



April 21, 2026

Via E-mail & U.S. Mail

Courtney Davis
President
Mesa Public Schools Governing Board
63 E. Main St., #101,
Mesa, AZ 85201-7422
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Re: Mesa Public Schools Public Comment Policy

Dear President Davis:

We write to express our concern with certain restraints in the Mesa Public Schools Governing Board's policy for public comments during school board meetings. Specifically, we are concerned with the prohibition "Personal attacks on Board members, staff, students, or members of the public." This prohibition punishes a specific *viewpoint* insofar as it prohibits "attacks" against Board members, staff, students, or members of the public, but it does not likewise prohibit a member of the public from praising anyone in those groups. It is not, then, the speaking about Board members, staff, students, or members of the public in general the Governing Board is preventing, but only speech about those groups from a certain viewpoint. That is unconstitutional.

Under established First Amendment doctrine, the Constitution protects public comment periods at school board meetings. Even if viewed as "a limited public forum," a school board is only permitted to impose reasonable *viewpoint-neutral* restrictions on the time, place, and manner of speech. But it cannot restrict speech based on the viewpoint of the speech. It is a bedrock principle that the government cannot restrict speech just because the ideas may be "offensive" or "disagreeable." See *Matal v. Tam*, 582 U.S. 218, 244 (2017); *Street v. New York*, 394 U.S. 576, 592 (1969) ("It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers"). In other words, the Board cannot constitutionally stop a speaker because the Board disagrees with the viewpoint expressed by the speaker. See *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) ("The

government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”).

Federal courts that have addressed the issue of School Board prohibitions on speech directed at Board members in an “abusive” or “antagonistic” way have determined that such policies have violated the First Amendment. For example, in *Ison v. Madison Local School District Board of Education*, the Sixth Circuit held that a school board policy prohibiting speech “personally directed” at school board members that was “antagonistic” or “abusive” was viewpoint discrimination because it prohibited speech purely because it disparages or offends which “plainly fit in the ‘broad’ scope of impermissible viewpoint discrimination.” 3 F.4th 887, 894 (6th Cir. 2021). More recently, the Eleventh Circuit in *Moms for Liberty - Brevard County, FL v. Brevard Public Schools*, explained that a school board’s prohibition on “abusive” comments where abusive included practices such as name calling or saying “offensive” things was constitutionally problematic because it “effectively requires ‘happy-talk,’ permitting a speaker to give positive or benign comments, but not negative or even challenging ones.” 118 F.4th 1324, 1334 (11th Cir. 2024).

The Eleventh Circuit provided further guidance with respect to policies, especially ill-defined policies, that prohibit “personally directed” comments especially when that prohibition operates more like a policy that prevents “attacks” directed at board members, staff, and other members of the public. The court there explained that a “policy against personally directed speech [does] not advance the goals that the Board claims it serves” instead “it actively obstructs a core purpose of the Board’s meetings—educating the Board and the community about community members’ concerns.” *Id.* at 1337. That is because “[i]f a parent has a grievance about, say, a math teacher’s teaching style, it would be challenging to adequately explain the problem without referring to that math teacher.” *Id.* The court held that “[s]uch communications are the heart of a school board’s business, and the ill-defined and inconsistently enforced policy barring personally directed speech fundamentally impedes it without any coherent justification.” *Id.* The policy at issue here raises similar concerns.

These two cases applying the Supreme Court’s longstanding principles against the suppression of speech that a government finds “disagreeable” demonstrate the problematic nature of the Mesa Public Schools Governing Board’s policy prohibiting “Personal attacks on Board members, staff, students, or members of the public.” This policy discriminates based on viewpoint and is, therefore, likely unconstitutional. Such a policy leaves the district open to potential—costly—litigation. For example, after securing a victory at the Eleventh Circuit, the Moms for Liberty group in Brevard County

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reached a settlement with Brevard Public Schools which required the school district to pay nearly \$600,000 in attorney fees, costs, and expenses.¹

Further, even absent these First Amendment concerns, this policy raises questions under Article II, Section 6 of the Arizona Constitution which protects the right of every person to freely speak. Arizona courts have consistently recognized that this provision offers even greater protections for free expression than the First Amendment. *See Brush & Nib Studio, LC v. City of Phoenix*, 448 P.3d 890, 902–03 ¶ 45 (Ariz., 2019). Because this policy violates clear Supreme Court precedents persuasively applied in similar situations by federal courts of appeals in the Sixth and Eleventh Circuits, it also likely violates the broader protections for free speech contained in the Arizona Constitution.

To prevent ongoing and potential future violations on the constitutional rights of members of the public, we respectfully request the Governing Board amend its public comment policy to remove the prohibition on “Personal attacks on Board members, staff, students, or members of the public.” Our staff is available at any time to discuss the constitutional issues raised by this policy.

We appreciate your prompt and thoughtful consideration of these matters and look forward to receiving confirmation that the Board has taken actions to bring its public comment policy into compliance with the U.S. Constitution.

Should you have any questions regarding this matter, please do not hesitate to contact me directly at (602) 633-8996 or ashelton@goldwaterinstitute.org.

Regards,



Adam Shelton
Senior Staff Attorney
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

cc (via email only):

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¹ <https://www.ifs.org/wp-content/uploads/2025/10/Brevard-Settlement-Agreement.pdf>.