire Partain, *HISD's Sam Houston High School students stage mass walkout to protest national immigration crackdown*, Houston Chronicle (Feb. 6, 2025), https://www.houstonchronicle.com/news/houston-texas/education/hisd/article/hisd-student-immigration-walkout-20149388.php.

[3] *Compare* Claire Partain, *HISD's Sam Houston High School students stage mass walkout to protest national immigration crackdown*, Houston Chronicle (Feb. 6, 2025), https://www.houstonchronicle.com/news/houston-texas/education/hisd/article/hisd-student-immigration-walkout-20149388.php (not indicating that Sam Houston HS students received punishment for their walk-out immigration protests) *with* Todd Travon Rogers, *Northside HS parents demand HISD deny ICE agents access to any school in district*, CW39 Houston (Feb. 10, 2025), https://cw39.com/news/local/northside-hs-parents-demand/ (reporting that Northside HS students who participated in the immigration protests are facing suspensions and expulsions).

[4] *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

[5] Maria Aguilera, *HISD suspends 45 Northside HS students over 'disruptive' immigration protest*, KHOU 11 (Feb. 10, 2025), https://www.khou.com/article/news/education/northside-high-school-suspensions-immigration-protest-houston-texas/285-de704864-6a3d-4e4e-820f-3d7c81ebc641.

[6] *See 2024-2025 Student Code of Conduct*, Houston ISD, https://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/7905/HISD-Student-Code-Of-Conduct-2024-2025-ENG.pdf.

settings."[7] According to the code of conduct, none of these offenses merit suspension, DAEP placement, or expulsion.[8] If a student protestor could be accused of a Level II offense, such as "Failing to comply with directions given by school personnel," such a transgression would similarly not merit out-of-school suspension, DAEP placement, or expulsion.[9] Additionally, even if a Level III offense such as "leaving the classroom, school grounds, or school-sponsored events ***without permission***" applied here—which does not seem to be the case[10]—it should not result in DAEP placements or expulsions.[11] And for a Level III offense, many other, more proportionate disciplinary options exist, such as restorative practices, Saturday school, or teacher/student/parent conferences. Finally, the disciplinary options reserved for "Level IV Serious Offenses" seemingly do not apply here. Notably, for a school disruption to constitute a Level IV offense, it must be caused by "***[r]epeated*** acts of disobedience or disorderly behavior"—of which there are no indications in this case that appears to consist of a singular protest.[12] And the admittedly "overwhelmingly peaceful and well-organized" protest[13] does not seem to fall into Level IV's category of behavior that "endanger[s], or seriously affect[s] the health and safety of others."[14] Regardless, even Level IV offenses do not merit expulsion.

Finally, "exclusionary" forms of discipline—like suspensions, alternative school placements, and expulsions—that remove students from the classroom and separate them from their peers can have devastating consequences, which districts must seriously consider before administering these punishments, especially for non-violent offenses. Exclusionary discipline can lead to hours of lost instruction and is associated with negative educational outcomes, increased drop-out rates, and increased risk of incarceration through the school-to-prison pipeline.[15] Students should not face such severe consequences for peacefully protesting,

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7 *Id*.

8 *Id*.

9 *Id*.

10 A district statement on the matter indicates that the protest was not unauthorized. Maria Aguilera, *HISD suspends 45 Northside HS students over 'disruptive' immigration protest*, KHOU 11 (Feb. 10, 2025), https://www.khou.com/article/news/education/northside-high-school-suspensions-immigration-protest-houston-texas/285-de704864-6a3d-4e4e-820f-3d7c81ebc641 ("That [Northside HS]protest was overwhelmingly peaceful and well-organized, ***with staff respecting students' right to protest***.") (emphasis added).

11 *See 2024-2025 Student Code of Conduct*, Houston ISD, https://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/7905/HISD-Student-Code-Of-Conduct-2024-2025-ENG.pdf.

12 *Id*.

13 Statement by HISD. Maria Aguilera, *HISD suspends 45 Northside HS students over 'disruptive' immigration protest*, KHOU 11 (Feb. 10, 2025), https://www.khou.com/article/news/education/northside-high-school-suspensions-immigration-protest-houston-texas/285-de704864-6a3d-4e4e-820f-3d7c81ebc641.

14 *2024-2025 Student Code of Conduct*, Houston ISD, https://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/7905/HISD-Student-Code-Of-Conduct-2024-2025-ENG.pdf.

15 Chloe Kempf, et al., *Dressed to Express: How Dress Codes Discriminate Against Texas students and Must be Changed*, ACLU of Texas (Feb. 2024) at 39,

including to "stand[] up" for themselves, "show[] respect for sacrifices made by immigrant parents," and to denounce the presence of ICE in schools[16]—even if those protests did break school rules. Our country has a long history of students engaging in protest in the service of justice,[17] which schools should honor and respect, as opposed to singling these students out for harsh and disproportionate discipline.

We urge you to uphold your students' constitutional rights, follow your district's code of conduct, and to strongly consider the ramifications and severity of exclusionary discipline. Specifically, we ask that you immediately rescind any and all school suspensions that occurred because of content- or viewpoint-discriminatory motives or that exceeded the discipline authorized by the student code of conduct.

Sincerely,

The American Civil Liberties Union (ACLU) of Texas

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https://www.aclutx.org/sites/default/files/dresscodereport_2-1-24.pdf (citing K–12 Education: *Department of Education Should Provide Information on Equity and Safety in School Dress Codes*, U.S. Government Accountability Office (Oct. 25, 2022), https://www.gao.gov/assets/gao-23- 105348.pdf; Alexandra Brodsky et al., *Dress Coded: Black girls, bodies, and bias in D.C. schools*, National Women's Law Center (2018), https://nwlc.org/wp-content/ uploads/2018/04/5.1web_Final_nwlc_ DressCodeReport.pdf.

[16] Claire Partain, *HISD's Sam Houston High School students stage mass walkout to protest national immigration crackdown*, Houston Chronicle (Feb. 6, 2025), https://www.houstonchronicle.com/news/houston-texas/education/hisd/article/hisd-student-immigration-walkout-20149388.php (quoting, in part, HISD students Alisay Castorena and Kendra Ramirez).

[17] *See* Tinker v. Des Moines - Landmark Supreme Court Ruling on Behalf of Student Expression, ACLU (Feb. 22, 2019), https://www.aclu.org/documents/tinker-v-des-moines-landmark-supreme-court-ruling-behalf-student-expression ("Mary Beth Tinker was a 13-year-old junior high school student in December 1965 when she and a group of students decided to wear black armbands to school to protest the war in Vietnam."); Assoc. Press, *The Latest: Anti-gun rallies among biggest since Vietnam War*, WKYT (Mar. 24, 2018), https://www.wkyt.com/content/news/Organizers-hope-to-draw-half-a-million-to-gun-control-rally-477816963.html ("At Washington's 'March for Our Lives' rally, throngs jammed Pennsylvania Avenue for blocks. Tens of thousands of teenagers and their supporters roared their approval as survivors of the Parkland, Florida, assault spoke from the stage. One of them, Delaney Tarr, laid down the students' central demand, a ban on assault-type weapons, and declared 'We will continue to fight for our dead friends.'").