

June 13, 2024

Milford Board of Education
906 Lakeview Ave.
Milford, DE 19963

Dear Board of Education Members,

We write to you regarding proposed Policy 6103, which would propose new standards around Controversial/Sensitive Issues. As the nation's oldest civil liberties organization, our nonprofit, non-partisan organization has a long history of defending every person's First Amendment right to free speech. In particular, we have advocated for young peoples' right to speak freely and express themselves both in and out of classrooms. We believe strongly that educational settings function best when young people can engage in rich discussions around topics that challenge their thinking, and help shape critical reasoning skills. The First Amendment protects the right to share ideas, including the right of listeners to receive information and knowledge. We must protect this right, including educators' and students' rights to talk and learn about a wide array of topics in schools. It is for these reasons we have a strong interest in Policy 6103, and wish to provide you direct feedback.

Policy 6103, as currently drafted and depending on how it is enforced and implemented, may violate the constitutional rights of students, staff, educators, or others. The following include some of our concerns:

1.) The policy is overbroad and vague.

There are many aspects of Policy 6103 that will be difficult to implement without engaging in unconstitutional viewpoint discrimination of certain speech. The policy states:

In the District, controversial/sensitive material is that material which, when introduced arouses strong reactions representing differing points of view. There are many subjects, which by the nature of contemporary society, are intrinsically controversial/sensitive.

In addition, section D of the policy requires the staff to ensure that the learning environment is free of conduct or items that create an "intimidating, hostile, or offensive educational environment." This Policy, however provides little guidance to staff members who attempt to discern which topics the district may find controversial/sensitive and/or offensive, and thus provides a student



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or parent with the ability to object to something under the guise of it being offensive to ban it from class. As a result, many staff members may feel a chilling effect from bringing up any topic that could be construed controversial and would be hesitant to share certain important educational information. For example, history shows us that the instruction of evolution, slavery, climate change, health sciences, and other core educational topics “arouse strong reactions.” Educators might feel forced to avoid these topics. Policy 6103 inappropriately prioritizes the potential feelings of listeners detached from pedagogical interests in facts and knowledge

The prohibition against items which may cause others offense could also endanger students’ constitutionally protected right to express themselves. Messages or images on their clothing or personal belongings that express certain political or religious beliefs could be objected to by other students. Certainly, many students during the Vietnam War would have objected to Mary Beth Tinker’s black armband she wore to public school—and may have claimed it created an “offensive educational environment.” But, the U.S. Supreme Court affirmed that she had the constitutional right to express her core political beliefs. Policy 6103 would chill students’ ability to express themselves for fear of having to remove items or being punished for expressing themselves in certain ways.

Another stated goal of Policy 6103 is that “District Staff and students can teach and learn about instructional material rather than the issue.” We are unsure what the delineation Policy 6103 is attempting to make between instructional materials and issues, but this section is also likely to add to the overall vagueness of this policy, leading to confusion and disparate enforcement.

2.) The policy requires staff members to present certain ideas.

Section B of Policy 6103 states “All MSD Staff shall present and permit multiple viewpoints and the expression of the opinions of others.” While we agree that staff should often permit multiple viewpoints, the requirement that they themselves present multiple viewpoints unconstitutionally compels certain speech. Under this policy, for example, a history teacher presenting about the Holocaust would be required to present the ideas of Holocaust deniers and/or Nazism. Similarly, a science teacher presenting a lesson on evolution would be required to present about creationism, intelligent design, or other alternative—but not scientifically valid—theories or religious ideology.



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3.) The policy is redundant.

There are already strong federal protections in place against actions that interfere with a student's access to equal educational opportunities due to the creation of a hostile educational environment. Specifically, students may not be targeted, bullied, or discriminated against because of their race, sex, sexual orientation, gender identity, national origin, disability, among other characteristics. Policy 6103 would only add more confusion by inserting the ambiguous and standardless concept of an "offensive educational environment," and does not provide any additional protections to students who already face intimidation, bullying, or harassment due to their protected class membership.

All students have a right to learn, free from censorship or discrimination. The right to debate and discuss ideas, even those some might find uncomfortable, is an essential part of our democracy. However, this policy effectively chills educators from bringing up subjects that some may find offensive, and may keep students from expressing their fundamental beliefs. It also invites administrators to determine which topics are offensive and which are not, which will inevitably lead to unconstitutional viewpoint discrimination where some opinions are encouraged and others are discouraged.



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Policy 6103 creates many more problems than it solves, and it could impose significant challenges to both staff members and students who wish to express their constitutionally protected opinions. We ask you to reject this policy and ensure all students can learn about challenging ideas free from discrimination and censorship.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike B.", with a horizontal line extending to the right.

Mike Brickner
Executive Director
ACLU of Delaware