FIRE
Foundation for Individual Rights and Expression

March 12, 2026

Albemarle County School Board
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Dear Board Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by proposed revisions to the Albemarle County School Board's policy governing student activities and organizations. As written, the amended policy would violate the First Amendment, which protects students' right to free expression. The proposal also follows controversy surrounding a Turning Point USA (TPUSA) club's speaker invitation, raising serious concerns that the Board is targeting the group because of its views or the views of its guest speakers. FIRE calls on the Board to reject the proposed revisions and to respect and uphold students' First Amendment rights.

I. Factual Background

Last September, the TPUSA chapter at Western Albemarle High School (WAHS) arranged to host guest speaker Victoria Cobb, president of The Family Foundation, at a regular lunchtime meeting for an event titled "Two Genders, One Truth."[1] WAHS Principal Jennifer Sublette initially ordered the club to cancel the event because the topic was too "complex," "controversial," and "mature." The Founding Freedoms Law Center then wrote Albemarle County Public Schools (ACPS) to object to the cancellation, explaining that it constituted unlawful viewpoint discrimination.[2] The letter observed that another student organization—the Gender and Sexuality Alliance club—was

[1] Mike Barber, *Western Albemarle High changes course, will allow TPUSA to host Cobb*, CVILLE RIGHT NOW (Sept. 29, 2025), https://cvillerightnow.com/news/208802-western-albemarle-high-changes-course-will-allow-tpusa-to-host-cobb. The narrative in this letter represents our understanding of the pertinent facts, but we invite you to share any additional information.

[2] Letter from Michael B. Sylvester, Litig. Couns., Founding Freedoms Law Ctr., to Josiah Black, Sch. Div. Couns., Albemarle Cnty. Pub. Schs., Sept. 26, 2025, https://www.foundingfreedomslaw.org/s/2025-9-26-Ltr-to-ACPS-re-TPUSA-Club.pdf.

permitted to hold lunchtime meetings addressing related issues from an opposing perspective.[3] Administrators reversed course shortly after receiving the letter and allowed the TPUSA event to proceed. The event continued to generate community debate and even a lawsuit that unsuccessfully attempted to block it. Board Member Allison Spillman described the planned talk as "hate speech" that "has no place in our schools" and said she was "beyond livid."[4] The event ultimately took place on November 19.

Days earlier, the Board had directed the superintendent to have staff review Policy IGDA, which governs student activities, and to recommend any changes.[5] Staff presented a proposal to amend the policy on March 5, 2026, including a ban on student organizations that "promote or endorse violence, harassment, or hatred toward an identifiable person or group based on race, color, religion, ethnicity, national origin, ancestry, gender, gender identity, sexual orientation, or disability or are affiliated with any organizations that do so."[6] The policy would also ban noncurricular student organizations, including TPUSA, from hosting guest speakers during the school day, even during non-instructional time. And any student organizations who wish to host a guest speaker at any time would need to submit a "request for approval" to the "principal or designee for review and include the purpose, content, and duration of the speech." The proposed changes jeopardize the TPUSA chapter's plan for its April 2 lunchtime meeting to host Erika Kirk, widow of TPUSA co-founder Charlie Kirk.

II. The Revised Policy Would Violate the First Amendment and the Equal Access Act

While the Board has stated the policy revisions are part of a broader review of student activity policies, the sequence of events raises serious concerns that the proposal is aimed at burdening the TPUSA chapter's expressive activities and even forcing it to shut down. Further, regardless of the catalyst for the policy review, some of the proposed revisions are, on their face, inconsistent with the First Amendment and federal law protecting the rights of student groups.

It is well established that students do not check their First Amendment rights at the schoolhouse gate.[7] Administrators generally may restrict student speech only when it "would materially and substantially disrupt" school operations or "inva[de] the rights of others."[8] This "demanding

[3] Additionally, when a WAHS club invited a former Democratic state delegate to a club meeting last year to discuss her political career and "how to be politically active," that event reportedly faced no extra administrative scrutiny. James A. Bacon, *Albemarle School Board Moves to Shut Down TPUSA Chapter*, BACON'S REBELLION (Mar. 5, 2026), https://www.baconsrebellion.com/albemarle-school-board-moves-to-shut-down-tpusa-chapter.

[4] Kate Nuechterlein, *Recent controversies draw large crowds, heated debate at Albemarle School Board meeting*, WVIR (Oct. 10, 2025), https://www.29news.com/2025/10/10/recent-controversies-draw-large-crowds-heated-debate-albemarle-school-board-meeting.

[5] *School Board to Consider Amendments to Student Activities Policy*, ALBEMARLE CNTY. PUB. SCHS., https://www.k12albemarle.org/our-departments/communications/news-board/~board/newsroom/post/school-board-to-consider-amendments-to-student-activities-policy.

[6] The proposed policy is posted at https://esb.k12albemarle.org/attachments/fbf0a979-4070-4fb7-bbbb-b10e05702552.pdf. This letter does not contain an exhaustive analysis of every constitutional flaw in the policy.

[7] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

[8] *Id.* at 513. Since *Tinker*, the Court has recognized only "three specific categories of student speech that schools may regulate in certain circumstances." *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 187 (2021). None of those exceptions—lewd speech during a school assembly, speech promoting illegal drug use, and speech others may reasonably perceive as bearing the imprimatur of the school—are relevant to the proposed restrictions as applied

standard"[9] requires evidence of a "specific and significant fear of disruption, not just some remote apprehension of disturbance."[10] And that disruption must be severe—something beyond upset administrators, complaints about the speech, or negative publicity.[11]

Schools retain a "strong interest" in preserving the "marketplace of ideas," which includes protecting unpopular ideas."[12] They therefore lack the authority to restrict speech out of "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."[13] The mere fact that a student's expression offends or upsets others cannot constitute substantial disruption or an invasion of others' rights, as there is no "generalized 'hurt feelings' defense" to a public school's restriction of student speech.[14]

Under these principles, a prohibition on student organizations—including noncurricular clubs—that "promote or endorse violence, harassment, or hatred toward an identifiable person or group" based on specified characteristics violates the First Amendment. The constitutional problems are three-fold.

First, the policy is overbroad because it prohibits significantly more speech than that which causes substantial disruption to the school or invades the rights of others.[15] While *some* speech that school officials believe promotes violence, harassment, or hatred might substantially disrupt the school or rise to the level of actual, punishable harassment,[16] the policy bans *all* such speech

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to noncurricular student organizations. A noncurricular club's official recognition and use of school facilities are not enough to make its activities "school-sponsored" and thus subject to the greater level of oversight that may apply to curricular clubs. *See Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988); *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 117–18 (D. Mass. 2003) (student club's speech was not "school-sponsored" where the school merely allowed use of facilities and communications channels and provided a staff monitor who did not substantively participate in club activities).

[9] *Mahanoy Area Sch. Dist.*, 594 U.S. at 193.

[10] *Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 255 (4th Cir. 2003).

[11] *Mahanoy Area Sch. Dist.*, 594 U.S. at 192–93 (students being "visibly upset" at a student's social media posts "d[id] not meet *Tinker*'s demanding standard"); *C1.G v. Siegfried*, 38 F.4th 1270, 1279 (10th Cir. 2022) (four emails from parents, an in-school discussion, and news reports about a student's Snapchat post fell short of "*Tinker*'s demanding standard" for substantial disruption); *Flaherty v. Keystone Oaks Sch. Dist.*, 247 F. Supp. 2d 698, 704 (W.D. Pa. 2003) (public high school principal's belief that student speech would bring "disrespect, negative publicity, negative attention to our school and to our volleyball team" was "simply not sufficient to rise to the level of 'substantial disruption'").

[12] *Mahanoy Area Sch. Dist.*, 594 U.S. at 190.

[13] *Tinker*, 393 U.S. at 509.

[14] *N.J. v. Sonnabend*, 37 F.4th 412, 426 (7th Cir. 2022).

[15] An overbroad policy prohibits "a substantial amount of protected speech" relative to the policy's "plainly legitimate sweep." *United States v. Williams*, 553 U.S. 285, 292 (2008).

[16] In *Davis v. Monroe County Board of Education*, the Supreme Court explained that conduct—including expression—constitutes actionable discriminatory harassment in an educational setting only when it is (1) unwelcome, (2) discriminatory based on gender or another protected status, and (3) "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." 526 U.S. 629, 650 (1999). As the Department of Education has emphasized, the "offensiveness of a particular expression as perceived by some students, standing alone," is not actionable harassment. U.S. Dep't of Educ., Dear Colleague Letter from Catherine E. Lhamon, Assistant Sec'y for Civil Rights (May 7, 2024), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf.

regardless of whether it crosses these lines.[17] The expansive and subjective language threatens student organizations with punishment for expressing opinions on controversial political issues. That appears to be the point. The proposal follows on the heels of the TPUSA "Two Genders, One Truth" event that one board member described as "hate speech" that "has no place in our schools." Worse still, the policy would ban student organizations that do not even endorse or promote the forbidden views but are in some way "affiliated" with a group that does. Absent evidence of substantial disruption, student organizations have a right to express their views and to associate with others for expressive purposes. Notably, this is not the first time the Board has been put on notice that it may not enact overbroad restrictions on student speech.[18]

Second, untethered from the "substantial disruption" and harassment standards, the prohibition discriminates based on the speaker's viewpoint. The First Amendment forbids government officials from suppressing speech simply because they disapprove of the message it expresses.[19] Even a government policy that "evenhandedly prohibits disparagement of all groups" is viewpoint discriminatory,[20] and thus a "particularly egregious" First Amendment violation.[21]

Third, the policy is unconstitutionally vague because it lacks clear, objective standards.[22] Policies need to be clear and specific enough to ensure students understand what speech is prohibited and to prevent arbitrary or discriminatory enforcement.[23] But the proposed policy employs subjective terms like "promote" and "hatred" without defining them. Board Member Spillman may believe that claiming there are only two genders promotes hatred of transgender people, while others believe that supporting transgender athletes competing in girls' sports or using girls' locker rooms promotes harassment of girls. One administrator might decide a student organization voicing support for Israel's invasion of Gaza endorses violence against Palestinians, while another may think speech accusing Israel of perpetrating genocide promotes hatred against Israelis. The term "affiliated" is also undefined and could be read to encompass anything from formal relationships to perceived ideological alignment. Ultimately, whether a student organization violates the policy is based entirely on the subjective and unpredictable judgments of school officials—something the Constitution does not permit.

The proposed provision concerning approval of guest speakers is also unconstitutional. The Board can adopt reasonable administrative procedures governing the use of school facilities and inviting

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[17] *See Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001) (invalidating as overbroad a school district's policy prohibiting "unwelcome" and "offensive" speech based on protected characteristics); *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (invalidating an ordinance that prohibited placing on any property symbols that "arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender").

[18] *See Newsom*, 354 F.3d at 259–60 (ordering entry of a preliminary injunction against a likely unconstitutionally overbroad Albemarle County School District policy prohibiting students from wearing any clothing with messages that "relate to … weapons").

[19] *Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit expression of an idea simply because society finds the idea itself offensive or disagreeable.").

[20] *Matal v. Tam*, 582 U.S. 218, 243 (2017).

[21] *Vidal v. Elster*, 602 U.S. 286, 293 (2024).

[22] A policy is unconstitutionally vague when people "of common intelligence must necessarily guess at its meaning." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

[23] *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

a guest speaker, but they must incorporate "narrow, objective, and definite standards" to guide the principal's decision.[24] Yet the Board's proposed policy includes *no* standards to guide such decisions, while requiring student organizations to submit information about the speech's "content." This grant of unfettered discretion gives school principals "substantial power to discriminate based on the content or viewpoint of speech by suppressing disfavored speech or disliked speakers" in violation of the First Amendment.[25]

If adopted, the policies would also violate the Equal Access Act, which requires public secondary schools that receive federal funds and allow noncurricular student clubs to meet on school grounds to treat clubs equally regardless of the "religious, political, philosophical, or other content of the speech at such meetings."[26] As explained, the policies discriminate against noncurricular student organizations based on the content and viewpoint of their speech and the speech of their guest speakers.

To the extent these policy changes are motivated by disagreement with the views of the TPUSA chapter and its invited speakers, or by a desire to avoid controversy surrounding those views, that only compounds the constitutional problems. The "government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[27] Any attempt to enforce these unconstitutional provisions against the TPUSA chapter will only confirm the Board's illegitimate viewpoint-based motives.

FIRE urges the Board to fulfill its constitutional obligations by withdrawing the proposed limits on student organizations, and by allowing WAHS's TPUSA chapter to remain as a student organization that enjoys the same rights and privileges as other student groups. We respectfully request a substantive response no later than March 26, 2026.

Sincerely,

Aaron Terr
Director of Public Advocacy

Stephanie Jablonsky
Senior Program Counsel, Public Advocacy

Cc: Dr. Matthew S. Haas, Superintendent, Albermarle County Public Schools

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[24] *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992).

[25] *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 759 (1988).

[26] 20 U.S.C. § 4071(a); *accord Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226 (1990).

[27] *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).