

Education Alert
May 2019

**FREE SPEECH AT SCHOOL COMMITTEE MEETINGS:
IS IT TIME TO REVISE YOUR POLICY?**

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In a decision with the potential to impact school districts across Massachusetts, a Middlesex Superior Court judge recently issued guidance on the public's right to free speech at school committee meetings.

The underlying case, *Spaulding, et al. v. Town of Natick School Committee, et al*, Civil Action No. 2018-01115 (November 2018) involved three school committee meetings in which the two plaintiffs attempted to air past grievances with the Natick Public Schools. At all three meetings, the plaintiffs' comments were curtailed in accordance with the Natick School Committee's Public Participation at School Committee Meetings Policy ("Policy"), which forbade "improper conduct and remarks," "defamatory and abusive remarks," "personal complaints" from school personnel, and "personal complaints" about staff and students of the Natick Public Schools, while allowing "objective criticisms of the school operations and programs as concern [speakers]." In their subsequent lawsuit, the plaintiffs, together with the ACLU of Massachusetts, argued that the above prohibitions in the Policy were inconsistent with their free speech rights under the Massachusetts state constitution.

Adopting First Amendment "forum analysis" in reviewing the above provisions, the court found that allowing the public to speak at school committee meetings created a "designated public forum" in which the government could only restrict statements based on their content when the prohibition was "narrowly drawn to effectuate a compelling state interest." The Natick School Committee argued that the above provisions were narrowly drawn, citing compelling interests in protecting staff and student privacy, promoting a positive place to work and to learn, prohibiting bullying, and conducting orderly meetings.

While the court generally agreed that these interests were important and compelling, it nonetheless found that speech regarding topics within the scope of the School Committee's responsibility must typically be allowed, unless otherwise excluded from the protections of the First Amendment. In coming to this conclusion, the court defined the scope of a school committee's responsibilities as including comments about the superintendent of schools, the budgets for public education in the district, and the educational policies and goals of the schools in the district.

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The court noted that under G. L. c. 71, §§42 and 37O, principals and superintendents are responsible for staff member and student discipline, as well as addressing issues related to bullying, rather than school committee members. Therefore, the court concluded that personal complaints about school operations and programs would be permissible, and personal complaints about students and staff (excluding the superintendent) would not. However, the court clarified that identifying staff members or students while complaining about school operations and programs would be permissible under this framework. The court also rejected the Policy's implied requirements that comments be "objective" and "concern the speaker."

The court also found that the ban on "improper comments" in the Policy was too broad. The court noted that obscenity, fighting words (defined as those likely to provoke a violent reaction), threats, improper conduct (rather than speech), and defamation are excluded from the protections of state and federal free speech laws, and further clarified that only comments that have been adjudicated to be defamatory by a court of law could be lawfully prohibited under the Policy (assuming that they fell within the scope of the School Committee's responsibility).

Based on this decision, we are urging all of our school committee clients that permit public participation during school committee meetings to review their policies and ensure that they comply with state and federal free speech laws. While Superior Court decisions are considered persuasive, rather than binding legal authority with respect to non-parties, this decision leaves school committees open to a possible legal challenge if they rely upon any similarly-worded policies to prevent members of the public from speaking on a relatively wide array of topics. For school committees who utilize MASC model policies, the relevant provisions can typically be found in paragraphs 4 and 6 of Policy BEDH. If your policies conflict with the free speech principles identified in this decision, we encourage you to reach out to the attorney responsible for your account for assistance in making appropriate revisions.

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If you have any questions about this issue, please contact Andy Waugh, Elizabeth Sherwood or the attorney responsible for your account, or call (617) 479-5000.

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