



March 25, 2025

Patrick Fletcher, Executive County Superintendent  
Bergen County Office of Education  
One Bergen County Plaza  
3<sup>rd</sup> Floor, Room 350  
Hackensack, New Jersey 07601

*Sent via U.S. Mail and Electronic Mail (bergen@doe.nj.gov; eha@teaneckschools.org; kreyes@teaneckschools.org; superintendent@teaneckschools.org)*

Dear Superintendent Fletcher:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, would like to bring to your attention unconstitutional public participation policies adopted by the Teaneck Public Schools Board of Education, which it has enforced to silence criticism during public meetings.<sup>1</sup>

FIRE has attempted to resolve this issue with the Board since we sent our first correspondence over a year ago on November 27, 2023.<sup>2</sup> Despite receiving two additional letters from FIRE,<sup>3</sup> and considerable media coverage of the Board's First Amendment violations,<sup>4</sup> the Board has taken no action to rectify the policies' constitutional defects. FIRE has extensively addressed the unconstitutionality of the Board's policies and actions—including vague, undefined, and viewpoint-discriminatory bans on “inflammatory,” “disparaging,” “abusive,” and “graphic” comments—in previous correspondence, which we have enclosed.

---

<sup>1</sup> See enclosures.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *E.g.*, Eugene Volokh, *Teaneck (N.J.) Bd. of Education Allegedly “Selectively Restricts Public Comments About the Israeli-Palestinian Conflict,”* REASON (Nov. 20, 2023), <https://reason.com/volokh/2023/11/30/teaneck-n-j-bd-of-education-selectively-restricts-public-comments-about-the-israeli-palestinian-conflict/>; *New Jersey school board interrupts parents talking about Oct. 7 Hamas attacks*, JEWISH NEWS SYNDICATE (Dec. 6, 2023), <https://www.jns.org/new-jersey-school-board-interrupts-parents-talking-about-oct-7-hamas-attacks/>; Joanne Palmer, *Who can say what at a meeting?*, JEWISH STANDARD (Dec. 7, 2023), <https://jewishstandard.timesofisrael.com/who-can-say-what-at-a-meeting/>; Dean McGee, *When A Mom Stood Up For Her Special-Needs Son, School Board Bullies Silenced Her In Person And Online*, FEDERALIST (Feb. 2, 2024) <https://thefederalist.com/2024/02/02/when-a-mom-stood-up-for-her-special-needs-son-school-board-bullies-silenced-her-in-person-and-online/>.

FIRE first got involved after the Board sent a baseless cease-and-desist letter to a resident for exercising his First Amendment rights at a meeting on October 18, 2023.<sup>5</sup> Yet despite the Board counsel's initial promise to evaluate FIRE's objections, we have received no further correspondence from him, even after we followed up, and the Board has yet to change its policies. The Board also apparently enforces the public participation policies against attendees while giving Board members free rein to hurl accusations at them. At a May 15, 2024, meeting, a board member singled out an attendee and shouted, "You sir are a bigot," which resulted in a heated back-and-forth that prompted the Board to adjourn the meeting.<sup>6</sup> There are, in short, serious problems with the Board's public participation policies and their enforcement, which require prompt attention, and Board members need adequate training on the First Amendment.

Although FIRE's previous correspondence addressed only the Board's First Amendment violations, the Board also faces liability for violating state law. The New Jersey Supreme Court held in *Besler v. Board of Education of West Windsor-Plainsboro* that Paragraphs 6 and 18 of Article I of the New Jersey Constitution guarantee freedom of speech.<sup>7</sup> Paragraph 6 of Article I of the New Jersey Constitution states: "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech ..."<sup>8</sup> Paragraph 18 states: "The people have the right freely ... to make known their opinions to their representatives, and to petition for redress of grievances."<sup>9</sup>

*Besler* also held the public comment period of a school board meeting is a public forum, which would require any content-based speech regulations to meet the highest level of legal scrutiny.<sup>10</sup> Per the court, "a school board ... has the burden of showing that its restriction of speech in a public forum was done for a constitutionally permissible purpose."<sup>11</sup> In that case, the court held the West Windsor-Plainsboro Board of Education engaged in unlawful viewpoint discrimination when it silenced a critical attendee under the guise of enforcing the policy's ban on repetition, while non-critical attendees were permitted to violate the policy.<sup>12</sup>

Not only are the Teaneck Board of Education's policies unconstitutional on their face, but the Board has also exhibited the same exact pattern of viewpoint discrimination. There have been

---

<sup>5</sup> See enclosures.

<sup>6</sup> Teaneck Public Schools, *May 15, 2024 Regular Public Meeting*, EDUVISION (May 16, 2024), at 2:03:21, <https://teaneckschools.eduvision.tv/default?q=X3Y5NcZVhaADenkKrj6GIA%253d%253d>. Presumably, this accusation was in response to comments made by the attendee, a father of Jewish high school students, who complained about antisemitic bullying: "If your students shall succeed in making school unsafe for their fellow Jewish students, how will that impact the collective test scores of THS? How will that impact the standing of the school if they drive all of the Jewish students out?" *Id.* at 1:16:03.

<sup>7</sup> 201 N.J. 544, 598 (N.J. 2010).

<sup>8</sup> N.J. Const. art. I, ¶ 6.

<sup>9</sup> N.J. Const. art. I, ¶ 18.

<sup>10</sup> *Besler* at 570.

<sup>11</sup> *Id.* at 571.

<sup>12</sup> *Id.* at 575.

numerous instances, documented in FIRE’s correspondence, of the Board selectively enforcing the public comment policy *only* against speakers who make critical comments. This violates the New Jersey Supreme Court’s admonition that “once a governmental entity, such as a school board, opens the floor for discussion of relevant matters of public interest and concern, it ‘may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.’”<sup>13</sup>

The Board accordingly requires a reminder that, “[f]or public officials, particularly those who may be subject to ‘vehement, caustic, and sometimes unpleasantly sharp attacks,’ free speech is not for the fainthearted. Such officials must be thick-skinned enough to tolerate the uninhibited and robust debate on public issues that the First Amendment demands.”<sup>14</sup>

FIRE’s offer to assist the Board in remedying the constitutional defects in its current policies and practices—free of charge—still stands. However, at this stage, we believe the Department of Education’s involvement is necessary to facilitate corrective action and ensure the Teaneck Board of Education comes into compliance with the First Amendment and New Jersey law.

We respectfully request a substantive response no later than April 8, 2025.

Sincerely,



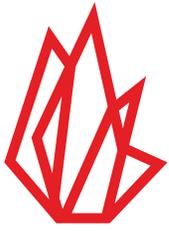
Stephanie Jablonsky  
Senior Program Counsel, Public Advocacy

Cc: Edward Ha, President, Teaneck Board of Education  
Kassandra Reyes, Vice President, Teaneck Board of Education  
André D. Spencer, Ed.D., Superintendent of Schools

---

<sup>13</sup> *Id.* at 544 (citing *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 96 (1972)).

<sup>14</sup> *Id.* at 575 (citing *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).



# FIRE

Foundation for Individual  
Rights and Expression

November 27, 2023

Mark A. Tabakin  
Weiner Law Group LLP  
629 Parsippany Road  
P.O. Box 0438  
Parsippany, New Jersey 07054

*Sent via U.S. Mail and Electronic Mail (mtabakin@weiner.law)*

Dear Mr. Tabakin:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by the Teaneck Public Schools Board of Education's restriction of public comments about the superintendent's statement on Hamas's October 7 attack on Israel. The comments were relevant to matters before the Board and fully protected by the First Amendment. While the Board may prevent actual disruption and prohibit unprotected speech, it lacks authority to limit comments to what it subjectively considers respectful or appropriate. For that and the reasons that follow, FIRE calls on the Board to reform its policies and practices to comply with its constitutional obligations.

**I. Board of Education Restricts Public Criticism of Superintendent's Statement on Hamas Attack**

As required by New Jersey law, the Teaneck Board of Education sets aside a portion of each of its meetings for "public comment on any school or school district issue that a member of the public feels may be of concern to the residents of the school district."<sup>2</sup> District policy also permits the presiding officer to "[i]nterrupt and/or warn a participant when the statement, question, or inquiry is abusive, obscene, or may be defamatory," and to "[r]equest any person to leave the meeting when that person does not observe reasonable decorum."<sup>3</sup>

Following Hamas's October 7 attack on Israel, Superintendent André D. Spencer wrote students' families referring to "the latest incidents in the cycle of violence in the Middle East"

---

<sup>1</sup> You can learn more about FIRE's mission and activities at [thefire.org](https://thefire.org). FIRE takes no position on the Israel-Gaza conflict or any other political or social question beyond the importance of freedom of expression and individual rights.

<sup>2</sup> TEANECK PUB. SCHS. BD. OF EDUC., DISTRICT POLICY 0167 - PUBLIC PARTICIPATION IN BOARD MEETINGS, <https://bit.ly/3G93Xga> [<https://perma.cc/T9SU-J745>]; see also N.J. STAT. § 10:4-12(a).

<sup>3</sup> *Id.*

and “recogniz[ing] the fear, grief, and pain that our community is experiencing.”<sup>4</sup> The letter called for open dialogue to “gain a comprehensive understanding of the complex factors impacting our world” and offered counseling services for those affected by the events. It later became a subject of many public comments—supportive and critical—at the October 18, 2023, Board meeting.

The Board, however, repeatedly cut off commenters who described Hamas’s actions to underscore why they thought Superintendent Spencer should have issued a stronger statement condemning the attack:

- One commenter, referring to the statement, said, “You can condemn Hamas unequivocally and you can condemn those actions unequivocally without taking a side in the conflict or even touching the overall conflict, unless of course you’re trying to appease people who actually think that the raping and murdering and pillaging of the community is appropriate.”<sup>5</sup> Board Vice President Victoria Fisher immediately interjected, “Excuse me we have an audience with children and students so I just ask that speakers be respectful of that audience. We’re aware of the news.”
- While criticizing the statement, a commenter asked rhetorically, “How would you feel if Indigenous people in our country came into your homes at 6 a.m., at 7 a.m., and pulled your kids out of their beds and then shot you in front of them?”<sup>6</sup> Vice President Fisher interjected, “I’m going to remind you that there are students and children,” adding that “facts don’t need to be repeated, they’re on the record.”
- Vice President Fisher cut off another commenter who, objecting to the district taking a “neutral” stance on the attack, said, “Terrorism is not neutral. Beheading babies, tying them together, shooting them between their eyes, that’s not neutral. Raping women, that’s not neutral.”<sup>7</sup>
- A commenter objected to Superintendent Spencer’s reference to the “unfortunate situation in the Middle East” and said, “Missing the bus is an unfortunate situation. Hanging babies from a shower rod and shooting them between the eyes is not an unfortunate situation.”<sup>8</sup> Vice President Fisher interrupted her and said, “There is no need to reiterate those details.” Board President Sebastian Rodriguez added, “Alright, we’re either going to follow the rules or we’re going to end this right now.”
- Another commenter, Keith Kaplan, called on the district to revise its statement and condemn Hamas.<sup>9</sup> “This is the week to talk about the savagery, the inhumanity that was perpetrated by a terrorist group on innocent civilians who were butchered, who were raped, who were mutilated, who were beheaded, and worse,” Kaplan said before Vice

---

<sup>4</sup> Letter from André D. Spencer, Superintendent of Schools, Teaneck Pub. Schs., to Teaneck families (undated), <https://bit.ly/3usJT6d> [<https://perma.cc/G9BJ-VNH6>].

<sup>5</sup> Teaneck Board of Education, *October 18, 2023 Regular Public Meeting*, EDUVISION (Oct. 19, 2023), at 16:55, <https://bit.ly/3Rankfn>.

<sup>6</sup> *Id.* at 50:16.

<sup>7</sup> *Id.* at 54:35.

<sup>8</sup> *Id.* at 1:21:57.

<sup>9</sup> *Id.* at 1:49:57.

President Fisher cut him off for not following the “ground rules.” Kaplan continued, “Imagine for a moment these heinous acts were committed by any group in any other place. Raping, butchering, beheading, setting aflame some thousand people.” President Rodriguez interrupted again, but Kaplan went on, “Imagine any politician anywhere responding to those acts, those outrageous crimes, calling them incidents in a cycle of violence. You are noncommittal. It begs the question as to whether our schools operate in a value-free zone — a value-free zone where torture and rape are relative.” President Rodriguez told Kaplan, “You need to stop now,” and the Board cut his mic and had him removed from the lectern. Moments later, Vice President Fisher says, “Keep your politics out of it.”

President Rodriguez said the meeting was a “forum for decency” and directed commenters to not make “graphic comments.”<sup>10</sup> Yet several commenters who supported Superintendent Spencer’s statement—or criticized it for not acknowledging the plight facing Palestinians—were free to make (or repeat others’) comments about murder, killing of children, rape, war, and genocide.

On November 15, the Weiner Law Group sent Kaplan a letter on behalf of the Board claiming his conduct at the October 18 meeting was “disruptive and crossed the boundaries of constructive dialogue.”<sup>11</sup> The letter said the Board “may prohibit profane or abusive language having no other purpose than to be threatening” and “will not allow any speaker to commandeer public participation for personal and/or private grievances that have no nexus to the school community.” The letter further said public participation at meetings “must be done in a manner that respects the rights and perspectives of others” and threatened to remove and/or ban Kaplan from future meetings if he violated the Board’s “decorum guidelines.”

## **II. The Teaneck Board of Education’s Restrictions on Public Comment Violate the First Amendment**

The First Amendment protects Teaneck parents and citizens when they speak during public comment periods at Board meetings.<sup>12</sup> A Board meeting is, at a minimum, a limited public forum, which means the Board may restrict the content of commenters’ speech only when those restrictions are viewpoint-neutral *and* reasonable in light of the forum’s purpose.<sup>13</sup> For example, the Board has the authority to cap the amount of time reserved for each public comment and to limit public comment to “any school or school district issue that a member of the public feels may be of concern to the residents of the school district.” But by enforcing

---

<sup>10</sup> *Id.* at 1:26:08, 2:30:50.

<sup>11</sup> Letter from Mark A. Tabakin, Member of the Firm, Weiner Law Group LLP, to Keith Kaplan (Nov. 16, 2023) (on file with author).

<sup>12</sup> *City of Madison, Joint Sch. Dist. No. 8 v. Wisc. Emp. Rel. Comm’n*, 429 U.S. 167, 174–76 (1976) (recognizing public’s right to speak at school board meetings “when the board sits in public meetings to conduct public business and hear the views of citizens”).

<sup>13</sup> *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995); *Eichenlaub v. Twp. of Ind.*, 385 F.3d 274, 280 (3d Cir. 2004). Whatever type of public forum is created by the Board’s public comment periods, it is well-established viewpoint discrimination is impermissible in *any* forum. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 60–62 (1983).

vague “decorum” rules, the Board inhibits the “free flow of ideas and opinions on matters of public interest and concern” that lies at “the heart of the First Amendment,”<sup>14</sup> and in doing so exceeds constitutional limits on the Board’s authority.

**A. *The Board’s regulation of public comments at the October 18 Board meeting was arbitrary and viewpoint discriminatory.***

The threat to free speech posed by the Board’s vague and overbroad policies was on full display at the October 18 meeting, where the enforcement of its rules varied based on the speaker’s views. Such viewpoint discrimination is an “egregious” form of censorship, and 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.”<sup>15</sup> Moreover, “allowing a viewpoint to be offered on some occasions without interruption does not prove the policy viewpoint neutral. Indeed, selective enforcement of a policy only when a presiding officer is feeling provoked does not help to support the policy’s constitutionality.”<sup>16</sup>

At the October 18 meeting, the Board repeatedly cut off speakers who described Hamas’s actions to support their arguments that Superintendent Spencer’s statement about the attack was inadequate. The Board purported to appeal to decorum and “decency” and the presence of children in disallowing “graphic comments,” but permitted similar comments from those who supported the superintendent or spoke from pro-Palestinian perspectives.

For example, the Board cut off a commenter who referred to Hamas’s “raping and murdering and pillaging,” but allowed another commenter to say: “These people talking about raping and piling bodies on top of each other, that happened in the Holocaust. And if they’re having PTSD for what they’re doing to the Muslim community in Palestine, that’s something they need to seek mental health counseling for.”<sup>17</sup> The Board also interrupted a commenter who rhetorically asked how others would feel if “Indigenous people in our country . . . pulled your kids out of their beds and then shot you in front of them.” And yet, another commenter freely opined that Israel’s “dehumanizing and genocidal actions” and the “propaganda surrounding them have spread all the way to us, where kids are stabbed 26 times just for being Palestinian, where women are run over just for wearing a hijab.”<sup>18</sup> The Board also repeatedly told speakers discussing the Hamas attack to refrain from repeating details “on the record” or mentioned by others, but permitted other speakers to repeat previous statements on subjects such as the killing of a woman wearing hijab and Israel cutting off food, water, and electricity to Gaza.<sup>19</sup>

---

<sup>14</sup> *Hustler Magazine, Inc. v. Falwell*, 485 U. S. 46, 50 (1988).

<sup>15</sup> *Rosenberger*, 515 U.S. at 829.

<sup>16</sup> *Marshall v. Amuso*, 571 F. Supp. 3d 412, 423 (E.D. Pa. 2021).

<sup>17</sup> *October 18, 2023 Regular Public Meeting*, *supra* note 5, at 33:17.

<sup>18</sup> *Id.* at 46:58.

<sup>19</sup> At 1:41:14, a commenter said: “Israel is preparing its ground invasion of Gaza and indiscriminately bombing Palestinians killing thousands including many children. . . . Will you call this ‘human rights’ when they’re cutting all the water and the basic necessity [of] the Palestinians? . . . I’m not going to say and repeat like everyone else the mother that witnessed her 6 years old being killed in front of her, the college student who was in critical condition in St. Joseph . . . . But the woman that had to die simply by walking on the sidewalk

The Board’s selective enforcement of its rules appeared to favor or disfavor certain views. Even if its actions were not motivated by speakers’ views, they were arbitrary and untethered from clear, objective, and sufficiently precise standards, as discussed below. The Board should have allowed *all* the above comments without interruption. Teaneck citizens “must be able to provide their feedback and critiques, even if some people, Board members included, find that distasteful, irritating, or unfair.”<sup>20</sup>

**B. *The Board’s restrictions on public comment are overbroad.***

The Board’s restrictions on public comment are unconstitutionally overbroad and unreasonable in light of the forum’s purpose of allowing “public comment on any school or school district issue that a member of the public feels may be of concern to the residents of the school district.”<sup>21</sup> A regulation is overbroad if it “prohibits a substantial amount of protected speech . . . not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep.”<sup>22</sup> Recently, in *Marshall v. Amuso*, a federal court in Pennsylvania blocked enforcement of a school board’s bans on “abusive” and “inappropriate” public comments in part because the bans reached protected speech relevant to board business.<sup>23</sup>

Likewise, the Teaneck Board of Education’s prohibitions on “abusive” and “graphic” comments and those that fail to “observe reasonable decorum” or “respect” others’ perspectives are both overbroad and unreasonable because they prohibit a vast amount of protected speech, including the October 18 comments about Superintendent Spencer’s letter. Those comments were pertinent to school district matters—the very speech for which the public comment period is intended to provide a forum. *Some* speech that the Board deems inappropriate or a breach of decorum could be subject to prohibition, but only if it actually disrupts the meeting (such as by exceeding the time limit for comments) or falls into one of the few, narrowly defined categories of expression that receive no First Amendment protection, like true threats.<sup>24</sup> But no comment within the prescribed time limits at the October 18 meeting constituted a true threat or was otherwise unprotected.

---

because she had a hijab on, she’s Muslim.” At 2:42:27, a speaker commented, “After the people of Gaza have been cut off from food, water, and electricity in violation of international law, Teaneck speaks now and is quick to introduce a resolution that further dehumanizes the Palestinians.” And another commenter echoed these sentiments at 2:53:28: “What’s happened to the Palestinian people is genocide. We need to call it what it is. To deny people food, water, electricity, is to condemn them to death. To bomb their hospitals.”

<sup>20</sup> *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1350 (N.D. Ga. 2022).

<sup>21</sup> DISTRICT POLICY 0167 - PUBLIC PARTICIPATION IN BOARD MEETINGS, *supra* note 2.

<sup>22</sup> *United States v. Williams*, 553 U.S. 285, 292 (2008).

<sup>23</sup> 571 F. Supp. 3d 412, 425–26 (E.D. Pa. 2021) (noting the Supreme Court, in *Gooding v. Wilson*, 405 U.S. 518 (1972), has found the term “abusive” overbroad in other contexts, reaching speech outside the “fighting words” category of unprotected speech); *see also Ison v. Madison Loc. Sch. Dist. Bd. of Educ.*, 3 F.4th 887 (6th Cir. 2021) (invalidating as unconstitutional a school board’s restrictions on “abusive,” “personally directed,” and “antagonistic” comments).

<sup>24</sup> *See United States v. Alvarez*, 567 U.S. 709, 717 (2012). A “true threat” is a statement through which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003).

The presence of minors at the Board’s meetings does not justify censorship of public comments. The First Amendment does not allow the government to limit discourse among adults “to that which would be suitable for a sandbox.”<sup>25</sup> The Supreme Court has firmly rejected the idea that the government has a “free-floating power to restrict the ideas to which children may be exposed.”<sup>26</sup> Just as the government may not childproof public libraries because both adults and children use them,<sup>27</sup> neither may it limit comments at school board meetings simply because children are present. As the *Marshall* court stated, “However laudable the desire to be conscientious when it comes to adult behavior as may be witnessed by children, the School Board cannot hide behind the possible presence of children to justify an unconstitutional policy.”<sup>28</sup> Such restrictions are not only inherently vague and subjective, but also hinder speakers’ ability to address sensitive topics and to communicate their points in the manner they deem most effective.

Limiting a speaker’s comment simply because a different speaker referred to the same facts is also unreasonable. Some speakers may need to refer to facts mentioned by another speaker to present their own arguments intelligibly. A speaker may wish to express agreement with and reinforce others’ points by restating key facts. When multiple speakers make similar arguments and emphasize the same facts, they communicate a message that is stronger than that delivered by any one of them alone. Restricting this practice undermines the public comment period’s purpose of soliciting and gauging community sentiment.

### **C. The Board’s decorum rules are unconstitutionally vague.**

Even setting aside the Board policies’ overbreadth and viewpoint-discriminatory enforcement, they are unconstitutionally vague because people “of common intelligence must necessarily guess at [their] meaning.”<sup>29</sup> Regulations must “provide explicit standards for those who apply them” to prevent “arbitrary and discriminatory enforcement.”<sup>30</sup> Even in a limited public forum, where “some degree of discretion in how to apply a given policy is necessary, ‘that discretion must be guided by objective, workable standards’ to avoid the moderator’s own beliefs shaping his or her ‘views on what counts’ as a policy violation.”<sup>31</sup> This “need for specificity is especially important where . . . the regulation at issue is a content-based regulation of speech” as vagueness has an “obvious chilling effect on free speech.”<sup>32</sup>

The *Marshall* court blocked enforcement of a school board’s prohibitions on “abusive” and “inappropriate” comments on overbreadth *and* vagueness grounds, holding these terms are

<sup>25</sup> *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 74 (1983).

<sup>26</sup> *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011) (law restricting sale or rental of violent video games to minors violated First Amendment); *see also Erznoznik v. Jacksonville*, 422 U.S. 205, 213–14 (1975) (“Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.”).

<sup>27</sup> *See, e.g., Mainstream Loudoun v. Bd. of Trustees of Loudoun*, 24 F. Supp. 2d 552 (E.D. Va. 1998).

<sup>28</sup> 571 F. Supp. 3d at 425.

<sup>29</sup> *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

<sup>30</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

<sup>31</sup> *Marshall*, 571 F. Supp. 3d at 424 (quoting *Minnesota Voters All. v. Mansky*, 138 S. Ct. 1876, 1888 (2018)).

<sup>32</sup> *Id.* (quoting *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243, 266 (3d Cir. 2002)).

“irreparably clothed in subjectivity” because their interpretation varies from “speaker to speaker, and listener to listener.”<sup>33</sup> The court noted the absence of “guidance or other interpretive tools to assist in properly applying” the policies.<sup>34</sup> The nebulous policy language enabled board members’ personal sentiments about a speaker’s views to shape enforcement.

For the same reasons, the Teaneck Board of Education’s vague “reasonable decorum” requirement and bans on “abusive” and “graphic” comments cannot stand. Nor may the Board limit comments to those it deems sufficiently “constructive,” respectful of the “perspectives of others,” or appropriate for children. These determinations are also “irreparably clothed in subjectivity,” creating an unacceptable risk of arbitrary and viewpoint-discriminatory enforcement—a risk that materialized at the October 18 Board meeting.

### **III. Conclusion**

Public comment periods offer the citizenry opportunities to share candid feedback directly with their elected representatives. The First Amendment protects this vital democratic function, restraining school boards, city councils, and other government assemblies from censoring comments they do not want to hear. While the Teaneck Board of Education is authorized to stop disruptive conduct—such as speakers going over time or persistently speaking on issues wholly unrelated to the school district—it cannot lawfully stretch the meaning of “disruptive” to censor or remove speakers based on subjective judgments that their remarks are inappropriate or disrespectful.

FIRE therefore calls on the Teaneck Board of Education to bring its public comment policies in line with the First Amendment, and to ensure constituents are free to comment at Board meetings without facing unconstitutional censorship. FIRE would be pleased to work with the Board to ensure its policies and practices meet these criteria.

We respectfully request a substantive response to this letter no later than December 11, 2023.

Sincerely,



Aaron Terr  
Director of Public Advocacy

Cc: Sebastian Rodriguez, President, Teaneck Board of Education  
Victoria Fisher, Vice President, Teaneck Board of Education  
André D. Spencer, Ed.D., Superintendent of Schools

---

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*



# FIRE

Foundation for Individual  
Rights and Expression

January 8, 2024

Mark A. Tabakin  
Weiner Law Group LLP  
629 Parsippany Road  
P.O. Box 0438  
Parsippany, New Jersey 07054

*Sent via U.S. Mail and Electronic Mail (mtabakin@weiner.law)*

Dear Mr. Tabakin:

FIRE is disappointed to have not received a response to our November 27 letter regarding the Teaneck Public Schools Board of Education's unconstitutional restriction of public comments at its October 18 meeting—and even more disappointed to learn it doubled down on that censorship by adopting vague and viewpoint-discriminatory public comment guidelines.<sup>1</sup>

The new guidelines state that the Board president “may interrupt or terminate any individual’s speaking privilege if the speaker’s comments are excessively loud, profane, vulgar, inflammatory, threatening, abusive, or disparaging language or racial or ethnic slurs, disruptive, obscene, or otherwise in violation of applicable law.” As explained in our prior letter (enclosed), the Board may prohibit threats and disruptive conduct and encourage respectful discourse, but it cannot impose vague, overbroad, and easily abused restrictions on comments in the name of decorum—including undefined bans on “vulgar,” “inflammatory,” “abusive,” or “disparaging” language. As the Supreme Court has held, restricting “disparaging” speech impermissibly discriminates based on viewpoint.<sup>2</sup> Board members may personally consider some criticisms disparaging, inflammatory, or otherwise objectionable, but that alone does not strip them of constitutional protection.

The Board therefore must not delay amending its public comment policies and guidelines, which violate the First Amendment rights of Teaneck residents and needlessly expose the Board to liability. The Supreme Court has been clear that the “loss of First Amendment

---

<sup>1</sup> TEANECK PUB. SCHS., BOARD OF EDUCATION – PUBLIC COMMENT GUIDELINES (DISTRIBUTED), <https://filecabinet7.eschoolview.com/560703AE-3BF2-44D3-B5F9-CAE9D23F7E86/50bed7f8-8ddb-45e1-bd73-13c53cc9b98f.pdf>.

<sup>2</sup> *Matal v. Tam*, 582 U.S. 218, 243 (2017); see also *Iancu v. Brunetti*, 139 S. Ct. 2294, 2300 (2019) (determination of whether something is “immoral” or “scandalous” is viewpoint-based because it “distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation”).

freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”<sup>3</sup> FIRE stands ready to assist the Board in remedying the unconstitutional defects in its current approach while helping to find constitutional ways to ensure its meetings proceed without disruption.

We respectfully request a substantive response no later than January 18, 2024.

Sincerely,



Aaron Terr  
Director of Public Advocacy

Cc: Clara Williams, President, Teaneck Board of Education  
Kassandra Reyes, Vice President, Teaneck Board of Education  
Victoria Fisher, Trustee, Teaneck Board of Education  
André D. Spencer, Ed.D., Superintendent of Schools

Encl.

---

<sup>3</sup> *Elrod v. Burns*, 427 U.S. 347, 373 (1976).



March 15, 2024

Mark A. Tabakin  
Weiner Law Group LLP  
629 Parsippany Road  
P.O. Box 0438  
Parsippany, New Jersey 07054

*Sent via U.S. Mail and Electronic Mail (mtabakin@weiner.law)*

Dear Mr. Tabakin:

Thank you for your responses to FIRE’s November 27, 2023, and January 8, 2024, letters concerning the Teaneck Public Schools Board of Education’s restriction of input at its October 18 meeting and the Board’s public comment guidelines. Your January 8 response indicated you would review FIRE’s latest letter with the Board. Accordingly, we are disappointed to have not heard further regarding the need for the Board to revise its viewpoint-discriminatory policies and guidelines to avoid violating Teaneck citizens’ First Amendment rights going forward.

Your December 19 letter characterized the Board’s public comment period as a limited public forum, which means any speech restriction must be well-defined, viewpoint-neutral, and reasonable in light of the forum’s purpose<sup>1</sup>—criteria the public comment limits at the October 18 meeting failed to meet. This failure is underscored by your claim that the Board, despite “intend[ing] to be viewpoint neutral,” set about “addressing whether, in the context of a school board meeting attended by and viewed by children, certain language was unnecessarily graphic and—as to those children—potentially harmful.” But as FIRE explained previously, the presence of minors at a meeting does not grant the Board license to shut down whatever comments it deems inappropriate for those under 18 to hear.<sup>2</sup>

In short, the First Amendment bars government actors from policing speech under such a subjective and vague standard, as it both fails to give speakers reasonable notice of what speech

---

<sup>1</sup> *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995); *Eichenlaub v. Twp. of Ind.*, 385 F.3d 274, 280 (3d Cir. 2004).

<sup>2</sup> *See, e.g., Marshall v. Amuso*, 571 F. Supp. 3d 412, 425 (E.D. Pa. 2021) (“However laudable the desire to be conscientious when it comes to adult behavior as may be witnessed by children, the School Board cannot hide behind the possible presence of children to justify an unconstitutional policy.”). *Cf. Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011) (rejecting any governmental “free-floating power to restrict the ideas to which children may be exposed”).

is allowed and inevitably facilitates arbitrary or viewpoint-discriminatory enforcement.<sup>3</sup> And that is exactly what happened on October 18. The Board repeatedly cut off commenters critical of the superintendent when they described Hamas’s actions in “graphic” terms, while those supportive of the superintendent and/or holding pro-Palestinian views were free to indulge in similar or even more-explicit descriptions—including one who said that “kids are stabbed 26 times just for being Palestinian” and that “women are run over just for wearing a hijab.”

Whatever the Board’s intentions, its decisions regarding what comments to allow were not viewpoint neutral. Moreover, its actions demonstrated why its unwritten rule against comments it considers inappropriate for children is unworkable and unconstitutional.

Your December 19 letter also claims the Board attempted to address the “manner in which members of the public comported themselves,” which you characterized as “overtly aggressive/threatening” in a manner that purportedly “created actual and imminent disruption to the meeting.” Yet none of the censored commenters threatened violence. While some might have spoken passionately, that does not justify restricting their speech. Meanwhile, other commenters, whom the Board did *not* interrupt, also raised their voices and could likewise be viewed as angry or “aggressive,” further demonstrating how vague decorum rules allow arbitrary and viewpoint-based enforcement.

As the Supreme Court has made clear, debate on public issues “should be uninhibited, robust, and wide-open” and “may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”<sup>4</sup> The Board can certainly remove commenters who make *actual* threats or who *actually* disrupt meetings by, for example, speaking beyond the allotted time. But speaking with intensity about relevant issues during the allotted comment time is not a disruption. If anyone disrupted the meeting, it was Board members who cut off commenters exercising their First Amendment rights.

The Board must take prompt action to revise its public comment rules. As discussed in FIRE’s January 8 letter, the rules requiring revision include undefined, viewpoint-discriminatory, and otherwise unconstitutional bans on “vulgar,” “inflammatory,” “abusive,” and “disparaging” language.<sup>5</sup> Again, we would be pleased to assist the Board in remedying the constitutional defects in its current approach while helping it find ways to ensure that its meetings can proceed without disruption.

---

<sup>3</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (regulations must “provide explicit standards for those who apply them” to prevent “arbitrary and discriminatory enforcement”).

<sup>4</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

<sup>5</sup> TEANECK PUB. SCHS., BOARD OF EDUCATION – PUBLIC COMMENT GUIDELINES (DISTRIBUTED), <https://filecabinet7.eschoolview.com/560703AE-3BF2-44D3-B5F9-CAE9D23F7E86/50bed7f8-8ddb-45e1-bd73-13c53cc9b98f.pdf>.

We respectfully request a substantive response no later than March 22, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Terr', with a long horizontal flourish extending to the right.

Aaron Terr  
Director of Public Advocacy

Cc: Clara Williams, President, Teaneck Board of Education  
Kassandra Reyes, Vice President, Teaneck Board of Education  
Victoria Fisher, Trustee, Teaneck Board of Education  
André D. Spencer, Ed.D., Superintendent of Schools

[< Prev](#) [Next >](#)[To Regulation](#)[Search District Policies](#)[District Policies TOC](#)

## District Policy

### 0167 - PUBLIC PARTICIPATION IN BOARD MEETINGS

Section: Bylaws  
 Date Created: March 2012  
 Date Edited: May 2016

The Board of Education recognizes the value of public comment on educational issues and the importance of allowing members of the public to express themselves on school matters of community interest.

In order to permit the fair and orderly expression of such comment, the Board shall set aside a portion of every Board meeting, the length of the portion to be determined by the Board, for public comment on any school or school district issue that a member of the public feels may be of concern to the residents of the school district.

Public participation shall be governed by the following rules:

1. A participant must be recognized by the presiding officer and must preface comments by an announcement of his/her name, municipality, residence, and group affiliation, if applicable;
2. Each statement made by a participant shall be limited to (not less than three) 3 minutes' duration;
3. No participant may speak more than once on the same topic until all others who wish to speak on that topic have been heard;
4. All statements, questions, or inquiries shall be directed to the presiding officer and any questions or inquiries directed by a participant to another Board member shall be redirected to the presiding officer who shall determine if such statement, question, or inquiry shall be addressed by the presiding officer on behalf of the Board or by the individual Board member
5. The presiding officer may:
  - a. Interrupt, warn, and/or terminate a participant's statement, question, or inquiry when it is too lengthy;
  - b. Interrupt and/or warn a participant when the statement, question, or inquiry is abusive, obscene, or may be defamatory;
  - c. Request any person to leave the meeting when that person does not observe reasonable decorum;
  - d. Request the assistance of law enforcement officers in the removal of a disorderly person when that person prevents or disrupts a meeting with an act that obstructs or interferes with a meeting;
  - e. Call for a recess or an adjournment to another time when the lack of public decorum interferes with the orderly conduct of the meeting; and
  - f. Waive these rules when necessary for the protection of privacy or to maintain an orderly operation of the Board meeting

N.J.S.A. 2C:33-8  
 N.J.S.A. 10:4-12

Adopted: 14 March 2012  
 Revised: 11 May 2016





**Board of Education – Public Comment Guidelines (Distributed)**

As a Board, we must serve as role models for our scholars. The way we conduct ourselves tonight can impact their civic participation in the future.

In accordance with New Jersey statute (N.J.S.A. 10:4-12), opportunities are provided for members of the public to speak, but open dialogue between the Board and the public is not part of this meeting.

The Board President is responsible for maintaining a respectful environment during public participation so that public comments can be heard and considered by the Board. The President, therefore, may interrupt or terminate any individual's speaking privilege if the speaker's comments are excessively loud, profane, vulgar, inflammatory, threatening, abusive, or disparaging language or racial or ethnic slurs, disruptive, obscene, or otherwise in violation of applicable law. Further, an individual may be cautioned that a personally directed statement may be slanderous or defaming and that the individual may be liable for his/her statement. All meetings are recorded and, therefore, statements made during public participation cannot be altered or amended and shall be included in the minutes as presented.

No person shall engage in disorderly or boisterous conduct, including the utterance of loud, physically threatening or abusive/profane/threatening/disparaging language, or other acts which disturb, disrupt, or otherwise impede the orderly conduct of any meeting and the ability of the public to hear or participate. Any person who conducts himself in the aforementioned manner shall, at the discretion of the presiding officer or a majority of the body, be requested to refrain from such conduct or be barred from further participation. If a speaker who has violated these rules refuses to step down, the Board President may ask for the individual to be removed from the meeting room and may be subject to disorderly conduct charges.

691 Teaneck Road,  
Teaneck, NJ 07666

Phone: 201-261-8333  
Fax: 201-261-8333





Individuals addressing the Board should take into consideration the rules of common courtesy.

The public participation portion of the meeting cannot be used to make personal attacks against a Board member, District employee, or student that are unrelated to the administration of the District.

All speakers will be allotted no more than three minutes for comment. The subject matter shall be limited to topics of public concern. Individuals may not give their time to another individual. Speakers must be present – virtually or in-person - when their names are called.

To enable as many members of the community to speak as possible, neither the Board nor the Superintendent will respond directly to any questions raised during the public input period. If you have a question or comment that requires a direct response, we encourage you to put your questions in an email to the Board secretary at [tpsboequestions@teaneckschools.org](mailto:tpsboequestions@teaneckschools.org).

# WEINER LAW GROUP<sub>LLP</sub>

629 Parsippany Road  
P. O. Box 0438  
Parsippany, New Jersey 07054  
(P) 973-403-1100 (F) 973-403-0010  
www.weiner.law

**MARK A. TABAKIN**  
**Member of the Firm**

**mtabakin@weiner.law**

November 16, 2023

**VIA EMAIL AND CERTIFIED MAIL – R.R.R.**

Keith Kaplan



**Re: Conduct During October 18, 2023 Board of Education Meeting**

Dear Mr. Kaplan:

Please be advised that this Firm represents the Teaneck Board of Education (the “Board”). I am writing to address your conduct during the recent Board meeting on October 18, 2023. Your conduct, including screaming and yelling, was disruptive and crossed the boundaries of constructive dialogue. The public participation portion of a Board meeting is a “limited public form.” This means that the Board may regulate decorum and the general subject matter of public comments. The Board may prohibit profane or abusive language having no other purpose than to be threatening. The Board will not allow any speaker to commandeer public participation for personal and/or private grievances that have no nexus to the school community. The Board’s goal is to cultivate a space where all voices are heard in a manner that advances a conducive and respectful exchange of ideas. However, reasonable time, place, and manner restrictions on speech are lawful, and the Board will not allow the type of behavior you exhibited. The Board takes no position with respect to the subject matter of your comments. Simply put, while the Board is sensitive to content-based prohibitions, in this situation, it was not what you said, it was how you comported yourself that is objectionable.

Due to your overtly aggressive and threatening conduct directed towards students and Board members in connection with what can be characterized as a non-Board matter, you created actual and imminent disruption. Thus, you were asked to leave to prevent further interference with the meeting. District Policy 01167 regarding Public Participation in Board Meetings, provides as follows:

The Board of Education recognizes the value of public comment on educational issues and the importance of allowing members of the public to express themselves on school matters of community interest.

\* \* \*

Public participation shall be governed by the following rules:

5. The presiding officer may:
  - b. Interrupt and/or warn a participant when the statement, question, or inquiry is abusive, obscene, or may be defamatory;
  - c. Request any person to leave the meeting when that person does not observe reasonable decorum;
  - d. Request the assistance of law enforcement officers in the removal of a disorderly person when that person prevents or disrupts a meeting with an act that obstructs or interferes with a meeting;
  - e. Call for a recess or an adjournment to another time when the lack of public decorum interferes with the orderly conduct of the meeting; and
  - f. Waive these rules when necessary for the protection of privacy or to maintain an orderly operation of the Board meeting. (emphasis added).

While the Board values public input and encourages active participation, it must be done in a manner that respects the rights and perspectives of others. To the extent you wish to participate in future public meetings, you must comport yourself to the Board's stated decorum guidelines. If you fail to do so, you will be removed. If you cannot comport yourself in an appropriate manner, you may be barred from attending future meetings.

Please be guided accordingly.

Very truly yours,

WEINER LAW GROUP LLP

By: Mark A. Tabakin

Mark A. Tabakin

A Member of the Firm

MAT:DS

cc: Dr. Andre Spencer, Superintendent of Schools  
Sebastian Rodriguez, Board President  
Victoria Fisher, Vice-President