

November 18, 2025

Mukilteo Board of Education  
9401 Sharon Dr.  
Everett, Washington 98204

*Sent via Electronic Mail (schoolboard@mukilteo.wednet.edu)*

Dear Board Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by the Mukilteo Board of Education's proposed "Staff Expressions" policy.<sup>1</sup> We urge the Board to revise the policy to ensure it reflects First Amendment standards and does not inadvertently chill employees' protected expression.

The policy correctly recognizes that when District employees speak in their official capacity, the District may regulate their speech,<sup>2</sup> and that the First Amendment protects public employees when they speak as citizens on matters of public concern.<sup>3</sup> The policy then states: "Even so, employee expression that has an adverse impact on district operations and/or negatively impacts an employee's ability to perform their job for the district may still result in disciplinary action up to and including termination." It similarly provides that "[e]mployee expression on social media platforms that interferes with the district's operations or prevents the district from functioning efficiently and effectively may be subject to discipline up to and including termination." While it is true such speech *may* be subject to discipline in some circumstances, the Board should revise the policy to provide greater clarity and align it more closely with the governing constitutional standards.

The Supreme Court's landmark public-employee speech case, *Pickering v. Board of Education*, held the First Amendment protected a public school teacher from discipline for his letter to a local newspaper criticizing his school board, even considering the board's concern the criticism would "foment controversy."<sup>4</sup> The Court established that a government employer may discipline employees for speech in their personal capacities only if it can prove that its interest "in promoting the efficiency of the public services it performs through its employees"

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<sup>1</sup> *Personnel – Series 5000 – Staff Expressions – 5254*, MUKILTEO SCH. DIST., <https://mukilteoschools.diligent.community/document/9342d8ff-4ef1-42b6-ba97-c80c0eeef1d8>.

<sup>2</sup> *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

<sup>3</sup> *Lane v. Franks*, 573 U.S. 228, 236 (2014).

<sup>4</sup> 391 U.S. 563, 567 (1968).

outweighs that of the employee “as a citizen, in commenting upon matters of public concern.”<sup>5</sup> To even potentially satisfy this test, the employer “must, with specificity, demonstrate the speech at issue created workplace disharmony, impeded the plaintiff’s performance or impaired working relationships. Mere allegations the speech disrupted the workplace or affected morale, without evidentiary support, are insufficient.”<sup>6</sup>

Importantly, an employer’s disapproval of the content or viewpoint of an employee’s speech does not factor into this balancing test.<sup>7</sup> Nor do complaints from individuals who “have no connection” to the employer or “live outside its service area.”<sup>8</sup> Otherwise, public employees would constantly be subject to an unconstitutional heckler’s veto—“allowing the public, with the government’s help, to shout down unpopular ideas that stir anger.”<sup>9</sup> The District “cannot justify disciplinary action against” an employee “simply because some members of the public find [the employee’s] speech offensive.”<sup>10</sup> The First Amendment does not allow angry mobs to dictate what views their fellow Americans can express.<sup>11</sup> Further, the Supreme Court has long held that free speech principles “protect even hurtful speech on public issues to ensure that we do not stifle public debate.”<sup>12</sup> Even complaints from members of the school community do not, absent more, establish disruption of the educational environment.<sup>13</sup>

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

<sup>6</sup> *Lindsey v. City of Orrick*, 491 F.3d 892, 900 (8th Cir. 2007); *see also Nichols v. Dancer*, 657 F.3d 929, 934 (9th Cir. 2011) (“It is no surprise, then, that other circuits have determined that a disruption claim must be supported by some evidence, not rank speculation or bald allegation.”).

<sup>7</sup> *Rankin v. McPherson*, 483 U.S. 378, 384 (1987) (“Vigilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of employees’ speech.”).

<sup>8</sup> *Damiano v. Grants Pass Sch. Dist. No. 7*, 140 F.4th 1117, 1146 (9th Cir. 2025); *see also Jorjani v. N.J. Inst. of Tech.*, No. 24-2588, 2025 U.S. App. LEXIS 23109 (3d Cir. Sep. 8, 2025) (influx of emails and other signs of public outrage did not automatically substantiate public employer’s claim of workplace disruption); *Melzer v. Bd. of Educ.*, 336 F.3d 185, 199 (2d Cir. 2003) (indicating that disciplining a public employee based on complaints from “outsiders seeking to heckle [the employee] into silence” would enforce an unconstitutional heckler’s veto).

<sup>9</sup> *Damiano*, 140 F.4th at 1145 (quoting *Munroe v. Cent. Bucks Sch. Dist.*, 805 F.3d 454, 475 (3d Cir. 2015)).

<sup>10</sup> *Flanagan v. Munger*, 890 F.2d 1557, 1566 (10th Cir. 1989) (police department’s discipline of officers was unconstitutional given the lack of “evidence of actual or potential internal disruption caused by [their] speech”; evidence of “potential problems which might be caused by the public’s reaction to [the officers’] speech” was insufficient).

<sup>11</sup> *Watson v. City of Memphis*, 373 U.S. 526, 535 (1963) (“[C]onstitutional rights may not be denied simply because of hostility to their assertion or exercise.”).

<sup>12</sup> *Snyder v. Phelps*, 562 U.S. 443, 461 (2011); *see also Matal v. Tam*, 582 U.S. 218, 246 (2017) (The “proudest boast of our free speech jurisprudence is that we protect the freedom to express the thought that we hate.”) (cleaned up).

<sup>13</sup> *See, e.g., Crook v. Creston Cmty. Sch. Dist.*, No. 4:25-cv-00373-RGE-HCA (S.D. Iowa Oct. 20, 2025) (holding that even in the face of 111 emails and 140 phone calls—mostly from parents calling for high school teacher’s termination or requesting to have their children removed from her classroom—and an increased police presence at the school, school district failed to produce evidence that teacher’s Facebook comment about Charlie Kirk caused actual disruption to educational environment; district’s bald assertions that teacher could no longer work effectively with parents or otherwise perform her job duties did not suffice).

In light of these principles, FIRE recommends the Board make the following revisions to the “Staff Expressions” policy (deletions in strike-through and additions in bold):

The board believes the district has an interest in maintaining an orderly and effective work environment while balancing employees’ First Amendment rights to freedom of expression and diverse viewpoints and beliefs. When employees speak within their official capacity, their expression represents the district and may be regulated. **Employees speak in their official capacity only when they are required to engage in the speech as part of their job duties, such as teaching curriculum, communicating with parents about school-related issues, or using district communication systems for work-related tasks. Employees’ speech will not be treated as speech in their official capacity, or speech on behalf of the district, merely because it concerns the district or school-related issues.**

The First Amendment protects a public employee’s speech when the employee is speaking as an individual citizen on a matter of public concern, **including matters of public concern related to the district.** ~~Even so, employee expression that has an adverse impact on district operations and/or negatively impacts an employee’s ability to perform their job for the district may still result in disciplinary action up to and including termination. The district will not take disciplinary action against employees for such speech unless it demonstrates its interest in promoting the efficiency of the public services it provides outweighs the employee’s interest in speaking. The employee’s interest shall be deemed to outweigh the district’s interest unless the district demonstrates through objective evidence that the employee’s speech (1) severely impairs discipline by superiors; (2) severely impairs close working relationships between co-workers for which personal loyalty and confidence are necessary; (3) directly and substantially impairs the employee’s ability to perform essential job responsibilities; or (4) severely disrupts the district’s regular operations. Disruption will not be inferred solely from disapproval of the content or viewpoint of an employee’s speech by government officials, administrators, other employees, students, or members of the public.~~

~~Staff expression includes the performance of job responsibilities and how they represent the district in their use of district email accounts, school district buildings, district property, classrooms and how they present themselves to students.~~

Employees who use social media platforms are encouraged to remember that ~~the school community may not be able to separate employees as private citizens from their role within the district~~ **that their online activity may be visible to members of the school community, even when they are speaking as private citizens.** ~~Employee expression on social media platforms that interferes with the district's operations or prevents the district from functioning efficiently and effectively may be subject to discipline up to and including termination.~~

The procedures that accompany this Policy will adhere to this policy and specify particular district standards for staff expression, including the conditions under which a staff member can participate in written or non-verbal expression **on behalf of the district.** Any violation of this Policy or adopted Procedure may result in disciplinary action. **This policy shall be interpreted and applied in a manner consistent with the First Amendment and controlling judicial decisions governing public-employee speech.**

FIRE urges the Board to adopt these revisions, which would conform the policy to the First Amendment while preserving the District's ability to maintain an effective and orderly educational environment.

Thank you for your attention to our concerns. We stand ready to assist further as needed, at no cost.

Sincerely,



Aaron Terr  
Director of Public Advocacy