



July 31, 2026

Board of Education
Chautauqua County Community Unified School District 286
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Dear Board Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by the Chautauqua County Community USD 286 School Board's unconstitutional restrictions on public comment at its meetings. The First Amendment prohibits public bodies from adopting or enforcing vague, overbroad, or viewpoint-discriminatory rules that infringe citizens' rights to speak freely and criticize government officials. FIRE calls on the Board to bring its policies and practices into compliance with the First Amendment.

Our concerns arise from the Board's prohibition on "[a]ttacks on personal integrity, character, or competency of any employee or student"; its ban on "address[ing] personal matters about specific employees, student matters, matters under active litigation, and confidential information"; and its directive that "[s]peakers shall maintain an appropriate level of decorum, courtesy, and professionalism" during public comment.¹

We are also concerned by the Board's enforcement of these policies to silence protected speech. For example, on August 4, 2025, John Brown, who has participated in public comment multiple times, received a letter from Superintendent Jamie Wetig about public comment expectations and disapproving the "nature and tone" of Brown's recent comments criticizing the District's indifference to alleged violations of the Americans with Disabilities Act.² Wetig explained "[t]he Kansas Association of School Boards (KASB) recommends that boards establish clear expectations that prohibit comments which include: [t]hreats of legal action or litigation,

¹ USD 286 Schools, Public Comment at Hearing of Visitors, available through the Chautauqua County Community Unified School District 286's website, https://www.usd286.org/246862_2.

² Letter from Jamie Wetig, Superintendent of Schools, USD 286 Chautauqua County Community Schools, to John Brown, Re: Public Comment During Board of Education Meetings (August 4, 2025) (on file with author).

[p]ersonal attacks or defamatory statements against board members, staff, or other individuals, [d]iscussion of specific personnel or student matters, which are protected under privacy laws such as the Family Educational Rights and Privacy Act (FERPA) and K.S.A. 45-221 (a)(4) & (10).”³ The letter further warned, “Repeated violations of these guidelines, including general allegations, threats of lawsuits, or personal attacks, will not be tolerated.”⁴

The Board’s Public Comment Policies and Practices Violate the First Amendment

The First Amendment protects speech by members of the public at government meetings.⁵ Public comment periods by their nature 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.⁶ The Board may, for example, adopt reasonable time limits on comments—as the Board does here in limiting comments to three minutes. It can likewise prohibit genuinely disruptive conduct, such as speaking when not recognized or making true threats of violence. However, the Board may not restrict sharp criticism, require adherence to vague and subjective civility standards, or unreasonably prohibit discussion of issues relevant to the District, such as its alleged ADA violations.

Viewpoint discrimination

Under the First Amendment, the government may not restrict speech “when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”⁷ Yet the policy does exactly that in purporting to ban “[a]ttacks on the personal integrity, character or competency of any employee or student.” Such a ban unconstitutionally discriminates based on viewpoint—it selectively targets speech expressing a negative or critical perspective while allowing praise of employees’ character. The Supreme Court has made clear that even a restriction that “evenhandedly prohibits disparagement of all groups” is viewpoint discriminatory,⁸ and federal courts across the country have invalidated similar rules banning “personal attacks” or “antagonistic,” “abusive,” “derogatory,” “offensive,” “rude,” “insulting,” or “personally directed” public comments.⁹ These decisions reflect our “profound national

³ *Id.*

⁴ *Id.*

⁵ *City of Madison, Joint Sch. Dist. No. 8 v. Wisc. Emp. Rels. Comm’n*, 429 U.S. 167, 174–76 (1976).

⁶ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

⁷ *Id.* at 829.

⁸ *Matal v. Tam*, 582 U.S. 218, 243 (2017).

⁹ See, e.g., *Boddy v. Grech*, 178 F.4th 264 (6th Cir. 2026) (even ad hominem attacks receive First Amendment protection, because “giving offense is a viewpoint”) (citing *Matal v. Tam*, 582 U.S. 218, 220 (2017)); *Moms for Liberty – Brevard Cnty. v. Brevard Cnty. Pub. Schs.*, 118 F.4th 1324 (11th Cir. 2024) (enforcement of restrictions on “abusive,” “personally directed,” and “obscene” public comments was unconstitutional); *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 894–95 (6th Cir. 2021) (bans on “antagonistic,” “abusive,” and “personally directed” public comments violated First Amendment as effectuating “impermissible viewpoint discrimination” by prohibiting nondisruptive speech “purely because it disparages or offends”); *Mejia v. Lafayette Consol. Gov’t*, No. 6:23-CV-00307, 2025 U.S. Dist. LEXIS 52868, at *24–25 (W.D. La. Mar. 20, 2025) (library board had no authority to restrict public comments on grounds they were “vile,” “derogatory,” or “confrontational”); *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1350 (N.D. Ga. 2022) (school

commitment to the principle that 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.”¹⁰ The government cannot allow government officials to “be praised but not condemned.”¹¹

Unreasonable restrictions on public comment topics

The policy’s broad prohibitions on discussion of “personal matters about specific employees, student matters, matters under active litigation, and confidential information” are, at a minimum, unreasonable and therefore unconstitutional in light of the Board’s stated purpose of allowing public comment on “district policies, programs, operations, facilities, and finances.” These constitutional problems are compounded by Superintendent Wetig’s apparent interpretation of the policy to prohibit even threats of legal action and seemingly *any* discussion of personnel matters, whether “personal” or not.

A blanket ban on “matters under active litigation” sweeps in numerous circumstances of protected speech relevant to District operations, such as whether those operations comply with the law. If a speaker, for example, expresses concerns regarding a District policy—something the Board designates as an appropriate topic for public comment—the comment should not be prohibited simply because that policy is being challenged in court. The specific ban on mere threats of legal action or litigation is likely viewpoint-discriminatory because it singles out speakers expressing an adversarial position toward the District. Even if observed as a viewpoint-neutral restriction on content, it is unreasonable. Although government officials themselves “may well have an interest” in discussing “sensitive personnel or litigation matters” in private, it is “difficult to see . . . how that interest translates into a significant interest in restricting the public’s ability to present its views on personnel or litigation matters at a public meeting.”¹² Any such limits on the Board members’ discussion of certain topics does not require them to do anything in response to a public comment: “they can just sit and listen and then discuss matters . . . among themselves at a closed meeting.”¹³

The ban on discussing “specific personnel or student matters”—in a forum designed to allow the public to express concerns related to District operations—is unreasonable for similar reasons.¹⁴ In many circumstances, members of the public cannot meaningfully comment on government actions without referencing the individuals who carry them out: “If a parent has a grievance about, say, a math teacher’s teaching style, it would be challenging to adequately

district’s public comment protocols stating that “attacks of a personal nature . . . will not be allowed or tolerated” constituted evidence of viewpoint discrimination).

¹⁰ *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

¹¹ *Barron v. Kolenda*, 203 N.E.3d 1125, 1139 (Mass. 2023) (quoting *Matal*, 582 U.S. at 249 (Kennedy, J., concurring)).

¹² *Mesa v. White*, 197 F.3d 1041, 1046 (10th Cir. 1999).

¹³ *Id.*

¹⁴ *Moms for Liberty*, 118 F.4th at 1337 (holding unconstitutional a school board’s prohibition on “personally directed speech” because it “actively obstructs a core purpose of the Board’s meetings—educating the Board and the community about community members’ concerns.”).

explain the problem without referring to that math teacher. Or principal. Or coach. And so on. Likewise, when a parent wishes to praise a teacher or administrator.”¹⁵ Even if the restriction is limited to “personal matters about specific employees,” speech could be unreasonably restricted. The Board can, of course, require comments to relate to school business, but many matters concerning individual employees’ performance may be both “personal” and directly relevant to District operations, particularly given the lack of any definition for “personal.” As for students, it is unclear whether the word “specific” in Superintendent Wetig’s letter is meant to modify “student matters.” Notably, the publicly posted policy contains no such qualification. A ban on discussing “student matters” broadly would make meaningful discussion of “district policies, programs, operations, facilities, and finances” impossible whenever those discussions concern students. Even if the policy is understood to prohibit only discussion of specific students, it would unreasonably bar a mother from referencing her own child.

Nor do either FERPA or Kansas statutes justify such restrictions. First, the restrictions’ broad language covers significantly more information than those statutes cover. Second, while it is true FERPA prohibits educational institutions from releasing certain education records, it applies only to educational agencies and institutions themselves, not members of the general public.¹⁶ If a member of the public independently learns of information the school could not disclose under FERPA, the law does not prohibit that person from discussing it publicly.¹⁷ K.S.A. 45-221(a)(4) and (10) likewise provide no basis for restricting public comment, as they concern only information public agencies “shall not be required to disclose”—they do not establish mandatory confidentiality.¹⁸ Further, because a member of the public has a right to discuss this and other “confidential information” (in the policy’s words) outside Board meetings, barring discussion during meetings serves no privacy interest. As with the prohibition on discussing “matters under active litigation,” simply because the Board cannot discuss a topic publicly does not mean it can restrict members of the public from doing so.

¹⁵ *Id.*

¹⁶ See 20 U.S.C. § 1232g(b)(1) (“No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization”); see also 34 CFR § 99.1 (“To which educational agencies or institutions do these regulations apply? (a) Except as otherwise noted in §99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary . . .”); *id.* at § 99.3 (defines “education records” as records “maintained by an educational agency or institution”).

¹⁷ See *Does FERPA permit school officials to release information that they personally observed or of which they have personal knowledge?*, U.S. DEP’T OF EDUC. (explaining FERPA does not prohibit even school officials “from releasing information about a student that was obtained through the school official’s personal knowledge or observation, rather than from the student’s education records”), <https://studentprivacy.ed.gov/faq/does-ferpa-permit-school-officials-release-information-they-personally-observed-or-which-they>.

¹⁸ KAN. STAT. ANN. § 45-221(a); see also *id.* § 45-221(a)(29)(C), (a)(52), (a)(54), and (b) (describing information that “shall not” be disclosed).

Vagueness

The policy is also unconstitutionally vague because speakers “of common intelligence must necessarily guess at its meaning”¹⁹ and it lacks “explicit standards” to prevent “arbitrary and discriminatory enforcement.”²⁰ 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.”²¹ Terms like “attacks,” “student matters,” “appropriate level of decorum, courtesy, and professionalism,” and “personal matters about specific employees,” are “irreparably clothed in subjectivity” and their interpretation will vary from “speaker to speaker, and listener to listener.”²² And there is no “guidance or other interpretive tools to assist in properly applying” the policies, allowing officials’ personal views to shape enforcement.²³ These are the hallmarks of a vague speech regulation.

Does criticizing a superintendent’s handling of ADA complaints or a principal’s enforcement of disciplinary policies constitute impermissible “attacks” on “personal integrity, character, or competency,” or is it protected commentary on District operations? If a parent raises concerns that the District has ignored her allegations that a teacher has mistreated students, could that be prohibited as discussion of a “personal matter about specific employees”? Would a parent’s argument that the District’s special education program is failing students trigger the ban on discussing “student matters” if he illustrates the point by describing his own child’s experience obtaining services? The answer to these questions is unclear. The First Amendment requires objective, workable standards to give speakers fair notice of what is prohibited and meaningfully constrain official discretion. These policies fall short.

Defamation

The apparent prohibition on “defamatory statements against board members, staff or other individuals,” exceeds the Board’s authority. As an initial matter, this language comes from Superintendent Wetig’s letter and is absent from the public comment rules on the District’s website. But even assuming it reflects official policy, the Board may not appoint itself arbiter of what is defamatory, which is a question for the courts under constitutionally prescribed standards.²⁴ The restriction is thus constitutionally infirm in leaving that determination not to

¹⁹ *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

²⁰ *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

²¹ *Marshall v. Amuso*, 571 F. Supp. 3d 412, 424 (E.D. Pa. 2021) (quoting *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 21–22 (2018)). 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.” *Id.* (quoting *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243, 266 (3d Cir. 2002)).

²² *Id.*

²³ *Id.*

²⁴ 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); *Marcus v. Swanson*, 317 Kan. 752, 755, 756 (2023).

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 . . . , is legally an expression of opinion rather than a statement of fact and hence not actionable[.]”²⁵ The Board’s enforcement is thus likely to turn on officials’ personal assessments as to whether a speaker’s statement is false, unfair, or offensive—none of which, standing alone, are constitutionally permissible reasons to restrict speech.²⁶

Conclusion

When it comes to protected speech that some listeners may find objectionable, “the remedy to be applied is more speech, not enforced silence.”²⁷ FIRE calls on the Board to take immediate steps to bring its public comment policy and enforcement of it into compliance with the First Amendment.

We stand ready to assist—at no cost—in crafting policies that respect constitutional limits and preserve order at meetings, as we have done with other local governments.²⁸ We respectfully request a substantive response to this letter no later than August 14, 2026.

Sincerely,



M. Brennen VanderVeen
Program Counsel, Public Advocacy

Cc: Jamie Wetig, Superintendent

²⁵ *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 728 n.6 (C.D. Cal. 1996).

²⁶ *United States v. Alvarez*, 567 U.S. 709, 718 (2012) (holding there is no “general exception” to the First Amendment for “false statements,” which “comports with the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation”).

²⁷ *Whitney v. California*, 274 U.S. 357, 377 (1927).

²⁸ See, e.g., Carrie Robison, *VICTORY: Michigan city recognizes First Amendment right to ‘demean’ government officials*, FIRE (Jan. 17, 2024), <https://www.thefire.org/news/victory-michigan-city-recognizes-first-amendment-right-demean-government-officials>.