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Atlantic Community School District
ATTN: Atlantic CSD Board of Education
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Jenny Williams, President
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Kristy Pellett, Member
Via email to kpellett@atlanticiaschools.org

June 12, 2023

Re: Constitutional Problems of Proposed Policy Regarding Student Protests and Walkouts

Dear Members of the Board:

I am writing to you on behalf of the American Civil Liberties Union of Iowa (ACLU of Iowa). The ACLU of Iowa is a statewide nonprofit and nonpartisan organization with thousands of Iowa members that is dedicated to the principles of liberty and equality embodied in the United States and Iowa Constitutions. As part of its mission, the ACLU of Iowa works to preserve the freedoms of speech and expression guaranteed by the First Amendment and the Iowa Constitution's article I, section 7. Along with our efforts in the courts and legislature, we promote these freedoms through public education and advocacy by, among other things, providing legal information letters such as this one to local governments potentially considering action that would infringe upon these basic constitutional rights.

According to reporting by the Atlantic News Telegraph, during your May 10th meeting a

citizen addressed the Board regarding student protests and walkouts.¹ This citizen’s comments were in response to a March 1st protest against the anti-LGBTQ legislation adopted during the Iowa legislature’s 2023 session. This citizen proposed the Board adopt a “protest policy” to prohibit any student demonstration unless it is scheduled to take place outside of educational instruction time and not on school property. We urge you not to consider or adopt any such policy, as it would violate your students’ constitutional rights and expose you to substantial liability.

As an initial matter, your mission as a public school is not merely to instruct in math, language, and science, but to inculcate in your students the “fundamental values necessary to the maintenance of a democratic political system.”² Among those fundamental values is the right to express one’s opinions and engage in that oldest form of participation in government: protest.³ It would be inconsistent with your mission as place of public education to teach your students about Dr. Martin Luther King Jr. and the civil rights movement on Thursday, and then penalize them for similar constitutionally protected nonviolent political expression on Friday. That your students apparently understand their rights and feel the need to speak out against prejudice would indicate not that your students are missing core education, but that your educators have done their job and instilled in these students a sense of respect, self-esteem, and leadership.

It was in recognition of this critical obligation of our system of public education that the U.S. Supreme Court famously declared—in case arising out of anti-war protests in Iowa public schools—that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”⁴ While the Court has since provided schools some leeway to regulate speech “in light of the special characteristics of the school environment,”⁵ it has never (and cannot ever, consistent with the Constitution) authorize engaging in viewpoint discrimination or punishing speech on account of its political content.⁶ Our constitutions provide the broadest

¹ See Jennifer Nichols, *New Policy Suggested During School Board Public Comment*, Atlantic News Telegraph, May 11, 2023, <https://tinyurl.com/45aep798>. See also, Roger Warne, *ACSD Regular Board Meeting 5-10-2023*, at timestamp 5:15 to 7:56, YouTube (streamed May 10, 2023), <https://www.youtube.com/watch?v=lMu8w-2lBtk>.

² *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986).

³ See, e.g., *Snyder v. Phelps*, 562 U.S. 443, 448, 458 (2011) (picketing entitled to First Amendment protections); *United States v. Grace*, 461 U.S. 171, 175, 183–84 (1983) (law prohibiting picketing unconstitutional); *Cox v. Louisiana*, 379 U.S. 536, 555, 558 (1965) (marching and picketing entitled to First Amendment protections). See also *Corales v. Bennett*, 567 F.3d 554, 563 (9th Cir. 2009) (holding student walkout was expressive conduct entitled to First Amendment protection).

⁴ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).

⁵ *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988).

⁶ See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”). See also *Mahanoy Area School District v. B.L. ex rel Levy*, 141 S. Ct. 2038, 2047 (2021) (noting the “strong protection” afforded by the First Amendment to speech on matters of public concern); *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)

possible protection to political speech and they do not allow schools to decide what political speech will be acceptable.

What a school may do is, with an even hand, punish behavior that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.”⁷ A school does not permissibly regulate student speech through a “protest policy,” which, by definition and on its face, regulates and penalizes the expression of disfavored viewpoints and political content. Instead, a school should only regulate walkouts through an unbiased and consistent application of an existing attendance policy.⁸ Students in Iowa are generally required to attend school absent an acceptable excuse.⁹ In fact, the ACSD Board has existing policies governing attendance and absences.¹⁰ If a student protest result in unexcused student absences from school under these existing policies, then those students’ absences must be treated the same as any other unexcused absence. A student who missed class because they were voicing their discontent with the Iowa legislature should not be treated more severely than a student who missed class because they wanted to avoid a math test.

In summary, no additional policy is necessary to address the citizen’s concerns. If the Board were to entertain the idea of a “protest policy,” it does so at its own risk and as a disservice to its own mission. Our American history is replete with examples of students leading calls for change. Youth activism is a sign of an active and engaged citizenry. The Atlantic Community School District Board should be proud of its students and the educators that have prepared them to be future leaders.

If you have any questions, please contact me directly at 515.207.7799 or thomas.story@aclu-ia.org. If you have not yet consulted with an attorney on this topic, we encourage you to do so, and request that you or your attorney notify us of your retention of counsel accordingly.

Sincerely,



Thomas D. Story, Staff Attorney

(per curiam) (“Discussion of public issues . . . [is] integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression”); *InterVarsity Christian Fellowship/USA v. University of Iowa*, 408 F. Supp. 3d 960, 979 (S.D. Iowa 2019) (“‘Viewpoint discrimination is . . . an egregious form of content discrimination’ that arises when ‘the government targets not subject matter, but particular views taken by speakers on a subject.’” (Quoting *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995))).

⁷ *Tinker*, 393 U.S. at 513.

⁸ See *Corales*, 567 F.3d at 566–68.

⁹ See Iowa Code § 299.1(1) (“The board of directors of a public school district . . . may, by resolution, require attendance for the entire time when the schools are in session in any school year and adopt a policy or rules relating to the reasons considered to be valid or acceptable excuses for absence from school.”).

¹⁰ See ACSD Board Policy Nos. 501.10R1, .10, .11, available at <https://tinyurl.com/mr3phy9c>.