IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

GREGORY ROBERSON,

Plaintiff,

v.

BACON COUNTY SCHOOL DISTRICT; Superintendent TRACI MARTIN in her individual and official capacities; Bacon County Board of Education Chair LISA HUGHES in her individual and official capacities; and Bacon County Board of Education Members LATRELL TURNER, MATTHEW PARKER, TYLER BEACH, STEPHANIE WRIGHT, and LANE LEE in their individual and official capacities,

Defendants.

Civil Action No.:
5:25-cv-00125-LGW-BWC

JURY TRIAL DEMANDED

PLAINTIFF'S MOTION AND BRIEF IN SUPPORT OF PRELIMINARY AND CONSOLIDATED PERMANENT INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Gregory Roberson ("Plaintiff" or "Roberson") seeks preliminary and permanent injunctive relief for violation of his rights to free speech and petition arising from the Bacon County School District's Public Participation Policies.

STATEMENT OF FACTS

Roberson is a resident of Bacon County, Georgia. He is an engaged member of the community interested in the well-being of the students and the employees of Defendant Bacon County School District ("BCSD"). Doc. 5-1 (Roberson Decl.) ¶¶ 2, 3. The BCSD Board of Education ("the Board") holds regular monthly meetings at which it sets aside time for public comment "for citizens to bring concerns and issues before the [Board]." Doc. 5-2 (BCSD Code

of Conduct), Intro Paragraph. Roberson often voices or seeks to voice his thoughts and concerns during public comment. Doc. 5-1 ¶ 3.

Public comment is regulated via the BCSD Code of Conduct for Public Comments at Public Meetings of the Bacon County Board of Education ("Code of Conduct"), the BCSD Chain of Command Procedure Form ("Chain of Command"), and the Bacon County School Board Public Participation Request Form ("Public Participation Request"). Docs. 5-2, 5-3 & 5-4. These policies and forms are collectively referred to hereinafter as "Public Participation Policies."

The Code of Conduct limits public comment to "residents of the School District, representatives of businesses or organizations located in the District, parents or guardians of students attending the schools of the District, or school system employees" (collectively hereinafter, "School District Constituents"). Doc. 5-2 ¶ 2. The Code of Conduct restricts the topics that School District Constituents may discuss during public comment, stating that "[i]ssues involving individual employees or individual students and pending litigation are not subjects for public participation." Doc. 5-2 ¶ 5. The Code of Conduct also grants Defendant Board Chair Lisa Hughes unilateral authority to cut off a School District Constituent's public comment involving "personal attacks on Board members, school district employees, or other citizens." Doc. 5-2 ¶ 12.

The Code of Conduct also incorporates a multi-layered process prior to being allowed to request to speak during public comment. "[O]nly those individuals who have followed the Chain of Command Procedure and submitted a completed Public Participation Request Form to the Superintendent's Office *no later than 24 hours in advance of the regularly scheduled Board meeting* will be allowed to speak." Doc. 5-2 ¶ 1 (emphasis added). In other words, a request to speak must be submitted <u>at least</u> 24 hours in advance of the meeting, if not more.

These precursors to public comment often preclude School District Constituents from speaking because: (1) agendas for Board meetings alerting Constituents to what items will be discussed or voted on are not required to be made available sufficiently in advance for Constituents to then put in their request to speak on an item 24 hours before the meeting, and (2) the Chain of Command Procedure involves a multi-step process (discussed below) that must be completed before submitting a request to speak (with no deadlines set out for completion of steps by those in the Chain of Command). Doc. 5-3 (Chain of Command) & Doc. 5-5 (BCSD Policy - Board Meeting Agendas). By the time School District Constituents know what is on the meeting agenda, the required timeframe for requesting to speak at that meeting has often passed, or else there is not time to complete the Chain of Command Procedure and still make the request to speak 24 hours ahead. Doc. 5-1 ¶ 9; Doc. 5-6 (Ellis Decl.) ¶¶ 4-7.

The problems with the Code of Conduct's at-least-24-hours requirement are exacerbated by the Chain of Command process. The Chain of Command outlines a series of BCSD employees with and from whom the School District Constituent is required to: (1) schedule an appointment, (2) meet, (3) seek resolution, and (4) obtain a determination prior to then requesting permission from the Superintendent to speak. Doc. 5-3. For instance, for a "Classroom/Teacher Incident," the School District Constituent must:

> **STEP 1:** Contact the teacher: Staff emails can be located on individual school's Staff Directory Link.
> **STEP 2:** If the issue is not resolved with the teacher, contact the school and make an appointment to speak with the school administrator (Assistant Principal and/or Principal)
> **STEP 3:** If the issue is not resolved with the school administrator, contact the Board of Education and make an appointment to speak with the Assistant Superintendent.
> **STEP 4:** If the issue is not resolved with the assistant superintendent, contact the Board of Education and make an appointment to speak with the superintendent.
> **STEP 5:** If the issue is not resolved with the superintendent, complete the proper form to speak with the Board of Education Members during a regular board meeting. This form will only be provided when the Chain of Command has been followed and can only be obtained from the superintendent administrative assistant.

Doc. 5-3 at p. 1. The Chain of Command Form outlines a similar 4- to 5-step series of meetings and determinations that must occur before a School District Constituent may request permission from the Superintendent to address the Board about: "a school [i]ncident or [i]ssue that cannot be discussed with a specific teacher," an "athletic or extra-curricular incident/issue," or a "bus incident/issue." Doc. 5-3 at p. 2. Neither the Chain of Command, nor any of the Public Participation Policies, provide a time frame in which the enumerated BCSD employees are required to meet with a School District Constituent or determine and communicate whether they can resolve the Constituent's issue. Docs. 5-2, 5-3 & 5-4.

Finally, after the Chain of Command is followed, and before any School District Constituent is permitted to speak during public comment, they must also complete and submit a Public Participation Request Form to Defendant Superintendent Traci Martin's office "at least 24 hours in advance" of the meeting at which they wish to speak. Doc. 5-2 ¶ 1. The Public Participation Request Form reiterates that the Chain of Command must be followed: "Individuals wishing to speak at BOE meetings must meet with the teacher or coach, principal and superintendent prior to approval of speaking to the BOE. The chain of command must be followed in all instances." Doc. 5-4. Additionally, the Public Participation Request Form asks for a "Narrative" of the speaker's intended comment stating, "Please provide a brief outline of your remarks and what you desire to have done." Doc. 5-4. The Public Participation Request Form further asks if the comment involves a complaint or report of wrongdoing by any BCSD employee, and if so, asks for the name and title of the employee, and the facts giving rise to the complaint. Doc. 5-4. In other words, the Public Participation Request Form probes deeply into both the content and viewpoint of the prospective speaker's intended remarks to the Board.

Once submitted, the Public Participation Request Form is reviewed by the Superintendent, who determines whether the School District Constituent is permitted to speak.

Doc. 5-1 ¶¶ 6-7; Doc. 5-4; Doc. 5-6 ¶¶ 5-6. Nothing in the Public Participation Policies requires the Superintendent to make this decision within any specified time frame. Docs. 5-2, 5-3 & 5-4. And nothing in the Public Participation Policies limits the basis on which the Superintendent may deny a request to speak. Docs. 5-2, 5-3 & 5-4.

The BCSD Code of Conduct's at-least-24-hours-in-advance requirement, in conjunction with the Chain of Command process, is unreasonable and also conflicts with O.C.G.A. § 20-2-58(a) which specifically prohibits county boards of education from requiring "notice by an individual *more than 24 hours prior to the meeting*" at which they wish to speak (emphasis added). A BCSD School District Constituent therefore has only a single hour (the 24th hour before the meeting) in which to make their request to speak that satisfies both the BCSD Code of Conduct, the multi-layered Chain of Command Procedure, and O.C.G.A. § 20-2-58(a). Doc. 5-2 ¶ 1; Doc. 5-3. This undermines O.C.G.A. § 20-2-58(a)'s aim to make public comment accessible.

ARGUMENT AND CITATION OF AUTHORITIES

Plaintiff seeks preliminary and permanent injunctive relief barring Defendants Bacon County School District, Superintendent Traci Martin, and the members of the Bacon County Board of Education from enforcing BCSD's Public Participation Policies. A preliminary injunction is appropriate when the movant establishes: "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction [is] not granted; (3) that the threatened injury to the plaintiff outweighs the harm an injunction may cause the defendant; and (4) that granting the injunction would not disserve the public interest." *K.H. Outdoors LLC v. City of Trussville,* 458 F.3d 1261, 1268 (11th Cir. 2006)*; Palmer v. Braun*, 287 F.3d 1325, 1329 (11th Cir. 2002). Plaintiffs satisfy each of these requirements.

No evidentiary hearing is necessary here as BCSD's Public Participation Policies at issue speak for themselves. They provide that in order to be approved to speak during public comment at Board meetings, Roberson and other School District Constituents must follow the onerous and multi-step Chain of Command procedure, request permission from the Superintendent to speak at least 24 hours in advance of the scheduled meeting, be granted permission, and refrain from speaking about "[i]ssues involving individual employees or individual students and pending litigation." Docs. 5-2 ¶¶ 1, 2 & 5; Docs. 5-3 & 5-4. *See Cumulus Media, Inc. v. Clear Channel Communications*, 304 F.3d 1167, 1178 (11th Cir. 2002) ("[a]n evidentiary hearing is required for entry of a preliminary injunction only where facts are bitterly contested and credibility determinations must be made to decide whether injunctive relief should issue") (internal quotations omitted)*; McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1311 (11th Cir. 1998) (noting that "Rule 65 [governing injunctions] does not require an evidentiary hearing," and a hearing is unnecessary where "material facts are not in dispute" and defendant was provided with requisite notice of plaintiff's request for injunctive relief).

Moreover, this is a case where consolidation of the preliminary injunction with permanent injunctive relief is appropriate. *See Drummond v. Fulton Cty. Dep't of Family and Children's Servs*., 563 F.2d 1200, 1204 (5th Cir. 1977) ("the consolidation [of a preliminary and permanent injunction] represented a responsible exercise of judicial discretion in view of the essentially legal nature of the contest and the need for prompt action on this case")[1]; *Budlong v. Graham*, 488 F. Supp. 2d 1245, 1248-50 (N.D. Ga. 2006) (analyzing factors to be considered in consolidating a preliminary injunction with a trial on the merits without necessity of a hearing). Plaintiff does not waive any relief in seeking

[1] Fifth Circuit decisions issued before October 1, 1981 are controlling in the Eleventh Circuit. *See Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (11th Cir.1981) (en banc).

consolidation, and the remaining challenges to BCSD's Public Participation Policies and other forms of relief raised in the Amended Complaint can be resolved later in the litigation.

I. Plaintiff Has a Substantial Likelihood of Success on the Merits.

The public comment period during the Bacon County Board of Education's regularly scheduled meetings constitutes a limited public forum where restrictions on speech must be reasonable and viewpoint neutral. *Moms for Liberty - Brevard Cnty., FL v. Brevard Pub. Sch*., 118 F.4th 1324, 1331 (11th Cir. 2024); *McDonough v. Garcia*, 116 F.4th 1319, 1329 (11th Cir. 2024).

"Reasonable" is a flexible and context specific concept, that depends on the nature and purpose of the forum. *Moms for Liberty*, 118 F.4th at 1332. In general, a speech regulation is "reasonable" if it is "consistent with the government's legitimate interest in preserving the property for the use to which it is lawfully dedicated" and prohibits speech that is "naturally incompatible" with the purposes of the forum. *Id*.

Meanwhile, viewpoint-neutral regulations are those that do not restrict speech based on the speaker's particular opinion or perspective on an otherwise acceptable topic. *See Rosenberger v. Rectors and Visitors of the University of Virginia*, 515 U.S. 819, 829 (1995) ("When the government targets not subject matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant . . . The government must abstain from regulating speech when the. . . opinion or perspective of the speaker is the rationale for the restriction.").

The Public Participation Policies promulgated by BCSD and enforced by the individual Defendants are neither reasonable nor viewpoint-neutral.

A. Chain of Command & Public Participation Request.

BCSD's Chain of Command process is an unreasonable restriction given that the stated purpose of public comment at BCSD Board meetings is for School District Constituents "to

bring concerns and issues before the [Board]." Doc. 5-2, Intro Paragraph. Requiring a School District Constituent to schedule and engage in up to four meetings with four different BCSD officials, and receive a decision from each one, before even being allowed to request permission from the Superintendent to address the Board unduly burdens and therefore chills the right to speak during public comment. Doc. 5-2 ¶ 1; Docs. 5-3 & 5-4. Moreover, there are no time limits for either scheduling or making decisions at each stage. Docs. 5-2, 5-3 & 5-4. Many people will not have the time, resources, or fortitude to schedule four separate meetings, confront four different BCSD officials, wait an uncertain time for a determination from each official, and then request and await approval from the Superintendent. These preconditions on public comment are not reasonable because they amount to a content-based prior restraint on speech that prevents speech before it occurs, and impose pre-requisites to speaking that allow for viewpoint discrimination and can be manipulated to completely bar access to the forum.

In *Barrett v. Walker County School Dist.*, the Eleventh Circuit considered a similar multi-layered chain-of-command process for speaking at board of education meetings that, as here, lacked any time requirements for either scheduling meetings or decision-making. 872 F.3d 1209, 1217-18 (11th Cir. 2017). Specifically, in *Barrett*, members of the public were required to meet and discuss their concerns with the superintendent before requesting to be heard by the board. *Id*. at 1217. The policy gave the superintendent the option to investigate the concerns and report back within ten days. Meanwhile, after meeting with the superintendent, members of the public who still wanted to address the board had to make a separate written request to the superintendent at least a week before the scheduled board meeting, stating the purpose of their request and the topic of their intended comment. *Id*. It was then left to the superintendent's discretion whether to place them on the agenda, provided they

were not raising a complaint against any employee of the board which was not permitted during public comment. *Id*.

The Circuit struck down this chain-of-command policy as an unconstitutional content-based prior restraint "because it prevents members of the public from speaking . . . unless they comply with the [p]olicy's requirements" and introduces "high" potential for content-based decisions on who will be approved to speak. *Id*. at 1123, 1228. The Circuit observed that for a variety of reasons, the superintendent was likely to have an idea of the topic or viewpoint of the prospective speaker's concern even before meeting with them and could avoid scheduling the initial required meeting in order to bar them from bringing that particular concern to the board. This would constitute viewpoint-based censorship. *Id*. at 1228. The Circuit further observed that after meeting with the prospective speaker and possibly conducting further investigation, the superintendent would be well-informed of the nature of the prospective speaker's concern. This would, in turn, inform the superintendent's decision whether to grant or deny permission for the speaker to address the board, which would be another content and viewpoint-based determination. *Id*. at 1228-29. The Circuit thus affirmed that the public comment policy challenged in *Barrett* operated as an unconstitutional, content-based prior restraint. *Id*. at 1229.

Like *Barrett,* BCSD's Public Participation Policies require School District Constituents to disclose the content and viewpoint of their issue or concern during prerequisite Chain of Command meetings with BCSD officials and provide no specified time frame in which officials must (1) schedule and hold those meetings, and then (2) consider and communicate a decision about the issue(s) presented, as dictated by the Chain of Command Procedure. Nor do BCSD's Public Participation Policies specify a time frame in which the Superintendent must approve or disapprove a request to speak once the Chain of Command is followed and a Public

Participation Request Form is submitted. This affords BCSD officials and Defendant Superintendent Martin unbridled discretion to delay Roberson and other School District Constituents from speaking to the Board while their issues and concerns are still live and relevant as a means of censoring their content and viewpoint. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 149 (1969) ("It is often necessary to have one's voice heard promptly, if it is to be considered at all."). This type of open-ended speech-licensing scheme violates the First Amendment. *Barrett*, 872 F.3d at 1228-29; *see also FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 226-227 (1990) (declaring city licensing ordinance unconstitutional as applied to businesses engaging in First Amendment activity because of "[t]he failure to confine the time within which the licensor must make a decision"); *United State v. Fransden*, 212 F.3d 1231, 1240 (11th Cir. 2000) (holding that a National Park Service regulation requiring a decision on a permit request to be made "without unreasonable delay" was unconstitutional because "[a] park superintendent who does not agree with the political message to be espoused [by the permit seekers] could allow the permit request to sit on his desk for an indefinite period of time—resulting in speech being silenced by inaction."); *Lady J. Lingerie, Inc. v. City of Jacksonville,* 176 F.3d 1358, 1361 (11th Cir. 1999) ("An ordinance that permits public officials to effectively deny an application by sitting on it indefinitely is also invalid."); *Redner v. Dean,* 29 F.3d 1495, 1501 (11th Cir. 1994) (explaining that "[w]e cannot depend on the individuals responsible for enforcing [a regulation] to do so in a manner that cures it of constitutional infirmities" and concluding that the law "risks the suppression of protected expression for an indefinite time period prior to any action").

Even beyond the Chain of Command Procedure, BCSD's Public Participation Policies also impose no limit on the Superintendent's ability to deny any request to speak, even if all of the Chain of Command steps have been followed. The Policies specify that requests to speak

may be denied for failure to submit a Public Participation Request Form at least 24 hours ahead of the meeting, or if the intended comment raises "[i]ssues involving individual employees or individual students" or relates to "pending litigation." Doc. 5-2 ¶¶ 1, 5. But the Policies do not restrict the Superintendent to only denying requests to speak for these reasons. Docs. 5-2, 5-3 & 5-4. The Superintendent's discretionary power to deny is unlimited and therefore facially unconstitutional. *See Atlanta J. & Const. v. City of Atlanta Dep't of Aviation*, 322 F.3d 1298, 1310 (11th Cir. 2003) (holding that even in a non-public forum, "[a] grant of unrestrained discretion to an official responsible for monitoring and regulating First Amendment activities is facially unconstitutional."); *Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Schs.,* 457 F.3d 376, 386 (4th Cir. 2006) (observing "there is broad agreement" among the circuits "that even in . . . nonpublic forums, investing governmental officials with boundless discretion over access to the forum violates the First Amendment") (citing decisions from Seventh, Eighth, Tenth, and Eleventh Circuits). *See also City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755–56 (1988) (the Supreme Court "ha[s] long held that when a licensing statute allegedly vests unbridled discretion in a government official over whether to permit or deny expressive activity, one who is subject to the law may challenge it facially without the necessity of first applying for, and being denied, a license" (footnote and citations omitted)).

To recap, the layers of procedure in BCSD's Public Participation Policies that contain no time limits unreasonably silence speech and create an intolerable danger of content/viewpoint discrimination. In *Cafe Erotica of Fla., Inc. v. St. Johns County*, the Eleventh Circuit invalidated a sign-permitting ordinance because even though applicants did not have to disclose the messages they intended to put on their signs, administrators would be able to discern the likely message from context clues, thus creating "a distinct possibility that

the County could decline to issue . . . a permit based on content." 360 F.3d 1274, 1289 (2004). Here, School District Constituents are required to disclose in advance the content of their public comment, both by participating in numerous prerequisite meetings with BCSD officials as required by the Chain of Command and by submitting the Public Participation Request Form, which solicits detailed information. Docs. 5-3 & 5-4. If permitted to speak, School District Constituents are not allowed deviate from what they wrote on their request form. Doc. 5-2 ¶ 3 ("The topic addressed must be identical to the one submitted on the Public Participation Request Form."). Thus, there is more than "a distinct possibility," *Café Erotica*, 360 F.3d at 1289, that BCSD officials and/or Defendant Superintendent Martin could delay and deny speakers whose intended comments they disagree with or dislike. *See Barrett*, 872 F.3d at 1228-29 (affirming summary judgment for plaintiff where public comment policy risked that speech would be chilled or censored on the basis of content or viewpoint). Because BCSD's Chain of Command Procedure and Public Participation Request Form are unreasonably onerous and therefore chilling on speech, Doc. 5-1 ¶ 9, and because they afford BCSD officials and Defendant Superintendent Martin unbridled discretion to delay speech until it is no longer relevant or timely -- or prevent it entirely -- for any reason (such as censoring its content or viewpoint) or no reason at all, BCSD's Public Participation Policies are facially unconstitutional and should be permanently enjoined.

B. Requiring Request to Speak At Least 24 Hours in Advance of Meeting is Not Reasonable Given the Purpose of the Forum.

BCSD's requirement that School District Constituents submit a Public Participation Request at least 24 hours before the Board meeting at which they wish to speak is not reasonable in light of the purpose of the public participation forum. This requirement precludes Roberson and other School District Constituents from speaking on Board agenda items being discussed and potentially voted on at a meeting when the

agenda notifying Constituents of the meeting's contents is not posted until less than 24 hours in advance. *See, e.g.*, Doc. 5-6 ¶¶ 4-7 (School District Constituent Tom Ellis precluded by 24-hours-notice requirement from speaking on issue of establishing a school district police department prior to this recommendation being approved by the Board because meeting agenda was not released until less than 24 hours in advance). BCSD Policy on Board Meeting Agendas does not require posting an agenda sufficiently in advance of a meeting for Constituents to be able to satisfy the at-least-24-hours-before rule for requesting to speak. *See* Doc. 5-5 ("The Superintendent and Board chair shall jointly prepare an agenda for each meeting of the Board and post the same *at some time during the two-week period immediately prior* to any regular or called Board meeting." (emphasis added)). Hence, if the Board wants to suppress public comment on a controversial agenda item, it can box commenters out by simply not releasing the meeting agenda until shortly before the meeting. Such easy manipulation of the at-least-24-hours-in-advance rule to suppress critical or dissenting comment about Board actions constitutes impermissible viewpoint discrimination that violates the First Amendment. *See Moms for Liberty*, 118 F.4th at 1331 (restrictions on public comment at school board meetings must be viewpoint neutral); *see, e.g.*, *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 785–86 (1978) ("Especially where . . . the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended."); *City of Madison Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 175–76 (1976) ("To permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees.").

The at-least-24-hours-in-advance requirement is further unreasonable because it

precludes School District Constituents from offering public comment on late-breaking or fast-moving "concerns and issues." This is problematic as timing is "often of the essence" for free speech. *Shuttlesworth*, 394 U.S. at 149. "A delay 'of even a day or two' may be intolerable when applied to 'political speech in which the elements of timeliness may be important.'" *NAACP v. Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984) (citing *Carroll v. President of Princess Anne*, 393 U.S. 175, 182 (1969)). As an example, the at-least-24-hours-in-advance requirement prevented School District Constituent David Swanson from being able to speak to the Board at a timely juncture during the rapidly moving process for selecting a new superintendent -- which resulted in the installation of Defendant Superintendent Martin -- about his view that there should be an open and formal search process. Swanson was denied to speak at the December 7, 2023 Board meeting because of the 24-hours rule. By the time Swanson was allowed to speak at the December 11, 2023 Board meeting, Martin was being approved as Interim Superintendent. And four days later, she was made Permanent Superintendent. *See* Amended Complaint at ¶¶ 45-49; Doc. 5-7 (Swanson Public Participation Requests & Emails with Superintendent's Office); Doc. 5-8 (Board Meeting Minutes from December 7, 11 & 15, 2023). Thus, the at-least-24-hours-in-advance rule prevented Swanson from being able to voice his concern until the selection process was too far along for his speech to have a chance at any impact.

Finally, requiring that a School District Constituent request to speak *at least 24 hours before* the scheduled Board meeting exists in tension with current state law. Specifically, O.C.G.A. § 20-2-58 was amended effective in 2022 to make public comment at county board of education meetings mandatory and to provide that "[a] local board of education shall not require notice by an individual *more than 24 hours prior to the meeting* as a condition of addressing the local board during such public comment

period." (Emphasis added).[2] First, BCSD's Public Participation Policies conflict with O.C.G.A. § 20-2-58(a) because they require more than mere notice of intent to speak.[3] Second, unlike other Georgians throughout the state, Bacon County School District Constituents have only one hour -- assuming they've completed the Chain of Command requirements -- to submit their Public Participation Request where it will be in compliance both with BCSD's requirement of *at least* 24 hours in advance of the meeting, and with O.C.G.A. § 20-2-58(a)'s requirement that notice be required *no more* than 24 hours in advance of the meeting. Reducing the time for requesting to speak to a 60-minute window is unreasonable (especially when set against the additional Chain of Command procedures) because it impedes public comment at Board meetings when the purpose in amending O.C.G.A. § 20-2-58 in 2022 to make public comment mandatory was to make it more accessible. A local rule that impairs the operation of a general state law cannot stand. *See Pawnmart, Inc. v. Gwinnett Cnty.*, 279 Ga. 19, 19-20 (2005) (a local ordinance is preempted unless it is (1) authorized by general laws, and (2) does not conflict with them). *Cf. Franklin Cnty. v. Fieldale Farms Corp.*, 270 Ga. 272, 275 (1998) ("We have

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[2] The amendment to O.C.G.A. § 20-2-58 that took effect in 2022 added the following language:

> The local board of education shall provide a public comment period during [its] regular monthly meetings. Such public comment period shall be included on the agenda required to be made available and posted prior to the meeting . . . A local board of education shall not require notice by an individual more than 24 hours prior to the meeting as a condition of addressing the local board during such public comment period. The chairperson of the local board of education shall have the discretion to limit the length of time for individual comments and the number of individuals speaking for or against a specific issue.

GA LEGIS 721 (2022), 2022 Georgia Laws Act 721 (S.B. 588).

[3] This is because the Constituent must follow the Chain of Command Procedure and then request and receive permission from the Superintendent to speak. Docs. 5-2, 5-3 & 5-4.

concluded that there was no conflict when the local law did not impair the general law's operation but rather augmented and strengthened it."). Here, BCSD's at-least-24-hours-in-advance rule undercuts rather than strengthens O.C.G.A. § 20-2-58(a)'s no-more-than-24-hours-in-advance law.

C. No Comment Allowed Regarding Individual Employees or Students or Pending Litigation.

1. Individual Employees or Students

The BCSD's Code of Conduct prohibits public comments that involve "personal attacks on Board members [or] school district employees," or that raise "[i]ssues involving individual employees or individual students." Doc. 5-2 ¶¶ 5, 12. These are not reasonable restrictions given the purpose of the forum. The public comment period exists so that School District Constituents may communicate their "concerns and issues" to the Board. Doc. 5-2, Intro Paragraph. Their "concerns and issues" may legitimately include criticism -- i.e., "attacks on" -- BCSD Board members or BCSD employees related to the performance of their public job duties and may also involve issues relating to individual BCSD students. The Eleventh Circuit recently addressed a very similar viewpoint-based public participation policy regarding criticism of school district employees. In *Moms for Liberty*, a Florida county school board's public comment policy disallowed "personally directed" speech. 118 F.4th at 1336. The Circuit found that banning "personally directed" comments "actively obstructs a core purpose of the Board's meetings—educating the Board and the community about community members' concerns." *Id*. at 1337. The Circuit explained:

> If 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. Or principal. Or coach. And so on. Likewise when a parent wishes to praise a teacher or administrator. Such 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.

> To be sure, sometimes meetings can get tense—no one enjoys being called out negatively, and some may even dislike public praise. But that is the price of admission under the First Amendment. Rather than curtail speech, as "a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

Id. (quoting *Snyder v. Phelps*, 562 U.S. 443, 461 (2011)). In light of the purpose of public participation at BCSD Board of Education meetings, it is therefore unreasonable to prohibit speech involving "personal attacks" (i.e. criticism) on BCSD officials, or to prohibit speech relating to individual employees or students. *See Moms for Liberty*, 118 F.4th at 1337 (invalidating rule against "personally directed" comments as "unreasonable"); *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013) (invalidating public comment policy that prohibited "personal, impertinent . . . or slanderous remarks"); *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1351-52 (N.D. Ga. 2022) (holding prohibition on "personally addressing" members of the school board during public comment "is not reasonable"); *Bach v. School Bd. of the City of Virginia Beach*, 139 F.Supp.2d 738, 741-44 (E.D. Va. 2001) (striking down restriction on "personal attacks" by citizens during public comment).

BCSD's prohibition on "personal attacks on Board members [or] school district employees," and "[i]ssues involving individual employees or individual students" is also viewpoint-based. Speakers at BCSD Board of Education meetings are permitted to make positive comments about individual district employees and students, as illustrated by, without limitation, the individual recognitions given to teachers, staff, and students at Board meetings. *See, e.g.*, Doc. 5-9 (March 18, 2025 & August 19, 2025 Board Meeting Minutes – "Recognitions"); Doc. 5-10 (Lee Decl.) & Doc. 5-11 (manually filed video-recording of August 19, 2025 Board meeting at 00:25-11:38; 42:06-44:27 individual teachers and staff receiving recognition, praise, and awards from the Board and the local

school principals who spoke at the meeting). As speech rules in a limited public forum must be viewpoint neutral as well as reasonable, BCSD's limits on criticism must be enjoined. *See, e.g.*, *Moms for Liberty*, 118 F.4th at 1337 (finding prohibition on "personally directed" comments unconstitutional because it "reflects no boundaries beyond the presiding officer's real-time judgment about who to silence"); *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 895 (6th Cir. 2021) (finding prohibition on "antagonistic," "abusive," and "personally directed" remarks during public comment to be unconstitutional viewpoint discrimination); *Marshall v. Amuso*, 571 F. Supp. 3d 412, 422 (E.D. Pa. 2021) (invalidating as unconstitutional viewpoint discrimination a prohibition on "personally directed," "abusive," or "personal attacks" during public comment); *Moore v. Asbury Park Bd. of Educ.*, No. Civ.A.05–2971, 2005 WL 2033687, at *13 (D.N.J. Aug. 23, 2005) (holding prohibition on "personally directed" comments constituted impermissible viewpoint discrimination).

2. Pending Litigation

The Code of Conduct's prohibition on public comment relating to "pending litigation" is also not a reasonable restriction given the purpose of the forum. School District Constituents may have legitimate "concerns and issues" about publicly filed litigation involving BCSD or its officials, either related to the underlying merits of the litigation or to the cost to county taxpayers. Both are matters of public concern for School District Constituents. *See Smith v. Atlanta Indep. Sch. Dist.*, 633 F. Supp. 2d 1364, 1377 (N.D. Ga. 2009) ("[T]he use of school system funds to settle lawsuits can "be fairly considered as relating to any matter of political, social, or other concern to the community" and is thus a matter of public concern); *see, e.g.*, *Anderson v. Burke Cnty., Ga.*, 239 F.3d 1216, 1220 (11th Cir. 2001) (finding that concerns about various school district employees, including "public tax consequences of high employee turnovers" is a matter of public

concern). *Cf. Wiley v. City of Atlanta, Georgia*, No. 1:16-CV-0031-CC, 2017 WL 11634377, at *15 (N.D. Ga. Oct. 2, 2017) (finding suit filed by former County Attorney against County Board of Commissioners over Board's decision to abolish the County Legal Department was speech on a matter of public concern). It is therefore unreasonable to prohibit School District Constituents from offering public comment on such a broad topic as "pending litigation" when that topic encompasses so many vectors of legitimate concern.[4]

The Code of Conduct's prohibition on public comment relating to "pending litigation" is also a viewpoint-based restriction to the extent that it operates to prohibit speech about accusations of wrongdoing against BCSD or its officials (i.e., speech critical of the School District or its employees). *See Mills v. Alabama*, 384 U.S. 214, 218 (1966) ("there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs"); *New York Times Co. v. Sullivan,* 376 U.S. 254, 273 (1964) ("Criticism of [elected] official[s]' conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations."); *Davison v. Randall*, 912 F.3d 666, 688 (4th Cir. 2019) (finding school board chair violated the First Amendment by banning critics of the school board from her social media page and noting that her "target[ing] comments critical of the School Board members' official actions and fitness for office renders the banning all the more problematic").

In sum, BCSD and the other Defendants should be permanently enjoined from barring public comment regarding individual employees or students or pending litigation

[4] Allowing public comment does not require BCSD officials to publicly discuss or answer questions about pending litigation which, depending on the circumstances, might be inappropriate to do. As the Code of Conduct notes, "Board members will not respond at this meeting to comments and questions from speakers." Doc. 5-2 ¶ 11.

given that these restrictions are neither reasonable considering the nature of the forum, nor viewpoint neutral.

II. Substantial Threat of Irreparable Injury if Injunction Not Granted

Roberson suffered an irreparable injury in being denied the right to speak and petition regarding his concerns about a particular BCSD official. Doc. 5-1 ¶¶ 6-7. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Mama Bears of Forsyth County*, 642 F. Supp. 3d at 1344-45 ("Irreparable harm is generally presumed where the moving party's freedom of speech right is being infringed"; granting preliminary injunction against policy restricting public comment before school board).

Roberson's right to speak at future Board meetings will be chilled or even prevented altogether under BCSD's Public Participation Policies. Doc. 5-1 ¶ 9. *See Siegel v. LePore*, 234 F.3d 1163, 1178 (11th Cir. 2000) (en banc) ("The only areas of constitutional jurisprudence where we have said that an on-going violation may be presumed to cause irreparable injury involve the right of privacy and certain First Amendment claims establishing an imminent likelihood that pure speech will be chilled or prevented altogether." (citations omitted)); *Barrett*, 972 F.3d at 1229 (holding that threat of chill or censorship by virtue of requirement to meet with superintendent before being allowed to give public comment constituted irreparable harm). Since Roberson suffered irreparable harm, his remedies at law are inadequate. *See Barrett,* 972 F.3d at 1229; *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B 1981) ("An injury is 'irreparable' only if it cannot be undone through monetary remedies.").[5]

[5] Decisions rendered by Unit B of the former Fifth Circuit constitute binding precedent in the Eleventh Circuit. *See Stein v. Reynolds Secs., Inc.*, 667 F.2d 33, 34 (11th Cir. 1982).

III. The Balance of Hardship Weighs in Plaintiff's Favor and an Injunction Would Promote the Public Interest

"Where the government is the opposing party, the final two factors in the [preliminary injunction] analysis—the balance of the equities and the public interest—merge." *Mama Bears of Forsyth Cnty.,* 642 F. Supp. 3d at 1359–60 (quoting *Coronel v. Decker*, 449 F. Supp. 3d 274, 287 (S.D.N.Y. 2020) (citation omitted)). Defendants have a significant interest in conducting orderly meetings and providing opportunity for members of the public to speak at those meetings. *Id.* at 1360. But where, as here, "the plaintiffs are likely to succeed on their [First Amendment] claims, the balance of equities and the public interest favor injunctive relief." *Id*.

In this case, Plaintiff's loss of free speech rights unquestionably outweighs Defendants' interest in unreasonably, and in a viewpoint-based manner, preventing School District Constituents from speaking on "concerns and issues" pertaining to the Bacon County Schools. *See K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 114 (3d Cir. 2013) ("the enforcement of an unconstitutional law vindicates no public interest"). Defendants suffer no cognizable hardship by having to allow an untrammeled path for signing up for public comment and the free flow of opinions and ideas during the comment period. Meanwhile, Defendants retain the ability to impose reasonable and viewpoint-neutral restrictions on how they conduct public comment (e.g., limiting it to only School District Constituents, requiring people to put their name on a list to speak before the meeting starts, imposing a three-minute maximum per commenter, removing commenters who physically disrupt the meeting). Under these circumstances, the balance of harms tips well in favor of protecting free speech rather than protecting Defendants' censorial and overly restrictive regulations. *Accord Barrett*, 972 F.3d at 1229; *Mama Bears of Forsyth County*, 642 F. Supp. 3d at 1359-60. "[T]he public interest is always served in promoting First Amendment values." *Suntrust Bank v. Houghton*

Mifflin Co., 268 F.3d 1257, 1276 (11th Cir. 2001). *Accord Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) ("[I]njunctions protecting First Amendment freedoms are always in the public interest.").

CONCLUSION

For the foregoing reasons, Plaintiff urges the Court to grant his Motion for Preliminary and Consolidated Permanent Injunction, barring Defendants from:

- enforcing BCSD's Chain of Command Procedure;
- enforcing BCSD's Public Participation Request Form whereby the intended speaker is asked to disclose the details of their intended remarks and the Superintendent must approve them to speak;
- requiring the intended speaker to request to speak at least 24 hours prior to a Board meeting; and
- prohibiting comments that involve "personal attacks on Board members [or] school district employees," or that raise "[i]ssues involving individual employees or individual students" or "pending litigation.

DATED: This the 19th day of November, 2025.

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CERTIFICATE OF SERVICE

I certify that on November 19, 2025, I emailed the foregoing **PLAINTIFF'S MOTION AND BRIEF IN SUPPORT OF PRELIMINARY AND CONSOLIDATED PERMANENT INJUNCTION** to:

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