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BY FAX AND E-MAIL

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Dear Members of the Westerly School Committee:

Our office has heard from a number of residents expressing concerns about a proposed policy that the School Committee will be considering at its meeting tonight, establishing a "code of conduct" for School Committee members. Because we share some of those concerns, I am writing to urge you to reject the proposal or, at a minimum, postpone a vote in order to allow those who drafted the policy to first rewrite it.

The ACLU of Rhode Island does not quarrel with the general goal of policy #1033 as described in the policy's overview [Page 1, lines 1-13.]. Improving the school committee's effectiveness, ensuring members' understanding of the Open Meetings Act, recognizing that individual members do not carry the authority of the school committee, and encouraging professionalism and respect for the mission of the schools are all worthy objectives.

However, we believe that two sections of the proposed policy – "Communications with the Citizenry" [Page 1, lines 21-39] and "Consequences of Violating This Policy" [Page 2, lines 67-78] – are quite problematic and, depending on their implementation, raise potentially serious First Amendment concerns.

At first blush, the section dealing with "Communications With the Citizenry" would largely seem to be merely hortatory, encouraging school committee members to follow certain practices, but not requiring them to do so. But the section on "Consequences for Violating This Policy" strongly suggests otherwise and causes us deep concern.

Subsection 3 of the "Communications" section states that: "School committee members will support decisions made by the committee." However, school committee members, as elected by the voters of Westerly, have no obligation to stay in lockstep with whatever the committee decides. It is true, as the overview states, that "members have no individual authority," but that is very different from telling them they must support any decision made by a majority of the other committee members. School committee members have a right to express their objections to a school committee vote even if, as the policy notes, they are bound by it. They do not lose their right to free speech merely by being members of a majoritarian body, nor should their ability to express dissent be limited in time to the formal discussion of a motion at a school committee meeting.

Subsection 4 states that contact with the media "should only be made by the chairman of the school committee or his designee." To the extent this is meant to apply to formal communications on behalf of the school committee, this makes sense. But to the extent it can be

read to suggest that other members of the school committee cannot speak to the media on their own in their capacity as individual members of the school committee, it is very troubling. Unfortunately, this latter interpretation is not fanciful in light of the language in subsection 3 requiring school committee members to “support” decisions made by the committee.

Similar concerns arise with subsection 5, where communication using social media to discuss school committee matters “is not advised.” But, leaving aside obvious caveats about protecting confidential information, social media present a very simple and effective way for committee members to be in contact with their constituents about school issues.

All these restrictions take on more weight when considered with Section 4, dealing with “consequences” for violating the policy. Among other things, this section allows the school committee to require a member to apologize for his or her “misbehavior,” and in fact sets no explicit limits on other possible punishments that the committee could impose on a wayward member.

We would first note that this section has apparently been adapted from a Toastmasters web site, and we would suggest that that is not necessarily the most appropriate place to be determining how a school committee should run, much less how school committee members should be punished. In any event, we do not believe that a school committee member can be coerced into making an apology any more than he or she could be coerced by the committee into voting a certain way. It is especially dubious when that “misbehavior” could involve nothing more than the committee member’s exercise of his or her First Amendment rights.

Finally, it is important to stress that while we have talked about the impact of this policy on school committee members, its real impact will be felt on members of the public. It is they who will ultimately be deprived of information from their representatives and deprived of the give and take that is essential in debating important issues of public policy – a give and take that should not be confined to the few hours each month that the school committee meets.

In light of the troubling issues raised by this policy, the ACLU of RI respectfully urges the school committee to table consideration of the proposal at tonight’s meeting. Thank you in advance for your attention to our views.

Sincerely,

Steven Brown
Executive Director

cc: Supt. Roy Seitsinger