



By First Class Mail & Email: saragoodburn@smsd.org

May 30, 2017

The Honorable Sara Goodburn, President
Board of Education, Shawnee Mission School District
8200 W. 71st Street
Overland Park, KS 66204

Re: First Amendment Rights of Speakers During Open Forum Part of Board Meetings

Dear President Goodburn:

The American Civil Liberties Union of Kansas is concerned that the Shawnee Mission Board of Education's recently modified speaker guidelines for the Open Forum part of school board meetings violate the First Amendment.

As you know, under Board Policy BCBI, "the board invites public comment on school district issues," and – in order to facilitate such public comment – the board provides an Open Forum "at every regularly scheduled board meeting."

During the board's regular meeting on May 22, 2017, Jeff Passan, a parent of children in the school district, rose to comment on an alleged conflict of interest involving a vote by board member Deb Zila. As soon as Mr. Passan mentioned board member Zila by name, you stopped him from finishing his comment. Local media has reported your admonishment of Mr. Passan as follows: "You got this right? Beforehand?" Goodburn said, waving a piece of paper at him. "What we can and can't talk about in open forum? Naming specific people is really not allowed." Jay Senter, "Shawnee Mission parent told his questions about perceived conflict of interest aren't allowed in open forum," *Shawnee Mission Post*, May 25, 2017, <https://shawneemissionpost.com/2017/05/25/shawnee-mission-parent-told-his-questions-about-zilas-perceived-conflict-of-interest-arent-allowed-in-open-forum-63208>. A short time later, you "told Passan again that he should not mention a specific board member by name."

You were apparently waving a copy of "the guidelines for speakers in Open Forum," which were published in the agenda for the May 22 board meeting and which read as follows:

There are a few reminders about Open Forum that will help speakers have a constructive and positive experience when presenting their comments to the board.

When making your remarks:

- Please be civil, use respectful language and refrain from any personal attacks.
- Discussion of matters related to a specific student or employee is not allowed. Instead, comments should be submitted in writing to the Superintendent.

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You later acknowledged that you were mistaken about the scope of the new guidelines when you told Mr. Passan that he could not mention a specific board member by name because board members are not school district employees. But I write to emphasize that people have a well-established First Amendment right to criticize *both* elected officials *and other public servants*.

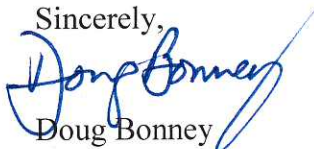
The Free Speech Clause of the First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times v. Sullivan*, 376 U.S. 254, 271 (1964). “Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations.” *Id.* at 273. “The right of free public discussion of the stewardship of public officials was thus, in Madison’s view, a fundamental principle of the American form of government.” *Id.* at 275. Moreover, this right to criticize the stewardship of public officials is not limited to elected officials; it extends to other public servants as well. *See, e.g., Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951, 958 (S.D. Cal. 1997) (“Debate over public issues, including the qualifications and performance of public officials (such as a school superintendent), lies at the heart of the First Amendment.”).

By prohibiting commenters from discussing “matters related to a specific student or employee,” the Board’s current guidelines are overbroad and inconsistent with the First Amendment. Specifically, the guidelines prohibit citizens from making public comments – whether good or bad – about the stewardship of school employees who have key responsibilities for carrying out the public functions of the school district. For example, the guidelines would prohibit a parent from criticizing Superintendent Hinson by name for his public statements about the on-going legislative and public debate over school funding in Kansas. Similarly, the guidelines would prohibit a parent from extolling the selfless dedication of a particular teacher or principal in the district who has made extraordinary efforts to help immigrant students. Because such comments fall squarely within the people’s First Amendment right to comment on the stewardship of public officials, the Board’s current guidelines for the Open Forum agenda item are unconstitutional.

For these reasons, I strongly urge the Board of Education to remove the guideline that prohibits commenters from mentioning district employees by name. Further, I trust that you will in the future refrain from admonishing commenters who mention board members by name.

I look forward to hearing from you at your earliest convenience regarding the policy matters that I have addressed here.

Sincerely,



Doug Bonney
Chief Counsel & Legal Director
Direct Dial: (913) 490-4102

cc: All members of the Board of Education by Email