LIBERTY JUSTICE CENTER

September 2, 2021

Via Email and Certified Mail

Mr. Russell Ragon
Superintendent
Manhattan School District 114
25632 S. Gougar Rd.
Manhattan, IL 60442
rragon@manhattan114.org

cc: District 114 Board of Education
Manhattan School District 114
25632 S. Gougar Rd.
Manhattan, IL 60442
boardmembers@manhattan114.org

Re: District 114's "Parent Contract for Quarantined Student Livestreaming"

Dear Mr. Ragon:

I write as a managing attorney of Liberty Justice Center, a national non-profit, public-interest law firm. Among other issues, we litigate education-law and free-speech cases across the country. We are especially vigilant when constitutional rights are invaded by public institutions.

We are deeply concerned by the recent "Parent Contract for Quarantined Student Livestreaming" ("Contract") distributed to District 114 parents. The terms of the Contract restrict parents' First Amendment right of free speech by inhibiting their ability to share recordings of Zoom lessons or, even more troubling, "comment on lessons or teachers on social media," and instead requires parents to share their concerns only with the building principal or District office. The Contract not only mandates how parents may speak of their children's learning environment, it denies the child of a non-consenting parent (or violator of the Contract) the benefit of "Zoom privileges."

As you surely know, the right of free speech is a constitutional bedrock and a right by which other freedoms are given meaning and power. Parents no less than any other citizen have a right to critique and discuss their children's public school. *Jenkins v. Rock Hill Local Sch. Dist*., 513 F.3d 580, 588 (6th Cir. 2008) ("the right to criticize public officials is clearly protected by the First Amendment"); *Trulock v. Freeh*, 275 F.3d 391, 404 (4th Cir. 2001) ("The First Amendment guarantees an individual the right to speak freely, including the right to criticize the government and government officials.").

The ability to complain directly to school administrators does not justify limiting parent speech in any other forum. *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546, 556 (1975) ("[one] is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."). Parents have a First Amendment right to express their views of their children's schools, teachers and learning environments—positive or otherwise—how they choose and the District cannot mandate that parents use only its preferred avenue to share these views. *See ACLU v. Alvarez*, 679 F.3d 583, 596 (7th Cir. 2012).

The Contract's terms present parents with the Hobson's choice of forsaking their First Amendment rights in favor of their children's access to education. The Supreme Court has expressly prohibited the government, including public school districts, from denying a benefit to an individual because

he or she exercises a constitutional right. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). Access to K-12 education is one such benefit that cannot be so conditioned. *Bossier Parish Sch. Bd. v. Lemon*, 370 F.2d 847, 851 (5th Cir. 1967). This doctrine protects constitutional rights "by preventing the government from coercing people into giving them up." *Koontz*, 570 U.S. at 604. The government cannot attempt to achieve indirectly what the Constitution prevents it from achieving directly. *Planned Parenthood of Ind. v. Comm'r*, 699 F.3d 962, 986 (7th Cir. 2012). The District may prefer to only be criticized by parents behind closed doors, but the Constitution is concerned with protecting citizens' free-speech rights, not protecting government agencies' branding.

In addition to imperiling parents' constitutional rights, the District's censorship policy also may violate state constitutional and statutory provisions. The Illinois Constitution guarantees a quality education, which students do not receive if they cannot attend even a Zoom class during a quarantine period. Ill. Const. Article X, Section 1. *See Cahokia Unit School District No. 187 v. Pritzker*, 154 N.E.3d 782 (Ill. 2020) (granting leave to appeal).

State statutes also provide that schools may only suspend students for "gross disobedience or misconduct." 105 ILCS 5/10-22.6(b). And such a suspension may last for no more than ten days. *Id.* By revoking "Zoom privileges" for students who are being forced to quarantine, the District is in essence suspending them for the parents' free speech, not any "gross misconduct" by the student.

We recognize the District may have student privacy concerns related to Zoom learning under the Family Educational Right to Privacy Act ("FERPA"). However, the requirements and restrictions included within the Contract do not appear to be narrowly tailored towards protecting students' privacy interests, but instead more broadly favor the preferences of teachers and/or the District which are clearly not protected under FERPA. Moreover, we are not aware of the District using the same terms during last school year's Zoom learning. It is clear the Contract was implemented to prevent parents from critiquing or discussing the performance of public employees during their official conduct (teaching). *See Alvarez*, 679 F.3d at 596 (Government's interest in protecting privacy not implicated when police officers are performing their official duties).

In light of our concerns, we write to urge District 114 to either rescind the Contract or revise its terms immediately to avoid unnecessary litigation and, more importantly, leave intact the constitutional rights of parents and children within the District. Please confirm that you will do so by September 8, 2021.

Sincerely,

Daniel R. Suhr, Managing Attorney
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Licensed in Wisconsin and N.D.Ill.