



Teresa J. Nelson
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July 29, 2022

VIA EMAIL

Jeremy Schmidt, Superintendent, Becker Public Schools (jschmidt@isd726.org)
Aaron Jurek, Director, Becker School Board (ajurek2@isd726.org)
Mark Swanson, Chair, Becker School Board (mswanson@isd726.org)
Connie Robinson, Vice Chair, Becker School Board (crobinson@isd726.org)
Pete Weismann, Director, Becker School Board (pweismann@isd726.org)
Ryan Obermoller, Clerk, Becker School Board (robermoller@isd726.org)
Troy Berning, Director, Becker School Board (tberning@isd726.org)

RE: Proposed Becker School Board Policy 471

Dear Superintendent Schmidt and Members of the Becker School Board,

I write on behalf of the American Civil Liberties Union of Minnesota (ACLU-MN). Concerned students and parents alerted us to a proposed Becker School Board policy which we believe raises serious legal and public policy concerns. The Board's goal of ensuring that school officials treat all students fairly and equitably is laudable; however, as currently drafted, proposed Policy 471 would undermine that goal and it would significantly interfere with the First Amendment rights of students. We respectfully urge you to reject the proposed policy.

The First Amendment protects the fundamental right to freedom of speech. U.S. Const. amend. I. Government restriction on speech because of the content of that speech is presumptively unconstitutional. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). And the U.S. Supreme Court has stressed that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Ind. Community School Dist.*, 393 U.S. 503, 506 (1969). While schools have a limited ability to curb some student speech within the schoolhouse walls, school officials may only regulate student speech and expression that is reasonably likely to “materially and substantially disrupt” the school environment. *Id.* at 513. Proposed Policy 471 would regulate constitutionally protected student speech (including student apparel and accessories, buttons, stickers, literature or other means of student expression) that does not rise to the level of being materially and substantially disruptive.

In addition to being overbroad in its regulation of constitutionally protected speech, proposed Policy 471 is vague, leaving students, school staff and school administrators to guess at what speech the policy permits and what it prohibits. Vague rules pose two distinct constitutional evils. First, vague rules create an acute risk of self-censorship. See *Keyishian v. Bd. of Regents*, 385 U.S. 589, 604 (1967) (“Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.”); see also *Reno v. American Civil Liberties Union*, 521 U.S. 844, 872 (1997) (“The severity of [] sanctions may well

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cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images.”). Second, vague rules can lead to ad hoc, arbitrary, or discriminatory enforcement. *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 758 (1988) (“the absence of express standards makes it difficult to distinguish, as applied, between a licensor's legitimate denial of a permit and its illegitimate abuse of censorial power.”)

If enacted, proposed policy 471 will also undermine the District’s efforts to promote equity, inclusion and belonging. The policy purports to ensure fairness and equity; but instead of encouraging learning, proposed policy 471 will effectively gag educators and students from talking about issues of the most profound national importance, such as the impact of systemic racism in our society. At best it will chill, and at worse it will censor classroom teaching and open discussion about the systemic barriers and discrimination people of color and other marginalized groups still face in this country across our institutions. Our country needs to acknowledge and reckon with its history of systemic racism, misogyny, and discrimination against LGBTQ people— this includes being able to teach and talk about these concepts in our schools. And chilling conversations about race — and gender and sexuality — in schools risks maintaining or creating education environments that are unwelcoming to students of color, women and girls, and LGBTQ+ students. As educators, your mission is to prepare students for civic life and the ability to discuss and debate ideas, even those that some may find uncomfortable, is a crucial part of our democracy.

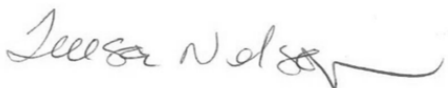
We are also concerned that, in proceeding with the adoption of proposed Policy 471, the Becker School Board is not following its own procedural rules. Policy 208 states, in part:

The school board shall give notice of proposed policy changes or adoption of new policies by placing the item on the agenda of two school board meetings. The proposals shall be distributed and public comment will be allowed at both meetings.

The Board conducted its “First Reading” of the proposed policy at its July 11th meeting; however, when the item came up in the agenda, the meeting was not opened up for public comment. As your policy recognizes, allowing public comment before adoption of new rules and policies is an important measure for transparency and public participation and we urge you to follow the process set out in Policy 208 going forward.

Lastly, attached please find a MGDPA request related to this matter. If you have any questions about the matters raised in this letter or in the attached data request, please let me know. You can contact me via the email or phone number listed above.

Sincerely,



Teresa Nelson
ACLU-MN Legal Director

cc via email: Maggie R. Wallner, Kennedy & Graven, mwallner@kennedy-graven.com



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VIA EMAIL

Jeremy Schmidt, Superintendent, Becker Public Schools (jschmidt@isd726.org)

RE: Minnesota Government Data Practices Request

Dear Superintendent Schmidt,

Pursuant to the Minnesota Government Data Practices Act, Minn Stat. Chapter 13, the ACLU-MN requests copies of any and all data related to the drafting and consideration of proposed Becker School Board Policy 471.

This request includes, but is not limited to, “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.” MGDPA § 13.02, subd. 7. This request includes all documents, emails, correspondence, letters, reports, messages, or other communications, including between and among Becker School Board members and Becker school personnel, and communications from members of the public regarding the proposed policy.

If there is some data that you are unwilling to provide, please provide the statutory and factual basis for omitting it.¹ Also, let us know if you expect the cost of providing the data to exceed \$250. If you are unable to provide the requested data within 10 business days, please provide a detailed estimate about when you expect to produce the data. Otherwise, the ACLU-MN will conclude the request has been denied, and will proceed accordingly.

Sincerely,

A handwritten signature in black ink that reads "Teresa Nelson".

Teresa Nelson
ACLU-MN Legal Director

cc via email: Maggie R. Wallner, Kennedy & Graven, mwallner@kennedy-graven.com

¹ The ACLU-MN understands that, to the extent data contains the identifying information of students, it will need to be redacted before being provided.