

Attorney Angela Juliani
Office of Corporation Counsel
235 Grand Street
Waterbury, CT 06702

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RE: WATERBURY SCHOOL DISTRICT

Deceptive and egregious use of “informed” and “voluntary consent” under the guise of

“Update Student Information”

Preface: I understand that the district is attempting to find a way to control cell phone use in the classroom. The path to which the district has chosen is deceptive, forcing parents and guardians to consent to something they might not otherwise consent to, given in a different setting and as a singular consent form. I refused to sign, requesting a paper form from Dr. Ruffin, to allow me to cross out language I do not agree with.

Dear Attorney Juliani,

Hello. I am writing to you in an attempt to have the district nullify all of the district school policy agreements it has obtained to date and to reissue, if the district so chooses, new agreements that clarifies the parent, guardian and/or student’s rights and responsibilities.

At the inception of the school year, each school sent home a notice REQUIRING parents and guardians to complete the **Update Student Information** form. To the best of my knowledge, this was provided as an online option only. The form guided and sequentially walked the parent or guardian through a series of questions and often only provided a, “yes”, answer that must be selected to move forward, even if the response to the question was a, “no”.

Updating student information does not relate to school and district policy. Student information is limited to demographical, biographical, and medical information only. For example, name, address, date of birth, [age], guardian(s) name(s), emergency contact, medications, allergies, etcetera.

There are many legal and ethical issues with the districts’ **“Update Student Information”** form. In this writing, I am going to focus exclusively on the **“Electronic Use Policy”**.

To be specific, I am going to deal with the deceptive practice the district is using to trick parents and guardians into voluntarily agreeing to things they would not normally agree to and would be advised against agreeing to, if they had an attorney review the documents asked by the district, to be signed. To address this issue, we must drill down to the core problem, “consent.”

There is consent and informed consent and voluntary consent, to name a few specific types and for our purposes here. Most people do not understand that when you go into a courthouse or through TSA at the airport and they put their phone into the plastic bin and hand it to the marshal or agent, they are voluntarily handing over their phone, which means it can legally be searched. This is consent, specifically, voluntary consent and a consent that law enforcement does not publicly advertise, but the same principle the district is exploiting in their “**Update Student Information**” form. The general public believes something different than how the law actually applies.

Informed consent is when you knowingly understand and agree to the consequences of your actions or what you are agreeing to.

“informed consent - A person’s agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives.

voluntary consent - Consent that is given freely and that has not been coerced.”

Blacks Law Dictionary, Eighth Edition, 1999

On the face , the districts “**Update Student Information**” form appears to meet the informed consent requirements, with language that spells out broad categories that would be considered a violation and the disciplinary action for violation of the policy. The only choice available to select is, “yes”. See attached, *Exhibit A, Update Student Information*. For those who do not agree, and I will get into reasons a parent or guardian might not agree, there is no, “no” option and cannot proceed forward. The district understands human nature. The person completing the form doesn’t agree, but has already invested so much time in completing the long, continuous and ongoing form to this point, that they need to move forward, so they select “yes” and proceed forward, even if they don’t actually agree. What harm could happen?

I am going to provide only one, of literally hundreds of real scenario’s that could really happen.

Tim and Tom are brothers. Tim, 18, attends Wilby High School. Tom, 13, attends North End Middle school. Tim is suspected of selling drugs in school and in the community but the police have not been able to catch him in the act or find any other evidence to prove he is in fact selling drugs.

The police then talk to the principal of North End. She subsequently instructs all of Tom's teachers to be on the lookout for when and if, Tom takes his phone out and to confiscate the phone under the Electronic Use Policy, without providing any other details, and to send Tom to the principal's office when this occurs.

It is only a matter of hours before Tom takes his phone out in the classroom to check a Snapchat notification. Tom's phone is confiscated and Tom is sent to the principal's office. The detective is handed Tom's phone. With no password, the detective easily opens the phone and reads incriminating text messages between Tom and Tim and sees phone contacts, shared by Tim, of known drug dealers. Tom's phone is seized as evidence. Subsequently, Tim is arrested and Tim's phone is seized also, providing a treasure trove of incriminating evidence.

At a hearing, Tim's defense argues that Tim's arrest and phone were predicated on the illegal search and seizure of Tom's phone. The prosecution pulls out the "consent", mom signed agreeing to the "Electronic Use Policy" that includes authorization of school personnel to confiscate Tom's phone. Furthermore, a secondary signature attesting to the *voluntarily*, previously agreed to authorization to confiscation of Tom's phone, is presented. The court rules that mom granted permission and therefore the evidence is ruled admissible.

The form, **Update Student Information**, is not a contact information form. It begins as a student contact information form. In reality, it is a consent form to the various school policies. Added, to ensure broad legal use by the district, is the final signature page, affirming the voluntary nature of the statements and agreements made within the foregoing form. See *Exhibit B, Release form, Signature and Submission page*. The form includes only yes responses and requirement to respond in the affirmative to continue to advance through the form. The entire method the district is using, is deceptive with a hidden and embedded legal construct. The language and intent embedded in the **Update Student Information** form should allow for a parent or guardian to decline or disagree with the conditions of the consent, in whole or in part. The form should include a notice or advisory that the parent or guardian may consult with a legal advisor before signing and agreeing, as some rights are being waived. Notice should also be given that by not signing the **Update Student Information**, will not bar their child from attending school, as Waterbury is committed to accept all students under C.G.S. Stating or

implying that completing this form is REQUIRED for a child to attend school is flat out, false. This is not similar to requirements of vaccines to enter school. Also, there does not need to be any agreement for policies to exist. A policy or rule, is just that. Adherence is mandatory. Ignorance of the policy or refusal to accept it, is not required to enforcement. Voluntary agreement to search and seizure, however, is required, which is what the district is quietly attempting to do. The district needs a watchdog and oversight to prevent this type of egregious behavior initiated by the district.

I will close this address of this issue with stating, that all of this does not take into account, eminent risk of immediate danger to staff, students or visitors, or to protect district property, as a situation of this nature has its own bar of measure to meet.

Please redo the Consent forms as actual consent forms and advise parents of their rights. The Constitution is not tossed out once the children cross the threshold of the school. This letter along with my opinion has been posted to my website www.Waterbury.Education. In fairness to the district, I will post the districts reply, if and when I receive one.

As a side note:

I would like to be clear regarding my children, and I have expressed this directly to Dr. Ruffin. No one has the authority to search or seize or confiscate any personal property of my children. Only the police, with probable cause that they will have to later support in court or with a search warrant, may they detain, and search and seize my children's personal property.

Very Truly Yours,

[Original Signed]

Joshua Marciniszyn

joshuapublicemail@gmail.com

cc: Republican-American 389 Meadow Street, Box 2090, Waterbury, CT 06722-2090

BOE Ms. Ann Sweeney, President Address omitted

BOE Ms. Juanita Hernandez, Vice President Address omitted

Mayor Neil O'Leary Chairman, 235 Grand Street, Waterbury, CT 06702

Dr. Verna Ruffin, Superintendent, Waterbury Public Schools, 236 Grand Street, Waterbury, CT 06702

Electronic Use Policy

The Waterbury Board of Education is committed to maintaining a safe and productive learning environment that provides each student with an atmosphere that is free of disruptions.

1. The use of electronic devices during the academic day disrupts and interferes with the educational process and will not be tolerated. Students will be subject to disciplinary procedures and confiscation of the device if it is either visible and/or used during regular school hours. Parents, upon appearing at school, will be given the confiscated devices on all second offenses.
2. Disciplinary action will be taken against any student for using a cellular telephone, iPod, beepers, walk man type player, laser pens and any other types of electronic device that is otherwise not banned by this policy, in any manner that disrupts the educational environment.
3. In no case will any personal communication device be allowed that provides for a wireless, unfiltered connection to the Internet or which has the capability to take photographs or any kind. The sending, sharing, viewing, or possessing pictures, e-mails, or other material of a sexual nature in electronic or any other form on a cell phone or other electronic device is prohibited in the school setting and is subject to disciplinary action.

Middle School:

1st offense: Confiscate, warning and notify parent, return to student at the end of the school day.

2nd offense: Confiscate, in school suspension or after school detention, item to be returned to parent/legal guardian only at the end of the school day.

3rd offense: Confiscate, out of school suspension, item to be returned to parent/legal guardian only at the end of the school day.

Do you agree to adhere to the Electronic Use Policy set forth by the City of Waterbury?*

Yes, I have read the policy and agree that my child will adhere to the Electronic Use Policy.

Update Student Information

* Required

Release form

Please type your full name in place of your signature.

By signing this information and release form, I am attesting to the following: I certify that the statements made by me on this form are voluntary, true, complete and correct. Additionally, I hereby certify that I am the parent and / guardian of the student listed above.*

Your answer

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