



**FIRE**  
Foundation for Individual  
Rights and Expression

**NATIONAL  
COALITION  
AGAINST  
CENSORSHIP**

August 11, 2022

Dr. David Bolton, Superintendent  
Mrs. Joan Cullen, School Board President  
Pennridge School District  
1200 N. 5th Street  
Perkasie, Pennsylvania 18944

*Sent via U.S. Mail and Electronic Mail (psdschoolboard@pennridge.org)*

Dear Superintendent Bolton and President Cullen:

The Foundation for Individual Rights and Expression<sup>1</sup> and the National Coalition Against Censorship<sup>2</sup> write today to express serious concern regarding a proposed Pennridge School District policy that would impose unconstitutional restrictions on student expression both on and off campus. We urge you to abandon this ill-considered intrusion upon the First Amendment rights of your students; pressing ahead would both invite litigation and teach students precisely the wrong lesson about the importance of freedom of expression in our pluralist democracy. Instead, we encourage you to seize this opportunity to reaffirm to your students and staff that “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

It has been well-settled for more than a half-century that public school students do not shed their First Amendment rights at the schoolhouse gate. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). While public school administrators may restrict student speech in certain limited situations for certain limited purposes,<sup>3</sup> “[s]chool officials do not possess

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<sup>1</sup> The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan, nonprofit organization dedicated to defending the rights of all Americans to the freedoms of speech, expression, and conscience—the essential qualities of liberty. Founded in 1999 as the Foundation for Individual Rights in Education, FIRE’s sole focus before the expansion of our mission in June 2022 was defending student and faculty rights at our nation’s colleges and universities. Every day, FIRE defends students facing life-altering discipline for protected but dissenting or unpopular speech.

<sup>2</sup> The National Coalition Against Censorship (NCAC) is an alliance of more than 50 national non-profit literary, artistic, religious, educational, professional, labor, and civil liberties groups that are united in their commitment to freedom of expression. Since its founding, NCAC has worked to protect the First Amendment rights of K-12 students and teachers, artists, authors, librarians, readers, and others around the country. NCAC has a longstanding interest in protecting the free speech rights of students in K-12 schools.

<sup>3</sup> Specifically, administrators do not violate the First Amendment rights of students when student speech “materially disrupts classwork or involves substantial disorder or invasion of the rights of others,” *Tinker*, 393 U.S. at 513; when responding to a student’s “offensively lewd and indecent speech” during a school assembly, *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U. S. 675, 685 (1986); when “exercising editorial control over

absolute authority over their students. . . . In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.” *Id.* at 511.

Indeed, in vindicating a public high school student’s First Amendment rights just last summer, the Supreme Court reminded students, parents, educators, and the general public that “America’s public schools are the nurseries of democracy.” *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2046 (2021). Accordingly, “schools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, ‘I disapprove of what you say, but I will defend to the death your right to say it.’” *Id.* In other words, our nation’s unique commitment to freedom of expression must be reflected and renewed in our schools.

Despite this longstanding precedent, Pennridge’s proposed “Student Expression/Dissemination of Materials” policy would, if adopted, impermissibly restrict student First Amendment rights in several respects.

The policy is shockingly overbroad. It would prevent students from engaging in a vast amount of protected expression by prohibiting the “dissemination” of “nonschool materials” during school hours, at school-sponsored events, inside district facilities, or on district transportation. Because the policy defines “nonschool materials” broadly—including “any printed, technological or written materials that are not prepared as part of the curricular or extracurricular program of the district, including but not limited to fliers, invitations, announcements, pamphlets, posters, online discussion areas and digital bulletin boards, personal websites and the like”—it would functionally prohibit students from sharing any expression that originated outside of the District’s control. And because of the policy’s equally broad definition of “dissemination,” Pennridge’s policy would prevent students from engaging in protected personal speech (e.g., “handing out” birthday party invitations); political speech (e.g., “publicly displaying” a button supporting a candidate for office); practical speech (“announcing” an off-campus study group); speech about athletics (e.g., “online discussion areas” concerning the athletic performance of students and their competitors); and far more still. In sum, as a result of the policy’s staggering scope, students would be subject to punishment for engaging in protected speech of all kinds.

This result cannot be squared with the First Amendment. The policy’s absurd reach was inadvertently made plain by Superintendent Bolton, who promised during a committee meeting that “the intent of this [policy] will not be valentines at elementary school,” but admitted that “technically, it may very well” prohibit students from participating in that classic classroom tradition.<sup>4</sup> Indeed, were Pennridge students to hand out flyers suggesting that students wear black armbands to protest military action, like Mary Beth Tinker did more than

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the style and content of student speech in school-sponsored expressive activities” like a student newspaper, but only when such control is “reasonably related to legitimate pedagogical concerns,” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988); and when addressing student speech “that can reasonably be regarded as encouraging illegal drug use.” *Morse v. Frederick*, 551 U.S. 393, 396 (2007). These limited restrictions on student speech rights do not in any way support the breadth of Pennridge’s proposed policy, which restricts speech far beyond the borders of these cases’ narrow holdings.

<sup>4</sup> Emily Rizzo, *Pennridge proposed policy on student expression goes ‘way further than anything I have ever seen’ ACLU lawyer says*, WHYY (July 29, 2022), <https://whyy.org/articles/pennridge-policy-student-expression-aclu>.

fifty years ago, they would run afoul of the District’s proposed policy, even if no disruption whatsoever resulted or could be reasonably forecast. FIRE and NCAC share the assessment of Witold “Vic” Walczak, Legal Director of the American Civil Liberties Union of Pennsylvania: “I’m almost speechless at just how overbroad this policy is.”<sup>5</sup>

The policy is also impermissibly vague. To avoid violating the policy, students will be forced to guess whether, for example, the policy’s restriction on “publicly displaying” “technological materials” like “digital bulletin boards” to others during school hours means that they will face discipline for showing a friend an Instagram post on their phone during lunch or showing a sibling a text message from their parents after class. Likewise, because of the policy’s ban on “distributing” “written materials . . . that are not prepared as part of the curricular or extracurricular program of the district,” students will have to think twice before bringing in a book or magazine to lend to a peer, or even sharing their own independent writing. Because of the uncertain contours of its terms, the policy denies student speakers “a reasonable opportunity to know what is prohibited, so that [they] may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Many will rationally decide to self-censor rather than risk crossing the tripwires the policy would create. The resulting chill on speech would be anathema to the First Amendment.

We recognize this policy has been introduced in a fraught political moment and against the backdrop of a national effort to remove works dealing with race, sexuality, and other charged topics from public school libraries.<sup>6</sup> We therefore caution that if the policy’s unstated aim is to shield students from the offense or discomfort that may arise when encountering a novel, dissenting, or simply unpopular viewpoint in written material from outside of the District’s prescribed curriculum, it is both unlawful and misguided. “The Supreme Court has held time and again, both within and outside of the school context, that the mere fact that someone might take offense at the content of speech is not sufficient justification for prohibiting it.” *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 215 (3d Cir. 2001).

For example, the United States Court of Appeals for the Third Circuit—the decisions of which are binding on Pennridge School District—considered the constitutionality of a public school policy that prohibited students from wearing or possessing on school grounds “any written material, either printed or in their own handwriting, that is racially divisive or creates ill will or hatred.” *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243, 264 (3d Cir. 2002). The Third Circuit struck down the prohibition on material that “creates ill will” on First Amendment grounds, holding that “an idea’s generating ill will is not a sufficient basis for suppressing its expression.” *Id.* Just as a public school “is not permitted to punish a student merely because her speech causes argument on a controversial topic,” *Norris v. Cape Elizabeth Sch. Dist.*, 969 F.3d 12, 32 (1st Cir. 2020), it also cannot restrict students from engaging in a wide

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<sup>5</sup> *Id.*

<sup>6</sup> See Elizabeth A. Harris and Alexandra Alter, *Book Ban Efforts Spread Across the U.S.*, N.Y. TIMES (Feb. 8, 2022), <https://www.nytimes.com/2022/01/30/books/book-ban-us-schools.html>; PEN AMERICA, *REPORT: 1,586 School Book Bans and Restrictions in 86 School Districts Across 26 States* (Apr. 7, 2022), <https://pen.org/press-release/report-1586-school-book-bans-and-restrictions-in-86-school-districts-across-26-states> (documenting efforts to restrict 1,145 books since July 1, 2021).

variety of protected expression on campus in a doomed effort to avoid discussion, dissent, and debate.

Rather than attempt to wall off students from the world of ideas outside of Pennridge, we encourage you to instead educate your young citizens about how best to productively participate in our nation’s democratic give-and-take, evaluating arguments instead of censoring them. Doing so would provide students with a civic education of lasting value and vital importance. To that end, the *Tinker* Court’s evaluation of the Des Moines schools’ punitive response to the black armbands worn by Mary Beth Tinker, her older brother John, and their friend Christopher Eckhardt is instructive:

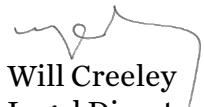
The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority’s opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

*Tinker*, 393 U.S. at 508–09 (internal citation omitted).

In this spirit, we urge you to reject the proposed policy and honor the expressive rights of your students. By doing so, you will preserve rather than extinguish the “hazardous freedom” of the First Amendment—the basis of our national strength—for the next generation.

We request receipt of a response to this letter by August 22, 2022.

Sincerely,



Will Creeley  
Legal Director  
Foundation for Individual Rights and Expression



Chris Finan  
Executive Director  
National Coalition Against Censorship

Cc: Pennridge School Board  
Witold “Vic” Walczak, Legal Director, ACLU-PA