FIRE
Foundation for Individual Rights and Expression

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[1]—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.[2]

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

[1] *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).

[2] *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.[3] 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."[4] 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.[5] 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.

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[3] *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").

[4] *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

[5] 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,

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