



October 13, 2021

## **FAIR Responds to the National School Boards Association Letter to President Biden**

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On September 29th, the National School Boards Association (NSBA) published a letter addressed to President Joe Biden, requesting “Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators.” Five days later, on October 4th, United States Attorney General Merrick Garland released a memorandum, seemingly in response to the NSBA letter, stating that the Justice Department “is committed to using its authority and resources to discourage these threats, identify them when they occur, and prosecute them when appropriate.”

FAIR unequivocally stands against all acts of violence and threats that prevent public school officials from safely doing their jobs. We also recognize the difficulties that school board members face in our polarized political climate, particularly in navigating what are potentially life-and-death decisions relating to the COVID-19 pandemic.

However, we strongly disagree with the September 29th letter’s central requests. Our disagreements stem from our concern that these requests will interfere with the right of parents to freely criticize decisions made by school boards. Tensions on all sides are high, and we believe that it is essential to work together wherever possible to ease these tensions in a way that respects the interests of all parties.

The attached version of your letter is annotated to identify the parts that FAIR believes are misguided.

FAIR was founded on the principle that civil dialogue, rooted in our common humanity, is the best approach to successfully working through even our strongest disagreements. We hope you will consider our position with the understanding that we share your goal of protecting the wellbeing of all school officials, parents, and students.

Dear Mr. President:

America's public schools and its education leaders are under an immediate threat. The National School Boards Association (NSBA) respectfully asks for federal law enforcement and other assistance to deal with the growing number of threats of violence and acts of intimidation occurring across the nation. Local school board members want to hear from their communities on important issues and that must be at the forefront of good school board governance and promotion of free speech. However, there also must be safeguards in place to protect public schools and dedicated education leaders as they do their jobs.

NSBA believes immediate assistance is required to protect our students, school board members, and educators who are susceptible to acts of violence affecting interstate commerce because of threats to their districts, families, and personal safety. As our school boards continue coronavirus recovery operations within their respective districts, they are also persevering against other challenges that could impede this progress in a number of communities.

All of the incidents that are referenced in the letter seem to have been managed properly by local police, and almost none of them have involved any physical violence. Accordingly, we believe that calling for federal intervention is unnecessary, and risks further inflaming an already-sensitive situation.

Many parents who have contacted us do not feel many board members are listening to them respectfully, or at all. We have received reports of board members mocking and insulting parents, making sarcastic comments, rolling their eyes, cutting them off or interrupting them while they are speaking, revising agendas so parents can no longer speak on certain topics, misrepresenting parents' statements in meeting minutes, and encouraging third parties to dox and oppose them. Parents are understandably upset and frustrated by such conduct. We urge the NSBA to encourage its members to listen to parents in a respectful manner.

We agree that public servants must be allowed to do their jobs without threats or fears of violence. We also stand for free speech and other civil liberties for all.

The NSBA seems to speak on behalf of local law enforcement departments, stating that these local departments need federal help to keep school officials safe. Presumably, if any local police department felt overwhelmed, they, and not the NSBA, would reach out to the federal government for support. Additionally, conduct and statements made at local school board meetings in no way "affect interstate commerce."

Coupled with attacks against school board members and educators for approving policies for masks to protect the health and safety of students and school employees, many public school officials are also facing physical threats because of propaganda purporting the false inclusion of critical race theory within classroom instruction and curricula.

The letter conflates protests opposing schools' COVID-19 policies and protests opposing critical race theory (CRT) in school curricula. These issues are substantively different from one another and the respective concerns, approaches, and reactions are likewise incomparable.

To support the claim that school officials are being physically threatened by anti-CRT protestors, the letter cites a "Fact Sheet" on CRT-demonstrations by the "The Armed Conflict Location & Event Data Project (ACLED)." This fact sheet contains nothing to support the letter. Its one relevant section, which involves the question of violence at CRT protests states that "In at least three events, militias and other militant right-wing actors have directly reacted to the perceived threat of CRT — engaging in 6% of anti-CRT protests in the country — though all anti-CRT events involving these actors have remained peaceful."

The fact that no violence occurred even in the very small number of anti-CRT protests that involved right wing militants should cast serious doubt on the veracity of the letter's broad portrayal of anti-CRT protests as a threat to the safety of school officials.

This propaganda continues despite the fact that critical race theory is not taught in public schools and remains a complex law school and graduate school subject well beyond the scope of a K-12 class.

On behalf of our state associations and the more than 90,000 school board members who govern our country's 14,000 local public school districts educating more than 50 million schoolchildren, NSBA appreciates your leadership to end the proliferation of COVID-19 in our communities and our school districts. We also appreciate recent discussions with White House and U.S. Department of Education staff on many critical issues facing public schools, including threats school officials are receiving.

It is true that "Critical Race Theory" originated as a niche sub-discipline in law schools in the 1980s. But since then, it has evolved from a narrow sub-specialty of jurisprudence into the dominant ideology in a wide variety of university departments, including departments of education. As a result, many of the education graduates who go on to be teachers and school administrators naturally ground their work in the philosophy of CRT. While most grade schools do not teach anything explicitly identified as "critical race theory," many of them do weave CRT's core tenets into their policies, curriculum, and lesson plans. Regardless of the label used, concepts from CRT are in fact being widely taught in public K-12 schools. At its annual meeting on June 30th, the National Education Association voted on and adopted a plan specifically to "support racial honesty in education including but not limited to critical race theory," and to encourage others to "fight back against anti-CRT rhetoric." Thus, it is false to claim that "critical race theory" is not taught in public schools.

In addition, we applaud your actions to restore resources to school districts that have not yet received their education stabilization funding through the Project SAFE (Supporting America’s Families and Educators) grant program for coronavirus recovery efforts, including the use of face masks and other precautions to help prevent COVID-19 infections among students and educators. Now, we ask that the federal government investigate, intercept, and prevent the current threats and acts of violence against our public school officials through existing statutes, executive authority, interagency and intergovernmental task forces, and other extraordinary measures to ensure the safety of our children and educators, to protect interstate commerce, and to preserve public school infrastructure and campuses.

While local and state law enforcement agencies are working with public school officials in several communities to prevent further disruptions to educational services and school district operations, law enforcement officials in some jurisdictions need assistance – including help with monitoring the threat levels.

The letter does not contain the evidence to justify the federal government taking “extraordinary measures.” In the absence of such evidence, we are concerned that this request could inadvertently create an atmosphere where parents feel it is unsafe for them to peacefully and respectfully voice their opposition to school board decisions.

Here again the NSBA seems to speak on behalf of local law enforcement in certain unspecified jurisdictions, saying that they require federal assistance to keep school officials safe. It remains unclear why the NSBA is making this request rather than the local law enforcement officials themselves. It is similarly unclear what is meant by “monitoring threat levels.”

As these threats and acts of violence have become more prevalent – during public school board meetings, via documented threats transmitted through the U.S. Postal Service, through social media and other online platforms, and around personal properties – NSBA respectfully asks that a joint collaboration among federal law enforcement agencies, state and local law enforcement, and with public school officials be undertaken to focus on these threats. 2 NSBA specifically solicits the expertise and resources of the U.S. Department of Justice, Federal Bureau of Investigation (FBI), U.S. Department of Homeland Security, U.S. Secret Service, and its National Threat Assessment Center<sup>3</sup> regarding the level of risk to public schoolchildren, educators, board members, and facilities/campuses. We also request the assistance of the U.S. Postal Inspection Service to intervene against threatening letters and cyberbullying attacks that have been transmitted to students, school board members, district administrators, and other educators.

Letters that threaten the physical wellbeing of school officials or students should be investigated by the proper authorities. "Cyberbullying attacks" - so long as they do not include a credible threat - do not (and should not) require any government action at all and may be protected under the first amendment.

As these acts of malice, violence, and threats against public school officials have increased, the classification of these heinous actions could be the equivalent to a form of domestic terrorism and hate crimes. As such, NSBA requests a joint expedited review by the U.S. Departments of Justice, Education, and Homeland Security, along with the appropriate training, coordination, investigations, and enforcement mechanisms from the FBI, including any technical assistance necessary from, and state and local coordination with, its National Security Branch and Counterterrorism Division, as well as any other federal agency with relevant jurisdictional authority and oversight.

It is unclear why "acts of malice," which is not a crime, is inserted here preceding "violence and threats."

The letter has not provided evidence to suggest that any of the actions mentioned should be classified as "domestic terrorism" and hate crimes," which have specific legal definitions. We see no such evidence. In our view, use of the term 'domestic terrorism' is an overreach that could deter parents from exercising their First Amendment and civil rights.

Additionally, NSBA requests that such review examine appropriate enforceable actions against these crimes and acts of violence under the Gun-Free School Zones Act, the PATRIOT Act in regards to domestic terrorism, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, the Violent Interference with Federally Protected Rights statute, the Conspiracy Against Rights statute, an Executive Order to enforce all applicable federal laws for the protection of students and public school district personnel, and any related measure. As the threats grow and news of extremist hate organizations showing up at school board meetings is being reported, this is a critical time for a proactive approach to deal with this difficult issue.

There is only one example in the letter of an "act of violence" at a school board meeting. And only a handful of the examples included protestors engaging in criminal behavior.

FAIR does not believe that the NSBA has presented convincing evidence to support the deployment of these extraordinary measures. Without such evidence, this long list of federal hate crime and counter-terrorism statutes could discourage parents from participating in school meetings.

There is no evidence given in the letter for either of these claims.



These threats or actual acts of violence against our school districts are impacting the delivery of educational services to students and families, as many districts receive federal funds and subsidies for services to millions of students with disabilities, health screenings and supplemental supports for disadvantaged students, child nutrition, broadband connectivity, educator development, school safety activities, career and technical education, and more.

School board meetings have been disrupted in California<sup>4</sup> , Florida<sup>5</sup> , Georgia<sup>6</sup> , and other states<sup>7</sup> because of local directives for mask coverings to protect students and educators from COVID-19.

An individual was arrested in Illinois for aggravated battery and disorderly conduct during a school board meeting.<sup>8</sup> During two separate school board meetings in Michigan<sup>9</sup> , an individual yelled a Nazi salute in protest to masking requirements, and another individual prompted the board to call a recess because of opposition to critical race theory.

Again, the letter contains just a single example of an "act of violence." FAIR condemns all acts of violence, and we wholeheartedly support the peaceful methods of protest used by the vast majority of parents.

FAIR stands for calm and civil discourse. However, protests are by nature disruptive. An attempt to stop parents from speaking because it is "disruptive" is an attempt to prevent them from exercising their First Amendment rights. FAIR will utilize all means available to us to oppose such attempts.

This is the one example in the letter that includes an act of violence.

In New Jersey<sup>10</sup>, Ohio<sup>11</sup>, and other states<sup>12</sup>, anti-mask proponents are inciting chaos during board meetings. In Virginia<sup>13</sup>, an individual was arrested, another man was ticketed for trespassing, and a third person was hurt during a school board meeting discussion distinguishing current curricula from critical race theory and regarding equity issues. In other states including Washington<sup>14</sup>, Texas<sup>15</sup>, Wisconsin<sup>16</sup>, Wyoming<sup>17</sup>, and Tennessee<sup>18</sup>, school boards have been confronted by angry mobs and forced to end meetings abruptly. A resident in Alabama, who proclaimed himself as “vaccine police,” has called school administrators while filming himself on Facebook Live.<sup>19</sup>

Other groups are posting watchlists against school boards and spreading misinformation that boards are adopting critical race theory curriculum and working to maintain online learning by haphazardly attributing it to COVID-19.<sup>20</sup>

This is an illustrative example of a school board using a different name than critical race theory - in this case, "equity issues" - to describe a policy that is based entirely on the ideology of CRT. Equity issues in this context essentially means prioritizing equal outcomes for students according to racial group, in violation of the principle of equality of opportunity.

We do not agree that this is misinformation. Many school boards are (or have already) adopted curriculum that is primarily influenced by CRT.

In Ohio, an individual mailed a letter to a school board member labeling the return address on the envelope from a local neighborhood association and then enclosing threatening hate mail from another entity.<sup>21</sup> This correspondence states that, “We are coming after you and all the members on the ... BoE [Board of Education].” This hate mail continues by stating, “You are forcing them to wear mask—for no reason in this world other than control. And for that you will pay dearly.” Among other incendiaries, this same threat also calls the school board member a “filthy traitor,” implies loss of pension funds, and labels the school board as Marxist. Earlier this month, a student in Tennessee was mocked during a board meeting for advocating masks in schools after testifying that his grandmother, who was an educator, died because of COVID-19.

The vast majority of the examples in the letter involve COVID-19 policies; only four out of the 26 total examples in the letter relate to anti-CRT protests. This enormous disparity might create the misimpression that there are widespread anti-CRT incidents, which is untrue.

22 These threats and acts of violence are affecting our nation's democracy at the very foundational levels, causing school board members – many who are not paid – to resign immediately and/or discontinue their service after their respective terms.

Five of the examples in the letter appear to involve genuine threats - where an individual had reason to fear for their physical safety. Another one (cited at the end of this sentence) involved a school board member who resigned because they felt unsafe, and there was the singular instance of actual violence committed by the Illinois man. So, out of 26 total examples, six or seven of them at most satisfy the "threats or acts of violence" standard. The remaining twenty examples mostly fall into the category of school board meetings being shut down early because of unruly (but non-violent) behavior from attendees. FAIR promotes understanding and civil discourse, and we encourage parents, however contentious the issue, to adhere to the norms and rules of school board meetings. At the same time, parents should not have to worry that exercising their First Amendment rights will result in being investigated or prosecuted as domestic terrorists.

Further, this increasing violence is a clear and present danger to civic participation, in which other citizens who have been contemplating service as either an elected or appointed school board member have reconsidered their decision.

The letter fails to present evidence that violence is, in fact, increasing.

NSBA believes public discussions and transparency by local school board members are important for the safe and effective operations of schools.<sup>24</sup> It is vital that public discourses be encouraged in a safe and open environment, in which varying viewpoints can be offered in a peaceful manner. Our children are watching the examples of the current debates and we must encourage a positive dialogue even with different opinions. However, with such acute threats and actions that are disruptive to our students' well-being, to the safety of public school officials and personnel, and to interstate commerce, we urge the federal government's intervention against individuals or hate groups who are targeting our schools and educators.

We agree entirely with the NSBA on the importance of transparency by local school boards, and on the need for open discussions at meetings that encourage all participants to voice their opinions in a respectful and peaceful manner.