



January 12, 2015

Donald F. Houston, Esquire
Durant, Nichols, Houston,
Hodgson & Cortese-Costa, P.C.
1057 Broad Street
Bridgeport, CT 06604

*Sent via facsimile and
USPS Certified Mail*

Re: Proposed Amendment to Fairfield Board of Education By-Laws

Dear Mr. Houston,

We have serious constitutional concerns about a proposed amendment to Article V, Section 6-A of the Fairfield Board of Education's By-Laws. The amendment will govern the public comments portion of Board meetings. Subsection 1 of the amendment, if adopted, would establish a three-minute time limit for each speaker but would authorize the Chair to extend the time limit "as appropriate." Subsection 3 of the amendment would authorize the Chair to terminate summarily the speaking privileges of any person who engages in "inappropriate" or "disrespectful" conduct. The amendment nowhere defines the quoted terms. We understand that the Board intends to vote on this amendment at its next scheduled meeting on Tuesday, January 13.

Such vague and standardless terms as "appropriate," "inappropriate" and "disrespectful" are open-ended invitations to unconstitutional applications -- that is, to applications based on the speaker's viewpoint -- and, in particular, to applications that treat as "disrespectful" or "inappropriate" any comments that criticize the Board's members or policies. Conversely, it is all too easy for the Chair to extend, "as appropriate," the time allotted to speakers who support the Board, while denying extensions to speakers of a different mind-set. It is not a question of whether such applications will occur; it is only a question of when.

As you are surely aware, viewpoint-based applications of this kind violate the First Amendment in limited and even in nonpublic forums. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 59-60 (1983); *Marcavage v. City of New York*, 689 F.3d 98, 104 (2d Cir. 2012) cert. denied, 133 S. Ct. 1492, (2013). *A fortiori*, they violate the even more speech-protective strictures of the Connecticut Constitution's Article I, Sections 4, 5 and 14. *State v. Linares*, 232

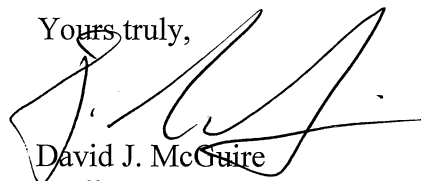
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Conn. 345, 377-387 (1995). We respectfully urge the Board to avoid the resulting litigation costs by either rejecting the proposed amendment in its entirety or by inserting clarifying language that minimizes the opportunities for unconstitutional application.

We are available to discuss the matter further if you wish. Thank you for your attention and anticipated response.

Yours truly,



David J. McGuire
Staff Attorney

Martin Margulies
Cooperating Attorney

Cc (all via email and USPS
First Class Mail):

Philip Dwyer, Board Chairman
Paul Fattibene, Board Vice-Chairman
Jessica Gerber, Board Secretary
Jennifer Maxon-Kennelly, Board Member
John Convertito, Board Member
Donna Karnal, Board Member
Eileen Liu-McCormack, Board Member
John Llewellyn, Board Member
Marc Patten, Board Member
David Title, Superintendent

DJM/jjs