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SENT VIA EMAIL TO [MARTHA.WITHAM@AUGUSTASCHOOLS.ORG](mailto:MARTHA.WITHAM@AUGUSTASCHOOLS.ORG)

Augusta Schools  
40 Pierce Drive, Suite #3  
Augusta, ME 04330  
c/o Martha Witham

April 8, 2026

## RE: Public Participation at Board Meetings

Dear Chair Witham,

I am writing on behalf of the New England First Amendment Coalition. NEFAC is the region's leading advocate for First Amendment freedoms and the public's right to know about government. The coalition is a non-partisan and non-profit organization that believes in the power of citizen engagement in a democratic society. Its Board of Directors and Advisors include many of the state's top media attorneys, journalists and open government advocates.<sup>1</sup>

While we are not involved in the pending federal litigation involving Policy BEDH, we are nonetheless concerned with several of its provisions and request they are revised in accordance with our comments below.<sup>2</sup> According to the policy:

- Those addressing the Board need to state their name and address for the record.
- Speakers are not permitted to share gossip, make defamatory comments, or use abusive or vulgar language.
- No complaints or allegations will be allowed at Board meetings concerning any person employed by the school system or against particular students.

### Limited Public Forum

Although Policy BEDH characterizes Board meetings as “not public forums,” it must be recognized that a public forum is indeed created once the Board opens the meeting for public comment as is statutorily required. This type of forum is considered a limited public forum and while content-based restrictions on speech are permissible under the First Amendment, those restrictions must be both reasonable and view-point neutral. Our primary concerns with your policy are the three requirements listed above. They are neither reasonable nor view-point neutral as the First Amendment requires.

### Requiring Name and Address

Section A requires speakers to state their name and address publicly before addressing the Board. The First Amendment protects the right to speak anonymously, recognizing that compelled identification can chill expression by making speakers vulnerable to retaliation, harassment, or reprisals for their views. Requiring speakers to announce their home addresses on the public record is particularly problematic in this regard. If the Board requires addresses for administrative purposes, speakers should be permitted to provide that information to staff privately, rather than as a condition of speaking.

The First Amendment has long protected the right to speak anonymously. In *McIntyre v. Ohio Elections Commission*, the Supreme Court stated that the right to speak without disclosing one’s identity is an aspect of the freedom of speech guaranteed by the First Amendment, a tradition in this country since its founding.<sup>3</sup> The Court recognized that the decision to remain anonymous may be motivated by fear of economic or official retaliation, by concern about social ostracism, or simply by a desire to preserve privacy — all legitimate reasons the First Amendment was designed to protect.

Requiring a speaker to publicly state their name, and especially their address, before being permitted to comment implicates these protections directly. Such a requirement can chill speech by making speakers vulnerable to threats, harassment, and reprisals, particularly when the topic is controversial or when the speaker has legitimate safety reasons to keep their address information private. The prospect of having one’s home address permanently attached to their commentary on public record may deter participation entirely.

### Banning Protected Speech

Section E prohibits speakers from sharing “gossip,” making “defamatory comments,” or using “abusive or vulgar language.” Each of these restrictions is constitutionally problematic. While the Board may have a legitimate interest in maintaining order and decorum, these restrictions are inherently subjective, susceptible to viewpoint-based enforcement and can include First Amendment-protected speech.

The First Amendment does not permit government officials to suppress speech simply because it is offensive, critical, or harsh. Some defamatory comments, particularly those that are true, are also protected. As a result, restrictions on speech must contain objective, workable standards so as to prevent arbitrary and discriminatory enforcement. These protections ensure individuals can criticize public officials and demand accountability without fear of censorship.

The prohibitions on gossip and abusive language also fail this test: neither term has a recognized legal meaning and both vest unbounded discretion in the Chair to silence speakers based on subjective judgments. This opens the door to viewpoint discrimination. Similarly, categorical bans on vulgar language are constitutionally suspect and risk suppressing protected expression.

While the case is not binding in Maine, we encourage you to take guidance from a recent Massachusetts decision addressing similar civility codes while noting our country’s long history of impolite discourse.<sup>4</sup> The Massachusetts Declaration of Rights provides that “[t]he people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body . . . redress of the wrongs done to them,” the court wrote, adding that “‘peaceable and orderly’ is not the same as ‘respectful and courteous.’” The court continued:

*“There was nothing respectful or courteous about the public assemblies of the revolutionary period. There was also much that was rude and personal, especially when it was directed at the representatives of the king and the king himself.”*

The court then held that the content sought to be prohibited — “discourteous, rude, disrespectful, or personal speech about government officials and governmental actions” — was clearly protected and thus the prohibition was impermissible under the state’s constitution.

Our concerns are compounded by other provisions of the policy. Sections A, B, and C grant the Chair broad discretion to determine who may speak, how long they may speak, and the procedures required to participate. While reasonable time limits and sign-up requirements may be permissible, they must be applied uniformly and may not be used to disfavor particular speakers or viewpoints. Sections J and K likewise permit the Chair to stop presentations or remove disruptive individuals. Without clear, objective standards, these provisions risk arbitrary enforcement and the suppression of disfavored viewpoints rather than the prevention of actual disruption.

## Banning Criticism of Government

Criticism of public employees, particularly in their official capacities, is protected speech. The policy's prohibition on complaints or allegations concerning specific employees or students therefore presents a significant constitutional problem. A rule permitting favorable or neutral comments while categorically foreclosing critical ones is viewpoint discriminatory and unreasonable.

The purpose of public comment is to allow the public to raise concerns about school operations, which necessarily includes how employees perform their duties. While the Board may encourage use of established grievance procedures, an outright ban on criticism of employee conduct exceeds constitutional limits and should be revised to make clear that such speech is permitted. As NEFAC President Gregory V. Sullivan recently told WMTW in response to your policy:<sup>5</sup>

*"There is no more important protection of speech than when the citizenry is criticizing governmental officials. That's what the First Amendment is all about."*

## Constitutional Alternatives Remain

Despite our concerns, the Board retains ample authority to conduct orderly and efficient meetings. It may designate the subject matter for public comment; impose reasonable, specific and uniformly applied time limits; use neutral sign-up procedures; and remove speakers who genuinely obstruct proceedings. We simply request that the Board codify these regulations in reasonable and viewpoint-neutral policies that balance the Board's interest in conducting an efficient meeting with the public's First Amendment rights.

We welcome the opportunity to discuss these concerns or to assist in revising Policy BEDH, and we thank the Board for its attention to this matter.

Sincerely,



Justin Silverman  
Executive Director

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<sup>1</sup> Please visit nefac.org to learn more about our coalition and its leadership.

<sup>2</sup> Policy BEDH enclosed.

<sup>3</sup> See *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995).

<sup>4</sup> See *Barron v. Kolenda Barron v. Kolenda*, 491 Mass. 408 (2023).

<sup>5</sup> See "Can Maine School Boards Restrict Free Speech During Public Comment?," Norah Hogan, WMTW, <https://www.wmtw.com/article/can-school-boards-restrict-free-speech/70737237> (last visited April 1, 2026).

## **PUBLIC PARTICIPATION AT BOARD MEETINGS**

Board meetings are conducted for the purpose of carrying on the official business of the school system. All meetings of the Augusta Board of Education are open to the public. The public is cordially invited to attend and participate in Board meetings as provided in this policy. Board meetings will be conducted in person unless the Board calls a remote meeting per policy BED. This policy applies only to meetings of the full Board, not to meetings of Board subcommittees.

Although Board meetings are not public forums, the Board will provide appropriate opportunities at its meetings for members of the public to express opinions and concerns related to the matters concerning education and the Augusta Board of Education schools. The intent is to allow a fair and adequate opportunity for the public to be heard while ensuring that the time allowed for public discussion does not interfere with the fulfillment of the scheduled agenda.

The Board will designate a portion of its agenda as an opportunity for public participation. During the time allotted for public participation, members of the public may speak on any subject directly related to the operations of the schools, except for personal matters or complaints concerning specific employees or students, which shall be addressed through established policies and procedures.

Members of the public may address the Board within the guidelines provided in this policy. The Chair shall be responsible for maintaining proper order and compliance with these guidelines.

The following guidelines shall apply to public participation at Board meetings.

- A. Citizens and employees of the school unit are welcome to participate as provided in this policy. Others may be recognized to speak at the Chair's discretion. Individual employees and/or employee groups will not be permitted to discuss matters for which complaint or grievance procedures are provided. Those addressing the Board need to state name and address for the record.

- B. The Chair may limit the time allotted for comments on a particular topic as well as the time each individual may speak.
- C. In the event of a sizable audience, the Chair may require persons interested in speaking to sign up so they may be called on in a fair and efficient manner.
- D. During the time set aside for public participation, the Chair will be responsible for recognizing all speakers, who must identify themselves as they begin talking.
- E. Speakers are not permitted to share gossip, make defamatory comments, or use abusive or vulgar language.
- F. All speakers are to address the Chair and direct questions or comments to particular Board members or the Superintendent only with approval of the Chair. Requests for information or concerns that require further research may be referred to the Superintendent to be addressed at a later time.
- G. Members of the Board and the Superintendent may ask questions of any person who addresses the Board but are expected to refrain from arguing or debating issues. Questions must be addressed through the Chair.
- H. No complaints or allegations will be allowed at Board meetings concerning any person employed by the school system or against particular students. Personal matters or complaints concerning student or staff issues will not be considered in a public meeting but will be referred through established policies and procedures.
- I. In order to make efficient use of meeting time, the Board discourages duplication or repetition of comments to the Board. The Board requests that groups or organizations be represented by designated spokespersons.
- J. The Chair has the authority to stop any presentation that violates these guidelines or the privacy rights of others.

- K. Persons who disrupt the meeting may be asked to leave, and the Chair may request law enforcement assistance as necessary to restore order.

An agenda shall be published in advance of each meeting in accordance with Board policy. The agenda for remote meetings will include information on how the public is able to participate during the times noted on the agenda for public participation. Members of the public who need accommodations should contact the board chair. Copies will be posted and/or available prior to regular meetings, on the school unit's website. Anyone desiring additional information about an agenda item or a hard copy of the agenda should direct such inquiries to the Office of the Superintendent.

Opportunity for public participation at Board subcommittee meetings is not required but may be permitted at the discretion of the subcommittee.

Legal Reference: 1 MRSA § 401 et seq.  
20 MRSA §1001(20)

Cross Reference: BEC – Executive Session  
BED – Remote Participation in School Board Meetings  
BEDA – Notification of Board Meetings  
BEDB – Agenda  
BEDD – Rules of Order  
KE – Public Concerns and Complaints

Adopted: March 13, 1989

Revised: July 10, 2002; October 12, 2011; April 8, 2020, April 13, 2022, **March 6, 2023**