



July 15, 2026

Edison Board of Education
c/o Patty Tymon
Executive and Confidential Secretary to the Superintendent
Edison Township Public Schools
312 Pierson Avenue
Edison, New Jersey 08837

Sent via U.S. Mail and Electronic Mail (Patricia.Tymon@edison.k12.nj.us)

Dear Edison Board of Education members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by the Edison Board of Education's restrictions on public participation at Board meetings. The First Amendment prohibits public bodies from adopting or enforcing vague or viewpoint-discriminatory rules. FIRE calls on the Board of Education to bring its policies and practices into compliance with the First Amendment.

Our concerns involve Policy 0167, which governs public participation in Board meetings,¹ and also arise from the removal of a speaker during the Board's May 19, 2026, Action Meeting.²

The policy grants considerable discretion to the presiding officer to regulate public participation. Although the rules already impose an objective six-minute limit on public comments, they also independently authorize the presiding officer to "[i]nterrupt, warn, and/or terminate a participant's statement, question, or inquiry when it is too lengthy." The presiding officer is likewise authorized to "[i]nterrupt and/or warn a participant when the statement, question, or inquiry is abusive, obscene, or may be defamatory." When any person "does not observe reasonable decorum," the presiding officer may ask the person to leave the meeting. The presiding officer may "request the assistance of law enforcement officers in the removal of a disorderly person," call for an adjournment "when the lack of public decorum so interferes with the orderly conduct of the meeting," "take any other action to the extent permitted by law," or even waive the rules entirely "when necessary for the protection of

¹ Edison Board of Education Policies, Policy 0167 (created Jan. 2011, ed. Nov. 2021) [hereinafter Policy 0167], available through the Board's policy repository, <https://www.straussesmay.com/seportal/Public/DistrictPolicy.aspx?policyid=0167&id=872d7fa6dac44a08ba4829100fa19af7>.

² EdisonBOE, *Board of Education Action Meeting May 19, 2026*, YOUTUBE (May 21, 2026) [hereinafter May 19 video], at 2:18:30, <https://www.youtube.com/watch?v=H8mQJip28sk&t=8310s>.

privacy or to maintain an orderly operation of the Board meeting.”³ In addition, the policy requires speakers to announce their name, municipality of residence, and group affiliation, if applicable.

The Board’s enforcement of these rules was on display during its May 19, 2026, meeting. Right before a speaker stepped forward for public comment, a Board official suggested reducing the policy allotted speaking time from six minutes to three.⁴ The Board President then instructed the speaker to state his name and address, to which he responded, “For a Good Time at 9 Finch Court.”⁵ He then objected to the requirement, saying, “I don’t have to tell you shit.”⁶ A Board official immediately told him to “watch his language.”⁷ The Board President then instructed security to remove the speaker “for using the bad words.”⁸ Before security removed the speaker, the Board President declared the speaker’s time was forfeited⁹ and proceeded to cite the speaker’s time being up as a reason for removing him.¹⁰ When the speaker objected that he still had over four and a half minutes left, the Board President responded, “I control this meeting. Your time is up.”¹¹ Security then removed the speaker from the meeting.¹²

The policy and the Board’s May 19 actions are each problematic under the First Amendment, which protects speech by members of the public at government meetings. Public comment periods are, at minimum, limited public forums where the government may impose only viewpoint-neutral restrictions that are reasonable in light of the forum’s purpose. The government may, for example, adopt reasonable time limits on comments—as the Board here does in limiting comments to six minutes. It can also prohibit genuinely disruptive conduct—such as speaking when not recognized or making true threats. However, it may not stretch the meaning of disruption to encompass constitutionally protected speech. Likewise, it cannot require speakers to say that which they do not wish to say when such requirements would unreasonably chill speech or impair the speaker’s message.

Policy 0167 is Facially Unconstitutional

Discretion and vagueness

Policy 0167 unconstitutionally grants the presiding officer extraordinary discretion. Rule 6 is entirely a list of things the presiding officer “may” do. Depending on the offense, he may

³ Policy 0167, *supra* note 1.

⁴ Video posted by Christo Makropoulos Jersey Watcher, FACEBOOK (May 23, 2026, at 9:27 ET), at 0:02, <https://www.facebook.com/reel/1614409526524132>.

⁵ May 19 video, *supra* note 2, at 2:18:39, <https://www.youtube.com/watch?v=H8mQJip28sk&t=8319s>.

⁶ *Id.* at 2:19:33.

⁷ *Id.* at 2:19:36.

⁸ *Id.* at 2:19:39.

⁹ *Id.* at 2:19:54.

¹⁰ *Id.* at 2:20:29.

¹¹ *Id.* at 2:20:33.

¹² *Id.*

interrupt, warn, terminate a participant’s speech, request a person to leave, request that law enforcement remove someone, or call for a recess of the meeting. The rule concludes by granting him both the authority to take “any other action to the extent permitted by law” and to “[w]aive these rules when necessary for the protection of privacy or to maintain an orderly operation of the Board meeting,” simultaneously making the rules non-exhaustive and merely suggestive.

This discretionary framework, on its own, renders Policy 0167 constitutionally infirm. The Constitution requires that government policies “provide explicit standards for those who apply them” in order to prevent government officials from engaging in “arbitrary and discriminatory enforcement.”¹³ By granting the presiding officer such discretion, Policy 0167 provides nearly no standards and invites arbitrary enforcement.

But even if the policy did not explicitly enshrine such excessive discretion, many of the terms are unconstitutionally vague. Terms such as “abusive,” “reasonable decorum,” and “too lengthy”—to the extent that provision operates independently of the six-minute limit, as it appears to do—lack precise, objective meanings and thus fail to “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.”¹⁴ No speaker can know when sharp criticism crosses the line into “abusive” language or what conduct violates “reasonable decorum.” As a result, these restrictions “may trap the innocent by not providing fair warning.”¹⁵

Viewpoint discrimination

The discretion and vague standards within the policy also raise the risk that the Board will apply the restrictions in a viewpoint discriminatory manner, which would be presumptively unconstitutional.¹⁶ The government may not restrict expression “when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”¹⁷

Even if the presiding officer avoids censoring general criticism, any interruption or warning to a participant for an “abusive” statement, question, or inquiry—as the rules explicitly allow—would be inherently viewpoint discriminatory and therefore unconstitutional. As the Supreme Court has explained: “Giving offense is a viewpoint” the First Amendment protects.¹⁸ Even a ban that “evenhandedly prohibits disparagement of all groups” is viewpoint-discriminatory,¹⁹

¹³ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

¹⁴ *Id.* at 108–109; see also *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

¹⁵ *Grayned*, 408 U.S. at 108.

¹⁶ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) (“Discrimination against speech because of its message is presumed to be unconstitutional.”).

¹⁷ *Id.* at 829 (1995).

¹⁸ *Matal v. Tam*, 582 U.S. 218, 243 (2017).

¹⁹ *Id.*

and federal courts across the country have invalidated similar rules banning “abusive” speech because it is viewpoint discriminatory.²⁰

“Obscene” and “defamatory” speech

Policy 0167 invites the presiding officer to “[i]nterrupt, and/or warn a participant when the statement, question, or inquiry is . . . obscene, or may be defamatory.” It is unclear whether the policy uses those terms in their colloquial sense or is meant to track the First Amendment’s narrowly defined exceptions for obscenity and defamation. Even if it is intended to incorporate First Amendment standards, it still presents constitutional problems by authorizing the presiding officer to make complex legal determinations on the spot.

Whether a statement is defamatory requires a fact-intensive legal analysis that courts must perform under constitutionally prescribed standards.²¹ Policy 0167 is constitutionally infirm in leaving that determination not to a court, with all attendant procedural safeguards, but “to one person” such as the president of a board, “without regard for such niceties as whether the statement, though critical, is true, or whether, though false, is privileged, or whether, though couched as fact (e.g., ‘X is a racist’), is legally an expression of opinion rather than a statement of fact and hence not actionable”²²

Obscenity likewise has a specialized meaning that, in the legal sense, is much narrower than its colloquial understanding. Expression is legally obscene only if (1) the “average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;” (2) it portrays “sexual conduct” in a “patently offensive” manner; and (3) “taken as a whole,” it lacks “serious literary, artistic, political, or scientific value.”²³ The term reaches only certain depictions of hardcore sexual conduct.²⁴ The Supreme Court has consistently rejected efforts to expand that definition beyond its focus on content that is sexual in nature.²⁵ The Board may not restrict speech as “obscene” simply because it is offensive, crude, or sensual.

²⁰ See, e.g., *Moms for Liberty v. Brevard Pub. Sch.*, 118 F.4th 1324 (11th Cir. 2024); *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887 (6th Cir. 2021); *Marshall v. Amuso*, 571 F. Supp. 3d 412, 425–26 (E.D. Pa. 2021).

²¹ Those standards require a plaintiff to prove (1) the speaker made a false statement of fact, as opposed to a true statement or opinion; (2) unprivileged publication of that statement to a third party; (3) fault, which in the case of speech about a public figure or official means the speaker knew the statement was false or recklessly disregarded the truth; and (4) damages. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); *DeAngelis v. Hill*, 847 A.2d 1261, 1268 (N.J. 2004).

²² *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 728 n.6 (C.D. Cal. 1996).

²³ *Miller v. California*, 413 U.S. 15, 24 (1973) (internal quotation marks omitted).

²⁴ *Penguin Random House LLC v. Gibson*, 796 F. Supp. 3d 1052, 1075 (M.D. Fla. 2025).

²⁵ See, e.g., *United States v. Stevens*, 559 U.S. 460 (2010) (rejecting application of the obscenity exception to animal crushing videos); *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786 (2011) (denying obscenity exception as applied to violent video games).

Policy 0167 therefore grants the presiding officer authority to police speech either according to unclear, subjective criteria or to legal standards that cannot lawfully or realistically be applied during the course of a public meeting.

The Board's Actions on May 19 were Unconstitutional

The Board's actions during the May 19 meeting leading up to the removal of a speaker, and the removal itself, were unconstitutional. The problems started when the Board asked the speaker his name and address, which goes beyond Policy 0167's requirement for speakers to announce their "name, *municipality of residence*, and group affiliation, if applicable."²⁶ The demand that the speaker publicly disclose his home address raises substantial First Amendment concerns. A federal court in the Third Circuit—which includes New Jersey—recently preliminarily enjoined a school board from enforcing a policy requiring speakers at public comment sessions to state their home address aloud before speaking because it compelled speech without any reasonable justification.²⁷ The court noted "the chilling effect of being forced to announce to all present one's actual home address before speaking on a hotly-contested issue is clear."²⁸ Going forward, the Board should refrain from going beyond its written policy by requiring speakers to state their address.²⁹

The constitutional problems escalated when the speaker, upset at the demand to share his address, told the Board, "I don't have to tell you shit."³⁰ Even though there is no written rule against profanity, a Board official immediately told the speaker to "watch his language,"³¹ and the Board President quickly instructed security to remove the speaker "for using the bad words."³² These directives were unconstitutional.

There is no profanity exception to the First Amendment. In fact, the Supreme Court has protected the right to wear a jacket reading "Fuck the Draft" in a public courthouse where children were present.³³ In doing so, the Court noted that "so long as the means are peaceful, the communication need not meet standards of acceptability."³⁴ As one court has observed, "courts have generally held that outright prohibitions on profane language or profanity are not

²⁶ Policy 0167, *supra* note 1. Emphasis added.

²⁷ *Marshall v. Amuso*, 571 F. Supp. 3d 412, 426 (E.D. Pa. 2021) ("Compelled speech is subject to the same analysis as prohibitions from speaking. . . . [R]equiring the speaker to announce their specific home address is an unreasonable restriction. Each speaker's address can be collected when they sign up for their speaking slot.").

²⁸ *Id.*

²⁹ FIRE reserves judgment as to whether a requirement that speakers publicly disclose their name and municipality is constitutional. While less intrusive than requiring public disclosure of a speaker's residential address, such a requirement nevertheless implicates First Amendment protections around compelled and anonymous speech.

³⁰ May 19 video, *supra* note 2, at 2:19:33.

³¹ *Id.* at 2:19:36.

³² *Id.* at 2:19:39.

³³ *Cohen v. California*, 403 U.S. 16 (1971).

³⁴ *Id.* at 25.

allowed.”³⁵ This is because of the “bedrock principle underlying the First Amendment” that officials cannot restrict speech simply because some find it “offensive or disagreeable.”³⁶ Bans on profanity also present serious vagueness concerns, as they do not provide speakers with adequate notice of what specific words are prohibited but afford officials discretion to decide what speech to allow.³⁷ Here, the lack of notice and unbounded discretion are far worse and unavoidable, as there is not even a written rule against profanity, making notice impossible.

Nothing here means to suggest the Board cannot remove genuinely disruptive speakers. But it may not conflate mere use of provocative language with a breach of decorum or disruption of proceedings. As one court has explained, “Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption.”³⁸ Here, the Board President ordered a speaker removed for “bad words,” declared his time forfeited and used *that* as the justification for having him removed, and, after the speaker objected that he still had over four and half minutes left, underscored the breadth of his authority by stating, “I control this meeting. Your time is up.”³⁹ That is unconstitutional censorship of speech, not prevention of actual disruption.

Conclusion

Policy 0167 unconstitutionally grants the presiding officer extraordinary authority over public comments and empowers him to censor protected speech. To comply with the Board’s First Amendment responsibilities, it must amend the policy. It also must refrain from removing speakers for engaging in protected expression, including for mere use of profanity or other provocative language that does not actually disrupt Board proceedings. We are happy to assist the Board in crafting a policy that respects constitutional limits, at no cost, and respectfully request a substantive response to this letter no later than July 30, 2026.

Sincerely,



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Program Counsel, Public Advocacy

³⁵ *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1355 (N.D. Ga. 2022) (citing as examples *Acosta v. City of Costa Mesa*, 718 F.3d 800, 813 (9th Cir. 2013) (“§ 2-61 prohibits the making of ‘personal, impertinent, profane, insolent or slanderous remarks.’ That, without limitation, is an unconstitutional prohibition on speech”); *Kalman v. Cortes*, 723 F. Supp. 2d 766, 798–99 (E.D. Pa. 2010) (a restriction on “‘profanity,’ without more, is not a valid reason for suppressing speech”)).

³⁶ *Texas v. Johnson*, 491 U.S. 397, 414 (1989); see also *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944) (explaining freedom of expression necessarily protects “not only informed and responsible criticism,” but also “freedom to speak foolishly and without moderation,” particularly in criticizing “public men and measures”).

³⁷ See *Mama Bears of Forsyth Cnty.*, 642 F. Supp. 3d at 1354 (describing a prohibition on “profane” remarks as “perhaps the most challenging, largely because it is not entirely clear what the word profanity means and what type of speech it encompasses.”).

³⁸ *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010) (*en banc*) (rejecting city council’s attempt to “define ‘disturbance’ in any way they choose.”).

³⁹ May 19 video, *supra* note 2, at 2:19:39–2:20:44.