

Mr. Kyle Hodsdon
Athletic Director
Newburyport High School
241 High St.
Newburyport, MA 01950

July 17, 2023

Re: Requiring Student-Athletes to Sign DEI Pledge Violates the First Amendment

Dear Mr. Hodsdon:

My name is Sam Whiting and I am an attorney for Massachusetts Family Institute, an organization dedicated to strengthening the family in Massachusetts. I am writing to you on behalf of the parents of Newburyport student-athletes. These students are attempting to register for the fall athletic season, but cannot in good conscience sign the so-called “MIAA Diversity, Equity and Inclusion Pledge” that appears to still be required on your school’s registration portal. Please know that requiring students to recite or affirm a “pledge” amounts to compelled speech and is a violation of the constitutional right to free speech. Therefore, no student should be prevented from full participation in your school’s athletic program for refusal to sign, recite or affirm the MIAA Pledge.

I include the following chronology of the Pledge and my office’s interaction with the MIAA in the hope that it will further clarify this issue. On October 27, 2021, the Massachusetts Interscholastic Athletic Association (MIAA) Board of Directors adopted a pilot program for the winter 2021-22 season requiring all student-athletes, coaches, and athletic directors to take the National Federation of High School Sports [Implicit Bias Course](#) and sign a [Diversity, Equity, and Inclusion Pledge](#) (DEI Pledge). The NFHS’s Implicit Bias course claims to identify a relationship between implicit bias and real-world behavior and highlights the alleged importance of being aware of and managing personal bias. The MIAA’s DEI Pledge requires student-athletes and school administrators to pledge their support and commitment to DEI policies and programs sponsored by the MIAA and their school.

On October 29, 2021, the MIAA’s Executive Director, Bob Baldwin, issued a [memorandum](#) to all member school principals, athletic directors, superintendents, and assistant superintendents, informing them of the immediate implementation of the pilot program and stating that “School administrators (coaches and athletic directors) must take the course and pledge every school year, prior to the start of the academic year. Student-athletes must take the course and pledge every year as well, and they must do so prior to the start of their athletic season.” By stating that school administrators and student-athletes “must take the course and pledge” annually or

before the start of an athlete's season, Executive Director Baldwin clearly implies that the course and pledge are compulsory in order to participate in MIAA activities. However, this is not the case.

Shortly after the MIAA's pilot program was implemented at many of its member schools, Massachusetts Family Institute began receiving complaints from coaches, student-athletes, and students' parents expressing concerns about the mandatory nature of the program, particularly being forced to pledge support for DEI policies and programs. Some reported that they complied with their school's mandate out of fear of losing their job or not being permitted to participate in athletics; in other cases, student-athletes and their parents chose not to participate because they could not in good conscience sign the pledge.

On behalf of these individuals, MFI sought clarification from the MIAA whether participation in its pilot program is mandatory, and if so, what are the consequences for refusing to take the course or the pledge. In response, the MIAA's legal counsel, Stoneman, Chandler & Miller, LLP, stated: **"At this time, there are no consequences from the MIAA for failure to take the pledge or the course."**

Based on the MIAA's counsel's acknowledgement, no school administrator or student-athlete can be compelled by the MIAA to take the Implicit Bias Course or sign the DEI Pledge in order to participate in MIAA sponsored activities and shall suffer no consequences from the MIAA for refusing to do so.

MFI brings this important information to your attention so that you can also ensure that no administrator or student-athlete who declines to take the course or the pledge is subject to penalty or punishment by your school. If, however, your school continues to compel student-athletes to sign the DEI Pledge, MFI cautions that such a policy is a violation of state¹ and federal law.

It has long been held that the First Amendment is binding on public schools. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.") The First Amendment protects the right to speak as well as the right to refrain from speaking. *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.") In the seminal case, *West Virginia State Board of Education*, 319 U.S. 624 (1943), the U.S. Supreme Court struck down as unconstitutional a requirement that students salute and pledge allegiance to the flag as a condition of attending public school. The Court ruled that compelling speech in this manner contradicts the protections afforded by the First Amendment because it constitutes "a compulsion of students to declare a belief." *Id.* at 611. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Id.* at 642.

¹ See M.G.L. c. 71, Section 82; *see also Pyle v. Sch. Comm.*, 667 N.E.2d 869, 872 (Mass. 1996) (interpreting Massachusetts law as protecting the rights of students to free expression).

Here, by requiring student-athletes to sign the DEI Pledge, Newburyport is forcing them to be an instrument for advocating public adherence to an ideological point of view they may disagree with or find unacceptable. Compelling speech, in the form of requiring students to affirm a belief, contradicts the protections afforded by the First Amendment and simply cannot be enforced at a public school.

For these reasons, no public school in Massachusetts may condition a student's participation in interscholastic athletics, or any other school activity, on his or her pledge to support DEI policies or programs. We therefore respectfully request that you remove the MIAA Pledge from your athletics registration page or make the Pledge optional.

Sincerely,

A handwritten signature in blue ink that reads "Sam Whiting". The signature is fluid and cursive.

Samuel J. Whiting, Esq.
Staff Attorney
Massachusetts Family Institute
401 Edgewater Drive, Suite 580
Wakefield, MA 01880
Tel: 781.589.0400
Email: sam@mafamily.oeg
www.mafamily.org

cc: Superintendent Sean Gallagher