

**FIRE**Foundation for Individual  
Rights and Expression**Exhibit C**

September 8, 2025

Augusta Schools Policy Committee  
40 Pierce Drive, Suite #3  
Augusta, Maine 04330

Sent via U.S. Mail and Electronic Mail (staci.fortunato@augustaschools.org,  
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Dear Augusta Schools Policy Committee:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned by Augusta Schools' current policy for public participation at board meetings and recent discussion around changing it.<sup>1</sup> We understand you are still in the early stages of amending the policy and no concrete proposals have been introduced. We write now to remind you of your responsibilities under the First Amendment and to offer assistance—free of charge—in ensuring future proposals are constitutionally compliant.

As an initial matter, the public comment periods of school board meetings are, at a minimum, limited public forums where constitutional protections apply.<sup>2</sup> Importantly, a forum's status depends on its nature and operation rather than its label, rendering the current policy's claim that "Board meetings are not public forums" nonbinding under the First Amendment.<sup>3</sup> What matters is the Board has established a time, as required by Maine law,<sup>4</sup> for "members of the public to express opinions and concerns related to the matters concerning education and the Augusta Board of Education schools" in order "to allow a fair and adequate opportunity for the public to be heard."<sup>5</sup> Whatever might be said about "Board meetings" in full, their public comment sessions carry the quintessential features of a public forum.

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<sup>1</sup> See Augusta Sch. Bd., Policy BEDH Public Participation at Board Meetings [hereinafter Policy BEDH], [https://core-docs.s3.us-east-1.amazonaws.com/documents/asset/uploaded\\_file/4242/APS/3501866/BEDH\\_Public\\_Participation\\_at\\_Board\\_Meetings.pdf](https://core-docs.s3.us-east-1.amazonaws.com/documents/asset/uploaded_file/4242/APS/3501866/BEDH_Public_Participation_at_Board_Meetings.pdf).

<sup>2</sup> See *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 893 (6th Cir. 2021) (treating school board meetings as limited public forums).

<sup>3</sup> Policy BEDH, *supra* note 1.

<sup>4</sup> ME. REV. STAT. tit. 20-A § 1001(20) (2025), <https://legislature.maine.gov/statutes/20-a/title20-asec1001.html>.

<sup>5</sup> Policy BEDH, *supra* note 1.

And the government cannot “discriminate against speech on the basis of viewpoint” in *any* type of forum, and even viewpoint-neutral restriction on speech “must be ‘reasonable in light of the purpose served by the forum.’”<sup>6</sup> Several portions of the current policy, as well as some of the changes under discussion, violate these principles.

### ***Comments regarding specific students or personnel***

Both the current policy and at least one proposal prohibit complaints concerning employees or students.<sup>7</sup> This ban, in both versions, is viewpoint discriminatory and thus unconstitutional because it “allows expression of two points of view (laudatory and neutral) while prohibiting a different point of view (negatively critical) on a particular subject.”<sup>8</sup> Although the proposal would add that “members of the public may not comment about such personnel matters in either a negative or positive manner,” that limiting construction is still cabined within a rule specifically about complaints—and “a complaint is not a topic; it is a viewpoint about a topic.”<sup>9</sup> Moreover, even a viewpoint-neutral ban on mentioning school employees is unreasonable for a forum designed to allow “the public to express opinions and concerns related to” Augusta schools. That purpose necessarily includes commentary on school officials’ and employees’ performance of their official duties.

### ***Defamatory comments***

The current policy bars “defamatory comments.” Although legally proven defamation is not constitutionally protected, whether a statement is defamatory is a complex determination that courts must make under constitutionally prescribed standards—it is not one for school board officials to make in their own discretion. And, contrary to concerns expressed during the August 4, 2025, Policy Committee Meeting,<sup>10</sup> Augusta Schools cannot be held liable for a comment made by a member of the public just because the comment was made at a school board meeting.

### ***Abusive language, personally directed attacks, and derogatory comments***

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<sup>6</sup> *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001) (quoting *Cornelius v. NAACP Legal Def. & Ed. Fund., Inc.*, 473 U.S. 788, 806 (1985)).

<sup>7</sup> Policy BEDH, *supra* note 1; see also *Brann Isaacson Sample* (linked in the Policy Committee Agenda, Aug. 4, 2025), [https://drive.google.com/file/d/1H3aEMnB55pza-FW4bRs\\_HPc1M5VH6mRK/view](https://drive.google.com/file/d/1H3aEMnB55pza-FW4bRs_HPc1M5VH6mRK/view); Agenda available at <https://docs.google.com/document/d/1RY7qhdHy9BzDIHFnr-JyczJ7X1YCiPYcAlkiVsw2QM/edit?tab=t.0>.

<sup>8</sup> *Spiehs v. Lewis*, 2024 U.S. Dist. LEXIS 226266 at \*28 (D. Kan. Dec. 13, 2024) (quoting *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 730 (C.D. Cal. 1996)); see also *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (government officials may not restrict speech “when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction”).

<sup>9</sup> *Id.* at \*27. In any case, the limiting construction doesn’t apply to comments about students.

<sup>10</sup> Augusta School Department, *8/4/2025 Policy Committee Meeting*, YouTube (Aug. 4, 2025), at 45:43, <https://www.youtube.com/live/ufKDY3sE76A?feature=shared&t=2743>.

The current policy bans “abusive” language. One proposal would keep that ban and adds one on certain “personally directed attack[s].”<sup>11</sup> Additionally, the August 4 Policy Committee Meeting discussed prohibiting “derogatory” comments.<sup>12</sup> These sorts of bans on what might be labeled collectively as harsh or offensive criticism are unconstitutional for two reasons. First, they are viewpoint discriminatory because “[g]iving offense is a viewpoint.”<sup>13</sup> As one court has noted, a restriction on verbal “abuse” is “plainly” “impermissible viewpoint discrimination” because it “prohibit[s] speech purely because it disparages or offends,” not because it causes disruption.<sup>14</sup> Second, such rules are unconstitutionally vague given the lack of standards for what language falls within the prohibition. The Constitution requires speech restrictions to “provide explicit standards for those who apply them” to prevent “arbitrary and discriminatory enforcement.”<sup>15</sup> This principle is especially important where, as here, the speech at issue may be criticism of the very official empowered to decide whether it is permitted.

### ***Vulgar language and swearing***

The current policy bans “vulgar language,” and the August 4 Policy Committee Meeting also mentioned restrictions on swearing.<sup>16</sup> Blanket bans on swear words are unconstitutional, as illustrated by the seminal 1971 case *Cohen v. California*, in which the Supreme Court protected the right to wear a jacket with the words “Fuck the Draft” inside a courthouse where children are present.<sup>17</sup> As the Court noted, speech involves not only “precise, detached explication” of ideas but also “inexpressible emotions,” such that “words are often chosen as much for their emotive as their cognitive force.”<sup>18</sup> The Committee cannot deprive speakers of that right.

That is especially so in that, even apart from any emotional embellishment, swear words can be necessary for comprehensible discussion about the words themselves, as may happen if a parent wishes to complain about language in a library or curricular book. Restrictions on parents using “profane” language in school board meetings have already led to unfavorable litigation for the offending board. After Atlanta area parents read at a school board meeting book passages they thought inappropriate, the board punished them for their comments.<sup>19</sup> In ensuing litigation, the parents and school board stipulated that the latter’s ban on “profane” comments would prevent parents from quoting passages of the books to which they objected.<sup>20</sup> In holding the parents substantially likely to succeed in facially challenging the board’s ban on

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<sup>11</sup> *Brann Isaacson Sample*, *supra* note 7.

<sup>12</sup> *E.g.*, Augusta School Department, *8/4/2025 Policy Committee Meeting*, YOUTUBE (Aug. 4, 2025), at 35:52, <https://www.youtube.com/live/ufKDY3sE76A?feature=shared&t=2152>.

<sup>13</sup> *Matal v. Tam*, 582 U.S. 218, 243 (2017).

<sup>14</sup> *Ison*, F.4th at 894.

<sup>15</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

<sup>16</sup> *E.g.*, Augusta School Department, *8/4/2025 Policy Committee Meeting*, YOUTUBE (Aug. 4, 2025), at 40:00, <https://www.youtube.com/live/ufKDY3sE76A?feature=shared&t=2400>.

<sup>17</sup> 403 U.S. 15 (1971).

<sup>18</sup> *Id.* at 26.

<sup>19</sup> *Mama Bears of Forsyth Cnty. v. McCall*, 642 F.Supp. 3d 1338, 1344–46 (N.D. Ga. 2022).

<sup>20</sup> *Id.* at 1347.

“profane” comments, the court noted case law has “generally held that outright prohibitions on profane language or profanity are not allowed.”<sup>21</sup>

Additionally, what qualifies as “vulgar language” or “swearing” is undefined. That makes the prohibition on them unconstitutionally vague. That, too, violates the First Amendment.

### ***Speech targeting protected status***

One proposal would add a new restriction on speech targeting a person or group of people based on their protected status:

Speech that is a personally directed attack on a person or group of people based on their race, color, ancestry, national origin, sex, sexual orientation, gender identity, gender expression, disability, religion or age, and is likely to provoke or incite violence or imminent lawless action, will not be permitted during public comment.<sup>22</sup>

This also unconstitutionally targets speech based on viewpoint. The First Amendment makes no exception for expression others deem discriminatory, hateful, or offensive.<sup>23</sup> Even a restriction that “evenhandedly prohibits disparagement of all groups” is viewpoint discriminatory because determining whether speech is disparaging requires the government to consider its viewpoint.<sup>24</sup> Although the proposed rule incorporates the standard for incitement—which is generally proscribable—the Supreme Court has made clear that, even within an unprotected category of speech, the government may not single out disfavored viewpoints.<sup>25</sup>

### ***Obscenity***

One proposal would add a restriction on “obscene” language.<sup>26</sup> Although obscenity, properly defined, is unprotected, the term has a precise legal meaning narrower than its more colloquial usage. Under Supreme Court precedent, something is 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

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<sup>21</sup> *Id.* at 1355 (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”)).

<sup>22</sup> *Brann Isaacson Sample*, *supra* note 7.

<sup>23</sup> *Matal*, 582 U.S. at 246.

<sup>24</sup> *Iancu v. Brunetti*, 139 S. Ct. 2294, 2300 (2019).

<sup>25</sup> *R.A.V. v. City of St. Paul*, 505 U.S. 377, 384 (1992).

<sup>26</sup> *Brann Isaacson Sample*, *supra* note 7.

value.”<sup>27</sup> Only depictions of hard core sexual conduct qualify.<sup>28</sup> A government body may not label language “obscene” simply because it is offensive, crude, or sensual.

### ***Props***

Restrictions on props at the podium also came up at the August 4 Policy Committee Meeting.<sup>29</sup> Although the school board may prohibit speakers from bringing up items that would disrupt the meeting, not every prop is disruptive. For instance, a pocket constitution, a small American flag, or a photograph can be used for rhetorical embellishment without disrupting a meeting.<sup>30</sup> The Committee may not constitutionally prohibit these communicative devices.

### **Conclusion**

Augusta Schools’ current policy for public participation at board meetings needs adjustment to comply with First Amendment standards. Any restrictions must be viewpoint-neutral and reasonable. FIRE is happy to work with Augusta Schools—at no cost—to help ensure proposed changes fix these problems rather than create new ones.

We respectfully request a substantive response to this letter no later than September 22, 2025.

Sincerely,



M. Brennen VanderVeen, Esq.  
Program Counsel, Public Advocacy

Cc: Martha Witham, Board Chair  
Michael Tracy, Jr., Superintendent  
Shelby Thibodeau, Assistant Superintendent

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<sup>27</sup> *Miller v. California*, 413 U.S. 15, 24 (1973) (internal quotation marks omitted).

<sup>28</sup> *See, e.g., Penguin Random House LLC v. Gibson*, --- F.Supp. 3d ----, 2025 WL 2408178, at \*14 (M.D. Fla. Aug. 13, 2025).

<sup>29</sup> Augusta School Department, *8/4/2025 Policy Committee Meeting*, YOUTUBE (Aug. 4, 2025), at 57:01, <https://www.youtube.com/live/ufKDY3sE76A?feature=shared&t=3421>.

<sup>30</sup> *See* Angel Eduardo, *FLAGGED FOR REMOVAL: New Jersey resident ejected from town council meeting for displaying American flag and U.S. Constitution*, FIRE (Dec. 4, 2024), <https://www.thefire.org/news/flagged-removal-new-jersey-resident-ejected-town-council-meeting-displaying-american-flag-and>.