



Via Email and Certified Mail

January 29, 2024
Superintendent Bob Stewart
Board of Education Chair Tracy Oberg Grant
Gladstone School District
17789 Webster Road
Gladstone, OR 97027
bob@gladstone.k12.or.us
grantt@gladstone.k12.or.us

Dear Superintendent Stewart and Chairperson Grant:

We write on behalf of our client, Glenda Scherer, concerning violations of her rights under the First Amendment to the United States Constitution.¹ As you are likely already aware, Glenda is an educator, a mother of two children, and District resident. Over the past 4 years, Glenda has also been a tireless advocate for her own children and for education in the District. We are concerned that Gladstone has repeatedly placed unconstitutional limits on Glenda's ability—and the ability of the public generally—to participate in critical debate regarding the District's policies. This letter is intended to provide Gladstone with an opportunity to remedy these violations before we are compelled to initiate litigation.²

I. The Gladstone School District Unconstitutionally Suppresses Glenda's Speech on Social Media.

Around September of 2020, the Gladstone School District opened a Facebook group where parents could offer support, ask questions, and receive assistance on school-related issues. But when Glenda tried to post about an Oregon Department of Education program permitting limited in-person instruction, the group's administrators applied [the "Post Approval" feature](#) to her account, prohibiting her comments from appearing unless they received approval. It is our understanding that such limitations were not placed on other members of the group, leaving us to

¹ Liberty Justice Center is a nonpartisan, nonprofit public-interest law firm dedicated to protecting the freedom of speech. You can learn more about our mission at libertyjusticecenter.org.

² These allegations are made upon information and belief, based on interviews with our client and a review of her files.

assume that Gladstone targeted Glenda for her views. Around the same time, Gladstone temporarily blocked Glenda from interacting with the District’s Twitter account. And, to this day, it appears that Glenda is blocked from tagging Gladstone Schools on all three of her Facebook accounts – Glenda.Scherer, OregonKidsFirst and unheardparent. These actions violate Glenda’s First Amendment rights. *See Garnier v. O’Connor-Ratcliff*, 41 F.4th 1158, 1163 (9th Cir. 2022) (holding that school board members “violate[d] the First Amendment by creating a publicly accessible social media page related to [their] official duties and then blocking certain members of the public from that page because of the nature of their comments”).

II. The Gladstone School Board Unconstitutionally Restricts Public Speech at Open Meetings.

The First Amendment protects the public’s right to speak at school board meetings “when the board sits in public meetings to conduct public business and hear the views of citizens.” *City of Madison, Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm’n*, 429 U.S. 167, 174–76 (1976). Although a school board may exercise some discretion with respect to speech—for example, it may limit the time for public speaking and require preregistration for public comment—policies that discriminate on the basis of content and viewpoint are almost always impermissible.³ Indeed, such policies inhibit the “free flow of ideas and opinions on matters of public interest and concern” that lies at “the heart of the First Amendment.” *Hustler Magazine, Inc. v. Falwell*, 485 U. S. 46, 50 (1988).

Here, Gladstone’s School District Policies on “Public Comment at Board Meetings” (the “Policies”) ostensibly invite the public “to share comments, ideas and opinions with the Board during designated times on the agenda.”⁴ But, in practice, the Board has enacted and enforced policies or practices completely inconsistent with that goal and with the protections of the First Amendment. This letter focuses on two of those policies: a ban on discussions of the administrators and educators implementing school policy, and a requirement of prescreening public comments.

³ *See, e.g., Reed v. Town of Gilbert* that “[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” 576 U.S. 155, 163 (2015); *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991) (“Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.”).

⁴ There appear to be two relevant policies posted on the Board’s website: one labeled BDDH-G1, dated March 9, 2022, and one labeled BDDH-R-G1, dated February 9, 2022. *See* <https://gladstoneschools.org/sites/thrillshare.com/documents/school-board-policies/476586>. We presume the March 9, 2022 policy is current.

a. The District’s Prohibition on Mentioning any School Employee by Name or Title Is Unconstitutional.

In November of 2023, Glenda signed up to speak at an upcoming school board meeting to express concerns about the qualifications and transparency of school staff members and the hiring process. She met the Board’s requirements for speaking at the meeting, including filling out a comment form at least five hours prior to the start of the meeting. However, just before she spoke, she was told that she could not mention any current or former school employee by name. Likewise, in January of 2024, Glenda was prohibited from discussing the District’s failure to discipline an employee who was investigated for abusing her son, and who allegedly screamed profanities at her offsite. She was told that she was not permitted to even reference a school employee by title or refer to any events that, in the opinion of the Chair, did not “occur during regular business hours” and “have no bearing on school buildings or property.” When she expressed concerns about the restrictions on her First Amendment rights, the Chair temporarily stopped the meeting. These actions inhibited Glenda from communicating her concerns about school policies and personnel.

The Board was ostensibly enforcing the portion of the Policies concerning “comments regarding staff members,” which states that “a person speaking . . . may offer objective criticism of district operations and programs [but] The Board will not hear comments regarding any individual district staff member.”⁵ This provision is unconstitutional on its face, and in its implementation against Glenda. Indeed, under “Legal References,” the Policies cite *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719 (C.D. Cal. 1996) and *Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997), both of which clarify that the Board’s actions are illegal. In *Baca*, for example, the Court enjoined a school district from enforcing a policy prohibiting speakers from criticizing the school’s employees by name and position, observing that “[i]t is difficult to imagine a more content-based prohibition on speech than this policy.” 936 F. Supp. at 720. In *Leventhal*, the court struck down similar restrictions, finding that “[d]ebate over public issues, including the qualifications and performance of public officials (such as a school superintendent), lies at the heart of the First Amendment.” 973 F. Supp. at 958. Courts have recognized more recently that school boards’ restrictions on “abusive,” “personally

⁵ The Google Forms template used to request submission of comments in advance similarly states “that reference to a specific employee or group of employees is prohibited.” Likewise, a document titled “Public Participation” provided to meeting participants says “the Board/Committee will not hear complaints concerning specific school personnel . . . Comments of this nature will not be heard.”

directed,” and “antagonistic” comments are unconstitutional. See Ison v. Madison Loc. Sch. Dist. Bd. of Educ., 3 F.4th 887 (6th Cir. 2021) (recognizing recent Supreme Court decisions that “stand for the proposition that the government may not censor speech merely because it is offensive to some”).⁶

b. The Board’s Requirement that Speakers Submit Their Entire Statement in Advance is Unconstitutional Prior Restraint, and Inconsistent with the Board’s Written Policies.

It is our understanding from Glenda that the Board requires public speakers to submit their comments in full for approval by the Chair prior to a meeting.⁷ As a threshold matter, this is inconsistent with the Board’s written policies, which state only that a speaker must “sign in on the public comment sheet provided, complete and submit the Intent to Speak card to the Board secretary, and submit their name electronically prior to the Board meeting.”⁸ In any event, the requirement for a speaker to submit their comment for prior approval by the government is a patently unconstitutional policy of prior restraint. As explained by the Ninth Circuit:

[A] regulation of expression aimed at suppressing speech before it is uttered, as opposed to punishment of individuals after the expression has occurred, is a prior restraint, which generally comes before a court bearing a heavy presumption of unconstitutionality. . . . A system of prior restraint is in many ways more inhibiting than a system of subsequent punishment: It is likely to bring under government scrutiny a far wider range of expression; it shuts off communication before it takes place; suppression by a stroke of the pen is more likely to be applied than suppression through a criminal process; the procedures do not require attention to the safeguards of the criminal process; the system allows less opportunity for public appraisal and criticism; the dynamics of the system drive toward excesses, as the history of all

⁶ We note that the Public Participation section of the January 24, 2024 Board Agenda emailed to Glenda demands that Board members must be treated with “respect.” This vague demand appears intended to improperly insulate the board from criticism at public meetings.

⁷ For example, a January 27, 2021 email from then-Chair Greg Lind demanded that Glenda stick to her “submitted comments”, explaining that “extemporaneous speech” is not permitted and that “if a person goes off-script . . . [he] will have to mute them.” A January 10, 2024 email from the current Chair asked Glenda to edit her pre-submitted comment to omit criticism and concerns about a district employee.

⁸ It is our understanding that these policies are also being applied inconsistently, with the Board demanding strict compliance from Glenda but waiving compliance for other speakers at both the November 8 and December 13 meetings.

ensorship shows. . . . Prior restraints are permissible in only the rarest of circumstances, such as imminent threat to national security.

Burch v. Barker, 861 F.2d 1149, 1155 (9th Cir. 1988) (striking down a school’s preapproval requirement for student speech and finding that such communications “cannot be subjected to regulation on the basis of undifferentiated fears of possible . . . embarrassment to school officials.”) The use of prior restraint here makes Gladstone’s policies even more egregious than the unconstitutional policies in *Baca*. See *Baca*, 936 F. Supp. at 727 (prohibition on critiques of school employees—though unconstitutional anyway—was not a prior restraint “because it [did] not give a public official the power to deny use of the forum in advance of the actual expression”).

c. The Superintendent’s Attempt to Ban Glenda from School Board Meetings Without Prior Approval is Unconstitutional Prior Restraint.

In January of 2024, Glenda received a letter from the superintendent banning her from attending school board meetings and workshops on school property unless she received prior approval from the Superintendent’s Office. This alarming restriction on Glenda’s First Amendment right to free speech and assembly is unconstitutional prior restraint.⁹ Prior restraint “exists when speech is conditioned upon the prior approval of public officials.” *Déjà vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson County*, 274 F.3d 377, 400 (6th Cir. 2011). Here, Glenda is forbidden from attending meetings and exercising her First Amendment rights without prior approval from school officials. Such drastic prior restraint is indicative of the Board’s willingness to suppress any contrary opinions and silence the public. Bans of this nature are flatly unconstitutional. See, e.g., *McBreairty v. Sch. Bd. of RSU22*, 616 F. Supp. 3d 79, 96 (D. Me. 2022) (“Singling out one individual, banning his (perhaps disfavored) speech, and essentially preventing him from engaging in a form of civil discourse that is available to everyone else in [the school district]—is unreasonable.”); *Anderson v. Hansen*, 489 F. Supp. 3d 836, 843 (E.D. Wis. 2020) (“[T]his ban has no rational connection to enforcing restrictions on citizen comments at board meetings and thus can only be viewed as a way of punishing the plaintiff for the comments she made during the prior board meeting.”).

⁹ In *Barna v. Board of School Directors of the Panther Valley School District*, the Third Circuit “took no issue” with the district court’s determination that barring a citizen from attending school board meetings and barring him from school property constituted an unconstitutional prior restraint. 877 F.3d 136 (3rd Cir. 2017).

III. Conclusion

Public comment is essential to the betterment of public schools. The First Amendment protects this vital right of the people to publicly voice their concerns and prohibits governing boards from censoring speech they disagree with or would rather not hear.

Liberty Justice Center therefore calls on the Gladstone School District to immediately bring its social media and public comment policies and practices in compliance with the First Amendment by (1) removing all social media restrictions on accounts controlled by Glender Scherer, (2) revoking its policies and practices restricting comments regarding staff members, (3) removing the requirement that comments be submitted in full prior to public meetings, (4) withdrawing the January 23 2024 letter purporting to ban Glenda from accessing school property, including board meetings, without the prior approval of the superintendent; and (5) otherwise guaranteeing our client's ability to speak freely on matters concerning the District. If these changes are not made promptly, we intend to promptly file suit in the United States District Court for the District of Oregon seeking an injunction.

Please feel free to reach out to us at the email addresses below to discuss further. We respectfully request a substantive response to this letter no later than February 5, 2024.

Sincerely,



Dean McGee, Esq.
Noelle Daniel, Esq.
dmcgee@ljc.org
ndaniel@ljc.org

cc: Jennifer Zamora (email only to zamoraj@gladstone.k12.or.us)