

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

No. 23-1389

SHAWN MCBREAIRTY,

Plaintiff – Appellant

v.

HEATH MILLER, in his personal and official capacities;
SCHOOL BOARD RSU 22

Defendants – Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MAINE

**BRIEF OF DEFENDANTS-APPELLEES
HEATH MILLER and SCHOOL BOARD RSU 22**

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INTRODUCTION

This case is about whether the First Amendment of the United States Constitution guarantees the right of Plaintiff-Appellant Shawn McBreairty to, in his words, “say anything I want about employees of RSU 22” at a meeting of the Regional School Unit 22 (“RSU 22”) School Board. It does not. RSU 22 has the right – indeed, the obligation – to protect the confidentiality rights of its employees when it provides members of the public with a limited public forum to comment on school and education matters at its Board meetings. As the court below correctly held, RSU 22 was therefore not required to subject its employees to a public airing of what those who choose to comment think of their personal character, work performance, or anything else that someone might choose to say about them. RSU 22’s Public Participation Policy, which prohibits comments on personnel matters, unequivocally passes constitutional muster. This Court should therefore affirm the decision of the District Court because McBreairty is not entitled to the unnecessary injunctive relief that he continues to seek.

STATEMENT OF THE ISSUES

1. Whether the District Court correctly concluded that Plaintiff-Appellant Shawn McBreairty is not entitled to injunctive relief because the personnel-matter rule in Policy BEDH is a reasonable and viewpoint-neutral restriction in a limited public forum.
2. Whether the District Court correctly concluded that Plaintiff-Appellant Shawn McBreairty was not entitled to injunctive relief because the personnel-matter rule in Policy BEDH was not applied unconstitutionally as to him.

STATEMENT OF THE CASE

I. The Public Participation Policy Establishes Reasonable Standards for the Public Comment Period in order to Allow the School Board to Conduct its Business Pursuant to Maine Law.

RSU 22 is a Maine school administrative unit that provides a free public education to students in the communities of Hampden, Newburgh, Winterport, and Frankfort, Maine. *See* Appendix (“App.”) 059, ¶ 2. The RSU 22 School Board (“School Board” or “Board”) holds monthly School Board meetings which are open for the public to attend and are broadcasted in real time via livestream on RSU 22’s website. The primary purpose of School Board meetings “is to conduct the business of the Board related to Board policies, programs, and operations.” Public Participation at School Board Meetings (June 16, 2023) (“2023 BEDH Policy”).¹

¹ RSU 22’s Public Participation Policy (“Policy BEDH”) was updated on June 16, 2023, during the pendency of this appeal. A copy of that policy is attached as an addendum to this brief (“Add.2”). This Court can take judicial notice of the updated policy because it is not subject to reasonable dispute, and it can be readily determined from sources whose accuracy cannot reasonably be questioned. *See* Fed. R. Evid. 201. Indeed, McBreaity cites the updated policy in his brief, *see* Blue Br. 39 n.13, and Policy BEDH is publicly available on the School website, *see* 2023 BEDH Policy (June 16, 2023), https://drive.google.com/file/d/14UOHsb-sfDv7pvo_GzF27H-ZBmkHab8-/view. Appellees primarily cite to the current version of Policy BEDH given that it is the applicable policy in this appeal, *see Itek Corp. v. First Nat. Bank of Bos.*, 704 F.2d 1, 6 (1st Cir. 1983), but also make reference to the parallel portions of the prior version of Policy BEDH (“2020 BEDH Policy”), *see* Appendix (“App.”) 065-66, which was updated as of March 25, 2020. Appellees refer herein to the current, applicable version of Policy BEDH

When conducting its business, the Board is bound by Maine law, which requires the Board, among other things, to “ensure the safety of employees” and “address the negative effects of bullying of school employees” by any “individuals associated with the public school.” 20-A M.R.S. § 1001(22). Remarks from the public on “school and education matters” are permitted at Board meetings during only the public comment period, for which Maine law expressly permits the Board to establish “reasonable standards for the public comment period, including time limit and conduct standards.” 20-A M.R.S. § 1001(20).

In compliance with Section 1001(20), RSU 22 adopted Policy BEDH, which establishes general requirements for the public comment period in order “to permit fair and orderly expression of public comments at Board business meetings while still allowing the Board to conduct its business efficiently.” 2023 BEDH Policy, Add.2 01; *see also* 2020 BEDH Policy, App. 065-66 (establishing reasonable standards for the Board to conduct its business “in an orderly and efficient manner”). Policy BEDH was “designed to promote public participation at [Board] meetings and ensure that the public commentary takes place in an orderly fashion, complies with applicable law, and respects the privacy rights of [RSU 22] employees.” App. 060, ¶ 7.

as the “2023 BEDH Policy” and likewise refer herein to the prior version as the “2020 BEDH Policy.”

McBreairty challenges only what the District Court called the “personnel-matter rule” in Policy BEDH, which does not allow any comments—including criticisms—related to the performance of specifically named RSU 22 employees. The personnel-matter rule was adopted in the March 2020 update to Policy BEDH. *See* App. 060, ¶¶ 5-6. In that former iteration, the personnel-matter rule was found in Rule 2 of Policy BEDH, which provided that

Confidential personnel information will not be shared in a public session. No complaints or allegations will be allowed at Board meetings concerning any person employed by the school system or against particular students. Personnel matters or complaints concerning student or staff issues will not be considered in a public meeting but will be referred through established policies and procedures.

App. 065.²

During the pendency of this appeal, Policy BEDH was amended, and the personnel-matter rule now clarifies that comments about a school unit employee’s job performance or conduct are not permitted regardless of whether such comments are laudatory or otherwise. *See* 2023 BEDH Policy, Add.2 02. As RSU

² McBreairty refers to the former version of the personnel-matter rule as “Rule 2.” At oral argument before the District Court and seemingly again in his opening brief to this Court, McBreairty claims to be challenging only the following specific words in the 2020 BEDH Policy: “No complaints or allegations will be allowed at Board meetings concerning any person employed by the school system . . . complaints concerning . . . staff issues.” In other words, McBreairty reads out the language prohibiting discussion of personnel matters. However, as the District Court correctly noted, the policy must be viewed as a whole. *See* Addendum to Brief of Appellant (“Add.”) 011 (“The problem is that the Plaintiff’s approach takes too myopic a view.”).

22 Board Chair Heath Miller set forth in his Declaration before the District Court, those revisions to Policy BEDH were set in motion starting in Winter 2023, when an RSU 22 Board member recommended such a clarification after attending a presentation on school board policies. App. 61, ¶ 17. At this time and instigated by the board member’s recommendation, Miller began warning speakers as soon as they mentioned an employee’s name during the public comment period.³ App. 062, ¶ 20.

On March 15, 2023—prior to McBreairty filing his complaint in this matter—the Maine School Management Association (MSMA) distributed a revised Policy BEDH to the RSU 22 Board for its consideration, *see* App. 061-62, ¶ 18; *see also* App. 073-75, and the Board ultimately adopted its own version of the MSMA’s suggested revisions on June 16, 2023, *see* 2023 BEDH Policy.

The personnel-matter rule in the current version of Policy BEDH can now be found in Rule 3(c), where it provides that

Discussion of personnel matters is not permitted during the public comment period due to the privacy, confidentiality and due process rights of school unit employees. For purposes of this policy, “discussion of personnel matter” means any discussion, whether positive or negative, of job performance or conduct of a school unit employee.

2023 BEDH Policy, Add.2 02. It further provides in Rule 3(e):

³ Because laudatory comments were and are so uncommon during the public comment period, it had not occurred to Miller until sometime after Fall 2022 that they, too, qualify as personnel matters. App. 061, ¶ 17.

Any concerns about personnel matters and/or student matters should be directed to the Superintendent or another appropriate administrator outside of Board meetings so that they can be addressed through an alternative channel and in a manner consistent with privacy, confidentiality, and due process rights of the individuals involved.

2023 BEDH Policy, Add.2 02; *see also* App. 65 (“Personnel matters or complaints concerning student or staff issues will not be considered in a public meeting but will be referred through established policies and procedures.”). Policy BEDH specifically references the separate Board Policy KE, which provides the process for which comments are heard about specific employees, including complaints or allegations thereof. *See* 2023 BEDH Policy, Add.2 02; App. 062, ¶ 21; *see also* App. 76.

In addition to the personnel-matter rule, Policy BEDH limits each speaker’s comments during the public comment period to three minutes, and it permits the Chair to stop any public comment that is contrary to its rules. 2023 BEDH Policy, Add.2 01; *see also* App. 065-66. The Chair is further authorized to “request the assistance of law enforcement if necessary to address disruptions or safety concerns.” 2023 BEDH Policy, Add.2 02; *see also* App. 065-66.

II. McBreairty’s Public Comments Were Interrupted Only After He Discussed the Conduct of Specifically-Named RSU 22 Employees.

McBreairty’s complaint and the District Court’s decision primarily focus on the February 15, 2023 and March 15, 2023 public comment periods, each of which

began with Miller summarizing the rules of the Public Participation Policy, App. 060, ¶ 8; Add. 019, and each of which were interrupted after McBreairty “willfully disobey[ed] the rules of the Public Participation Policy,” Add. 024.

At the February meeting, McBreairty played an audio of himself that started with his voicing of views regarding gender identity and LGBTQ+ concepts, including the topic of “sexual grooming.” *See* App. 014 (“Feb. Video”) at 1:55. He was uninterrupted during this entire time. *Id.* at :01-1:55. Toward the end of his recorded remarks, he said, “In an article recently I believe the Superintendent was quoted as saying that RSU 22 is proud of all [named employee] accomplished in her 2022 groomer, I mean, teacher of the year.”⁴ *Id.* at 2:12-2:21. Miller warned McBreairty that he would be asked to sit down if his recording continued to “mention[] names,” *id.* at 2:20-2:24, but Plaintiff’s recording nonetheless went on to state that the named employee should be locked up and not allowed within 500 feet of a school, *id.* at 2:22-2:27. McBreairty was therefore asked to sit down and, when he refused, the Board had to recess the meeting. *See id.* at 2:30.

The events of the March meeting were similar except that this time McBreairty spoke rather than playing pre-recorded remarks. As the District Court

⁴ The School does not here reference the names of the RSU 22 employees specifically named by McBreairty in his public remarks to protect the privacy of those employees. In so doing, the School does not agree with McBreairty’s argument that the naming of any employee in any setting constitutes speech about a “personnel matter” that could be restricted under Policy BEDH. *See* Blue Br. at 27 & n.11. That argument completely ignores the forum at issue.

found, he started by voicing his “displeasure with the School Board and its members” as well as “his disagreement with the books in the library, the RSU 22 strategic plan, the current superintendent, students’ math scores, a flag hanging on a classroom wall, certain afterschool programming he disliked, a national organization of so-called ‘groomers,’ and students being able to discuss sex during extracurriculars.” Add. 021; App. 022 (“March Video”) at :08-2:27. In the third minute of his remarks, he said, “Recently, Hampden Academy students alerted me to a high school Spanish teacher, [named employee], who has an LGBTQ cult war flag on the classroom wall.” March Video at 2:00-2:09. Miller once again initially interrupted only to warn McBreairty that he was not to name individual employees, *id.* at 2:09-2:11, but McBreairty went on to lament an after-school program for which he suggested a named employee was part of an “after-school cult pushing sex and enabling mental illness in our youth,” *id.* at 2:15-2:32. Having already warned McBreairty, Miller then asked him to step down from the podium. *Id.* at 2:33-2:36. Once again, the Board had to recess its meeting. During the recess, McBreairty refused to relinquish the podium until law enforcement arrived and, during the delay, other members of the public gathered their belongings and left the audience. Add. 006 n.6; App. 064, ¶ 28; App. 078.

In both meetings, speakers other than McBreairty offered public comments espousing views similar to those expressed by McBreairty, such as their shared

concerns for sexual predators in schools, for books with sexual content, and for students' exposure to gender identity ideologies. Add. 020.⁵ None of these speakers directed their comments at specific RSU 22 personnel, and none of them were interrupted.

III. The District Court Denied Injunctive Relief.

On March 24, 2023, McBreairty filed a complaint in the United States District Court for the District of Maine, alleging that the personnel matter rule was unconstitutional because it does not permit him to criticize named RSU 22 employees. App. 001-08. He also claimed that the rule was unconstitutional as applied to him, relying on one instance in October 2022—four months prior to the February meeting—when a member of Educate Maine spoke uninterrupted while offering comments about the Maine Teacher of the Year program, for which an RSU 22 teacher had been named Teacher of the Year. *Id.* McBreairty seeks declaratory and injunctive relief in addition to monetary damages. App. 007-08.

⁵ Although McBreairty submitted as exhibits only those portions of the public comment period at which he spoke at the February and March 2023 Board meetings, the District Court properly reviewed the other portions of those public comment periods, which are publicly available on the RSU 22 School Board's YouTube channel. Add. 002 & n.1. As the District Court noted, the full video of the February 15, 2023 meeting is available at https://www.youtube.com/watch?v=EZoXb_CIXy4, and the full video of the March 15, 2023 meeting is available at https://www.youtube.com/watch?v=f_snd64INc. See Add. 004 n.5, 005 n.7.

On the same day, McBreairty also filed an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, representing that it was his intention to criticize RSU 22 employees at the upcoming April 26, 2023 Board meeting, *see* App. 023, and requesting that the court enjoin the personnel-matter rule on the basis that it deprived him of his First Amendment right to do so.

After hearing oral argument, the District Court issued a 30-page opinion denying McBreairty's request for a preliminary injunction. It determined that McBreairty's facial challenge would fail on the merits because the personnel-matter rule was a viewpoint-neutral and reasonable restriction in a limited public forum. Add. 010-18. It likewise concluded that McBreairty's as-applied challenge would similarly fail on the merits because, "[c]ontrary to Mr. McBreairty's contention, the record unequivocally reveal[ed] that he was not shut down because of his viewpoint. He was shut down because he—unlike any of the other speakers—could not follow the School Board's rules for public comment." Add. 021. The court furthermore determined that the three remaining factors for injunctive relief—irreparable harm, the balancing of harms, and the public interest—all weighed in favor of the School Board. Add. 026-29.

Following the court's denial of his request for a preliminary injunction that day, McBreairty attended the Board's April meeting and, like other members of the public, he was permitted to speak—and offer criticism—for the three minutes

allotted to him during the public comment period.⁶ The next day, McBreairty filed a Notice of Appeal, and he thereafter moved on an expedited basis for an injunction pending appeal, which the court denied. App. 125. Four days after filing his notice of appeal, McBreairty filed with this Court a motion for injunction pending appeal and a motion to expedite the appeal. This Court denied both of McBreairty's motions.

⁶ The April 26, 2023 meeting is available on the RSU 22 School Board's YouTube Channel at https://www.youtube.com/watch?v=wn_mp1sq1IM.

SUMMARY OF THE ARGUMENT

McBreairty's First Amendment challenges in this case will fail on the merits because of what McBreairty readily admits: the public comment period at RSU 22 School Board meetings is a limited public forum. The Board can therefore restrict public comments so long as such restrictions are viewpoint-neutral and reasonable, *see Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001), and the District Court properly concluded that the personnel-matter rule is exactly that: it restricts comment on personnel matters during publicly televised Board meetings regardless of a speaker's viewpoint.

The Board's interests in such a restriction are substantial and myriad. The Board is tasked with carrying out the business of the board efficiently, and it seeks to promote public participation in doing so. The Maine Legislature has instructed Maine school boards to protect the safety of their employees, 20-A M.R.S. § 1001(22), and compliance with that mandate is not mutually exclusive from fulfillment of the Board's "most basic obligation," which is to provide "a stable environment for the education of its students," *Solmitz v. Maine Sch. Admin. Dist. No. 59*, 495 A.2d 812, 818 (Me. 1985).

In addition to the personnel-matter rule being both viewpoint-neutral and reasonable, so too were Miller's interruptions of McBreairty's comments during the February 2023 and March 2023 Board meetings. The District Court did not

abuse its discretion in determining what the record unequivocally bears out, which is that McBreairty was not interrupted on the basis of viewpoint: he was interrupted because he violated the personnel-matter rule, and indeed it was his proclaimed intention to the Board at the outset of his remarks that he would be doing just that.

The current version of the personnel-matter rule makes clear that neither laudatory nor critical personnel-matter comments are permitted, and McBreairty offers no reason for this Court to believe that the personnel-matter rule has been or will be applied unconstitutionally as to him. McBreairty, like other members of the public, remains free to offer his views and criticism on a wide range of topics, and he likewise remains free to comment on personnel matters through alternative channels for doing so.

McBreairty's void-for-vagueness argument was properly deemed waived, nor could that argument rescue the merits of his claims even if it were preserved. The District Court properly concluded that McBreairty's claims will fail on the merits, and it likewise properly determined that all other factors weigh *against* granting the injunctive relief sought by McBreairty. This Court should therefore affirm the District Court's decision and deny the same extraordinary relief that he now seeks again here.

ARGUMENT

I. Standard of Review.

In assessing whether to grant a preliminary injunction, the District Court properly considered “(1) the movant’s likelihood of success on the merits; (2) the likelihood of the movant suffering irreparable harm; (3) the balance of equities; and (4) whether granting the injunction is in the public interest.” *Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist.*, 969 F.3d 12, 22 (1st Cir. 2020). “The showing of a likelihood of success on the merits is the most important of the four preliminary injunction factors,” *Doe v. Trustees of Boston Coll.*, 942 F.3d 527, 533 (1st Cir. 2019), and an assertion of First Amendment rights “does not automatically require a finding of irreparable injury,” *Respect Maine PAC v. McKee*, 622 F.3d 13, 15 (1st Cir. 2010). Further, although the government bears the burden of proving the constitutionality of any restriction on speech, *see, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969), it is ultimately the movant’s burden to show that a preliminary injunction should issue. Indeed, “a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quoting 11A C. Wright, A. Miller, & M. Kane, *Fed. Prac. & Proc.* § 2948, pp. 129-130 (2d ed. 1995)).

This Court reviews the denial of a preliminary injunction for abuse of discretion. *See, e.g., Wine & Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 46 (1st Cir. 2005). “Under that rubric, findings of fact are reviewed for clear error and issues of law are reviewed de novo.” *Id.* This Court also reviews deferentially any judgment calls or issues that demanded the balancing of conflicting factors by the District Court, and it will therefore set aside the court’s denial of the preliminary injunction motion “only if the court clearly erred in assessing the facts, misapprehended the applicable legal principles, or otherwise is shown to have abused its discretion.” *Id.* Here, the District Court made no such missteps.

II. McBreairty’s Arguments Regarding the Language of the 2020 BEDH Policy Are No Longer Relevant But His Appeal Is Not Moot.

In reaching its conclusion that RSU 22’s Public Participation Policy passed constitutional muster, the district court undertook a two-step analysis. First, it looked at the language of the 2020 BEDH Policy and determined that contrary to McBreairty’s contention, it prohibited both positive and negative comments directed to specific employees of RSU 22. Then, it determined that the policy as thus construed did not violate McBreairty’s First Amendment rights. In this appeal, the first issue is no longer at issue because RSU 22 has since enacted the 2023 BEDH Policy. *See Naturist Soc., Inc. v. Fillyaw*, 958 F.2d 1515, 1520 (11th Cir. 1992) (“Where a law is amended so as to remove its challenged features, the claim for injunctive relief becomes moot as to those features.”). The personnel-

matter rule in the 2023 BEDH Policy is thus the policy that this Court should consider because it is the policy as it currently stands and the policy that will be applied if McBreairty seeks to speak at future meetings of the Board. *See, e.g., Itek Corp. v. First Nat. Bank of Bos.*, 704 F.2d 1, 6 (1st Cir. 1983) (“[W]e are constrained to apply the law as it exists now, not as it existed when the district court rendered its judgment.”).

Although amendment to a challenged law during the pendency of litigation can moot the case when that amendment affords a plaintiff the remedy that he seeks, *see, e.g., Town of Portsmouth, R.I. v. Lewis*, 813 F.3d 54, 58-59 (1st Cir. 2016); *Bos. Bit Labs, Inc. v. Baker*, 11 F.4th 3, 9 (1st Cir. 2021), in this case, RSU 22 agrees with McBreairty that this case is not moot. As this Court has explained: “A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. Another way of putting this is that a case is moot when the court cannot give any effectual relief to the potentially prevailing party.” *Bayley's Campground, Inc. v. Mills*, 985 F.3d 153, 157 (1st Cir. 2021) (reviewing challenged conduct that could recur even when the challenged law had been changed for reasons *unrelated* to the litigation) (alterations and quotation marks omitted); *see also Naturist Soc.*, 958 F.2d at 1520 (holding that challenges to statutory scheme regulating speech were not moot after amendment

to that scheme pending appeal because the scheme still “operate[d] in the same allegedly unconstitutional fashion.”).

It has always been and continues to be McBreairty’s stated intention to criticize individually named RSU 22 employees during the public comment period at Board meetings, which is a right that he claims he has regardless of whether it is the 2020 BEDH Policy or the 2023 BEDH Policy that is in effect. *See* Blue Br. 1, 12, 16; App. 001-08, 023; *see also* Blue Br. 4 & n.1 (“[B]oth versions of the rule are constitutionally infirm and must be enjoined.”). Such criticism was not permitted under the 2020 BEDH Policy, nor is it permitted now under the 2023 BEDH Policy. *Cf. Am. C. L. Union of Massachusetts v. U.S. Conf. of Cath. Bishops*, 705 F.3d 44, 53-54 (1st Cir. 2013) (explaining that an appeal for injunctive relief was moot when the controversy was no longer immediate or real because the government contract at issue had expired and there was “no ongoing conduct left for the court to enjoin” given that the new government contracts in the form of grants did *not* raise the Establishment Clause issues challenged by the Plaintiff).

In short, a live controversy continues to exist here because the School intends to continue the conduct that McBreairty challenges under the First Amendment. *See Naturist Soc.*, 958 F.2d at 1520 (“[A] superseding statute or regulation moots a case only to the extent that it removes challenged features of the

prior law. To the extent that those features remain in place, and changes in the law have not so fundamentally altered the statutory framework as to render the original controversy a mere abstraction, the case is not moot.”).

III. McBreairty’s Facial Challenge to the Personnel-Matter Rule Will Fail on the Merits Because it is Viewpoint-Neutral and Reasonable in a Limited Public Forum.

A. The Public Comment Period is a Limited Public Forum.

“[P]rotected speech is not equally permissible in all places and at all times. Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.” *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788, 799-800 (1985). The District Court held, and the parties agree, that the public comment portion of the RSU 22 Board Meeting is a limited public forum. RSU 22 School Board Meetings are not meetings of the public; they are meetings at which the School Board conducts its business, and the public is invited to attend. The public comment period is one portion of the Board’s broader agenda during which it permits public comment, subject to reasonable conduct standards and time limits, on the broad yet confined topic of “school and education matters.” 20-A M.R.S. § 1001(20); *see McBreairty v. School Board of RSU 22*, 616 F.Supp.3d 79, 93 (D. Me. July 20, 2022)

(determining that Section 1001(20) and the Public Participation Policy, “taken together, . . . show that the School Board opened up a limited public forum”).⁷

When the State establishes a limited public forum, “the State is not required to and does not allow persons to engage in every type of speech.” *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001). In a limited public forum, content discrimination is permissible if it “preserves the purposes of that limited forum.” *Rosenberger v. Rector & Visitors of the Univ. of Virginia.*, 515 U.S. 819, 830 (1995). The School Board can therefore restrict expression during the public comment period of its Board meetings so long as such restrictions are viewpoint neutral and are “reasonable in light of the purpose served by the forum.” *Good News Club*, 533 U.S. at 106-07.

B. The Personnel-Matter Rule is Viewpoint Neutral.

“The essence of a viewpoint discrimination claim is that the government has preferred the message of one speaker over another.” *McGuire v. Reilly*, 386 F.3d 45, 62 (1st Cir. 2004). The government must therefore “abstain from regulating

⁷ The parties agree that the public comment period is a limited public forum, and case law from other Circuits supports that conclusion. *See Davison v. Rose*, 19 F.4th 626, 635 (4th Cir. 2021); *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 759 (5th Cir. 2010); *Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1225 (11th Cir. 2017); *Lowery v. Jefferson Cnty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009) (“While this type of meeting offers citizens a chance to express their views to the board, it cannot accommodate the sort of uninhibited, unstructured speech that characterizes a public park.”).

speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger*, 515 U.S. at 829.

McBreairty’s argument that the personnel-matter rule is facially invalid as either a viewpoint or content-based regulation rests largely on his contention that the personnel-matter rule prohibits criticism of employees but allows praise. *See, e.g.*, Blue Br. 16 (“On its face, Rule 2 prohibits ‘complaints’ and ‘allegations,’ while allowing laudatory comments and compliments.”). In the first place, this argument plainly ignores the applicable 2023 BEDH Policy, which now makes unequivocally clear that personnel matters include either laudatory or so-called “critical” comments. Second, although McBreairty pays lip service to the principle that the language of the rule controls, and he criticizes the District Court for “rewriting” the rule, nowhere does he point to language in the rule that actually encourages, or even allows, laudatory comments. To the contrary, the 2023 BEDH Policy specifically prohibits both criticism and praise. Similarly, the 2020 BEDH Policy, although less direct, prohibited comments on all personnel matters, and the evidence before the District Court was that such a prohibition encompassed both positive and negative comments. *See* App. 061, ¶17.

A restriction on speech related to the conduct and performance of specifically named employees in the limited public forum of a school board’s public comment period is not discriminatory on the basis of viewpoint. The

District Court agreed that the strong weight of authority supports this position of the School. Add. 014-17; *see Pollak v. Wilson*, No. 22-8017, 2022 WL 17958787, at *2, *8 (10th Cir. Dec. 27, 2022) (unpublished); *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 753, 755-60 (5th Cir. 2010); *Prestopnik v. Whelan*, 83 F. App'x 363, 365 (2d Cir. 2003); *Moms for Liberty – Brevard Cnty., FL v. Brevard Pub. Sch.*, 582 F.Supp.3d 1214, 1217-19 (M.D. Fla. 2022), *aff'd* No.22-10297, 2022 WL 17091924 (11th Cir. Nov. 21, 2022) (finding the district court's denial "well-reasoned"); *see also Davison v. Rose*, 19 F.4th 626, 635-36 (4th Cir. 2021) (affirming summary judgment that a school board's public participation policy, which did not permit comments "that are harassing or amount to a personal attack against any identifiable individual," was viewpoint neutral), *cert. denied*, 143 S. Ct. 106 (2022); *Cipolla-Dennis v. Cnty. of Tompkins*, No. 21-712, 2022 WL 1237960, at *1-2 & n.1 (2d Cir. Apr. 27, 2022) (unpublished) (holding that a county legislature's rule of prohibiting public comment on personnel matters, which it defined as "comments about the job performance of named County employees," was viewpoint neutral because the policy did not "single out any subset of views for exclusion").

McBreairty does not cite case law in support of his position⁸ but instead attempts now to distinguish the weight of authority by arguing that the personnel-matter restriction in Policy BEDH is broader than those at issue in some of the cases relied upon by the District Court. Blue Br. 26-33. This is not so, and the argument misunderstands the nature of the forum at issue. As the District Court correctly recognized, the term “personnel matters” encompasses an employee’s conduct and performance of his or her duties, which, like the policies in the cases relied upon by the District Court, constitutes a prohibition on discussion of a *subject*. See *Fairchild*, 597 F.3d at 757 (defining personnel matters broadly to include “duties”); *Pollak*, 2022 WL 17958787, at *7-8 (determining that the policy was facially viewpoint neutral because it “prohibits the discussion of a subject—personnel matters”).

The personnel-matter restriction here need not be content-neutral in light of its forum, and viewpoint discrimination furthermore does not occur when “the government incidentally prevents certain viewpoints from being heard in the course of suppressing certain general topics of speech.” *Ridley v. Mass. Bay Transp. Auth.*, 390 F.3d 65, 91-92 (1st Cir. 2004) (“Reasonable ground rules, so long as they are not intended to give one side an advantage over another, can be set

⁸ Although he continues to cite *Marshall v. Amuso*, 571 F.Supp.3d 412 (E.D. Pa. 2021), Blue Br. 18-19, the District Court agreed that *Marshall* is inapposite here, Add. 013-14.

without falling prey to viewpoint discrimination.”). Further, McBreairty’s argument that personnel matters ought to be narrowly defined as only the personnel information in the possession of the school, such as evaluations and records related to charges of misconduct, *see* Blue Br. 28, ignores the very practical reality that public comments at a board meeting, such as those suggesting, as McBreairty did, that an employee runs an after-school sex cult, must be interpreted by the Board as personnel information.

The personnel-matter rule here has not and does not referee only one side of a particular debate. It takes no regard for the nature of the comment, nor the speaker’s identity, ideology, or motivation which may animate the comment: so long as the speaker attributes his or her remark to a specifically named RSU 22 staff member, such speech is not permissible during the public comment period and must be communicated through the Board’s alternative procedure for doing so.

C. The Personnel-Matter Rule is Reasonable.

The District Court properly concluded that McBreairty cannot succeed on the merits of his facial challenge because, in addition to being viewpoint neutral, the personnel matter restriction is also reasonable in light of the purposes served by the limited public forum.

The purpose of the School Board meetings is for the School Board to conduct its business as charged by law. The purpose of the public comment period

at school board meetings is to provide opportunity for comment on “school and education matters,” 20-A M.R.S. § 1001(20), and RSU 22 does not shy away from the criticisms that often accompany the breadth of this topic. At the same time, a school board’s “most basic obligation is to maintain order in the schools and to create a stable environment for the education of its students.” *Solmitz v. Maine Sch. Admin. Dist. No. 59*, 495 A.2d 812, 818 (Me. 1985). The Maine Legislature has directed school boards to protect school employees from harassment and “ensure the safety of employees,” including by imposing a statutory duty on school boards to “address the negative effects of bullying of school employees” by any “individuals associated with the public school.” 20-A M.R.S. § 1001(22).

In light of these purposes and interests, the personnel-matter rule is indisputably reasonable. Absent the personnel-matter rule, the Board’s inability to conduct an orderly and efficient meeting would threaten public participation and attendance, as evidenced by the departure of public attendees when McBreairty refused to stop speaking and police were summoned. *See Davison*, 19 F.4th at 635-36 (school board’s policy restricting personal comments regarding identifiable individuals was reasonable in light of the forum’s purpose of conducting “good business” in an orderly, effective, efficient, and dignified manner); *see also Lowery v. Jefferson Cnty. Bd. of Educ.*, 586 F.3d 427, 433 (6th Cir. 2009) (“Unstructured,

chaotic school board meetings not only would be inefficient but also could deny other citizens the chance to make their voices heard.”).

Further, and contrary to McBreairty’s contentions, Blue Br. 24-25, the School’s participation in the broadcasting of unverified personal attacks on named educators would frustrate the Board’s ability and duty to protect and retain talented educators, *see Fairchild*, 597 F.3d at 760 (school board restriction on complaints involving the naming of employees was reasonable because “[t]he Board has a legitimate interest, if not state-law duty, to protect student and teacher privacy and to avoid naming or shaming as potential frustration of its conduct of business”). Relatedly, the restriction on any comments attributed to a specifically-named employee, whether laudatory or otherwise, is reasonable in light of the practical fact that the Board has no way of knowing in real time what will be said about an employee either before or after they are named during the course of one’s public comments. Indeed, this practical concern implicates the “privacy, confidentiality, and due process rights of school unit employees,” 2023 BEDH Policy, Add.2 02, and it also implicates the school’s liability for any infringement of those rights in addition to defamation.

The personnel-matter rule is also reasonable given that the Board will hear personnel matters through alternative channels, and the Policy itself specifically refers individualized remarks to the Board’s established procedure for hearing

them. See *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 690 (2010) (explaining that the availability of other avenues to express restricted speech “lessen the burden” of viewpoint neutral barriers and make a limited forum’s policy “more creditworthy”); *Fairchild*, 597 F.3d at 760 (finding the Board’s policy reasonable when it left “ample opportunity to be heard—just not here and now”). Indeed, the personnel-matter rule only restricts speech offered during the live-streamed public comment period at RSU 22 Board meetings, and McBreairty’s hypothetical concern for the fact that the personnel-matter rule might prevent a parent from reporting an assault on their student to the police is therefore significantly misplaced and ignores the forum analysis that this Court must undertake. Blue Br. 21.

The reasonableness of the personnel-matter restriction is underscored by the fact that it prohibits remarks *only* when they are associated with a specifically named employee. See *Fairchild*, 597 F.3d at 756, 760 (explaining that the policy still allows complaints, “just not if the complaint involves naming of people”) (alterations omitted). For this reason, McBreairty’s additional hypothetical concern for the Board avoiding criticism regarding dangerous building conditions is misplaced. Blue Br. 23. Likewise, McBreairty’s repeated contention that “criticism” of RSU 22 altogether is impermissible pursuant to the Policy is plainly inaccurate, and the record bears out that inaccuracy. Speakers, including

McBreairty, remain free to—and do—offer criticism on a variety of matters. For all of these reasons, the personnel-matter restriction is unequivocally reasonable.

Because the personnel-matter rule in Policy BEDH is both viewpoint-neutral and reasonable in a limited public forum, it passes constitutional muster and the District Court properly concluded that McBreairty’s facial challenge will fail on the merits.

IV. Policy BEDH Was Not Applied to McBreairty in an Unconstitutional Manner.

The District Court did not clearly err when it determined that the personnel-matter rule in the 2020 BEDH Policy was not applied unconstitutionally as to McBreairty in any particular instance. *See Reno v. Flores*, 507 U.S. 292, 300 (1993) (an as-applied challenge requires assessment of the constitutionality of a statute as it was “applied in a particular instance”). The 2020 BEDH Policy was applied to McBreairty in a viewpoint-neutral and reasonable manner, and McBreairty offers no reason to believe that the 2023 BEDH Policy—which is arguably even clearer with regard to its restriction on personnel-matter comments—will be applied in an uneven-handed manner going forward.

First, the facts found by the District Court clearly bear out the conclusion that McBreairty has never been interrupted on the basis of viewpoint. Rather, he was interrupted only when he made allegations regarding specifically identified school personnel. In his February 2023 remarks, McBreairty stated, in the context

of discussing “sexual grooming,” that a specifically named teacher was a “groomer” and should be “locked up and not allowed 500 feet from a school.” In his March 2023 remarks, McBreairty mentioned a specific name in the context of suggesting that such an individual was involved in an “after-school cult pushing sex and enabling mental illness.” These were clearly comments on personnel matters, and McBreairty was interrupted on each of these occasions. Other speakers at those very same meetings expressed views similar to those of McBreairty but were conversely not interrupted, and indeed they did not discuss personnel matters associated with specifically named RSU 22 employees.

As the District Court found, “[t]here is only one example in the record that arguably shows a speaker violating the personnel-matter rule and being treated differently,” which occurred at the October 2022 meeting—four months prior to McBreairty’s February comments—when the director of Educate Maine offered commending remarks regarding an RSU 22 employee’s role as Maine Teacher of the Year. Add. 022; App. 013. This one incident does not show that McBreairty’s speech was interrupted on the basis of viewpoint four months later.⁹ *See Moms for Liberty*, 582 F.Supp.3d at 1218-1220 (rejecting the as-applied challenge to a school

⁹ Nor does McBreairty’s fixation with the fact that “Personnel Matters” are an item on the Board’s agenda rescue this deficiency. Blue Br. 28-29 & n.12. Policy BEDH governs only remarks offered by the public *during the public comment period*, which is the limited public forum created for the purpose of hearing from the public, rather than conducting the Board’s business.

board policy that restricted “personally directed” speech when the plaintiffs identified only four instances in which they were interrupted and they were permitted to speak uninterrupted on other occasions, including when they conveyed the viewpoints allegedly restricted).

Further, Miller acknowledges that it was not until the winter that he began to interrupt speakers as soon as they mention an employee’s name, App. 062, ¶ 20, and indeed Miller did not interrupt McBreairty at the September 2022 meeting despite his mention of employee names, *see* Add. 022 (“[I]n the Fall of 2022, the Public Participation Policy was applied to Mr. McBreairty in the same way it was applied to the Educate Maine Speaker and others.”); *see also* App. 062-63, ¶ 62; App. 077 (“Sept. Video”) at 4:30-4:55, 5:16-5:30, 5:50-5:51. In any case, as the District Court pointed out, any prior misapplication of the personnel-matter restriction in October would not have obligated Miller to continue to misapply it in February and March. *See* Add. 023 (citing *Ridley*, 390 F.3d at 92). Therefore, despite his argument that there is a “pattern of unlawful favoritism,” Blue Br. 33, McBreairty cannot and does not show that he was interrupted on the basis of viewpoint when he only offers evidence of instances in which he alone was asked to stop speaking because he alone did exactly what Policy BEDH forbids.

Miller’s interruptions of McBreairty were reasonable for the same reasons that the personnel-matter restriction is reasonable in light of the purpose of the

forum and the Board's interests. Several factors further add weight to the reasonableness of Miller's interruptions of McBreairy's comments. First, McBreairy had notice of the personnel-matter rule because Miller read the rules out loud before both the February and March meetings. Second, notwithstanding Miller's reading of the personnel-matter rule, McBreairy began his comments by pronouncing that he would say anything he wanted about RSU 22 employees. Third, despite McBreairy's pronouncement and the change in Miller's understanding of the Policy come winter-time, Miller nevertheless initially interrupted McBreairy in February and March only to provide a warning and explanation of the personnel-matter rule first. Fourth, McBreairy, like everyone, was free to raise any personnel matters through the alternative process for doing so, and he was likewise unrestricted from offering a wide range of criticism about RSU 22 in that very forum, just not criticism that qualifies as a personnel matter given its attribution to a specifically named employee.

Finally, even if this Court were to determine that one instance of favorable comments about personnel somehow implies that McBreairy was interrupted on the basis of viewpoint four months later, he is nevertheless unlikely to succeed on the merits of his as-applied claims. One instance is insufficient to impose liability of constitutional proportion against either the Board or Mr. Miller. *See Oklahoma City v. Tuttle*, 471 U.S. 808, 841 (1985) ("Proof of a single incident of

unconstitutional activity is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy.”); *Moms for Liberty – Brevard Cnty. v. Brevard Pub. Schs.*, No. 6:21-cv-1849, 2023 WL 2454754, at *4 n.6 (M.D. Fla., Feb. 13, 2023) (finding summary judgment for school on plaintiffs’ as-applied challenges after denial of preliminary injunction because, even if the Chair strayed from “evenhanded application” of the public participation policy in a few instances, “an erroneous judgment call on the part of a presiding officer does not automatically give rise to liability for a constitutional tort.” (quoting *Jones v. Heyman*, 888 F.2d 1328, 1334 (11th Cir. 1989)), *appeal docketed*, No. 23-10656 (11th Cir. March 1, 2023).

V. McBreairty’s Void-for-Vagueness Argument is Unpreserved and Will Fail.

On appeal, McBreairty also claims that the personnel-matter rule in the 2020 BEDH Policy is void for vagueness in its use of the term “personnel matters.” Blue Br. 36-39. In the first place, as discussed above, it is the 2023 BEDH Policy that controls in this case and any argument pertaining to the vagueness of the 2020 BEDH Policy is moot. The current policy defines “discussion of a personnel matter” to be “any discussion, whether positive or negative, of job performance or conduct of a school unit employee.” 2023 BEDH Policy, Add.2 02. That language plainly provides notice to a person of ordinary intelligence that they cannot make

any comments about specifically named employees of RSU 22. This Court therefore need not consider McBreairty's void-for-vagueness argument.

Second, as the District Court correctly held below, McBreairty's vagueness argument was waived because it was neither briefed nor argued. *See Teamsters, Chauffeurs, Warehousemen & Helpers Union, Loc. No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 21 (1st Cir. 1992) (“[L]egal theories not raised squarely in the lower court cannot be broached for the first time on appeal.”); *McCoy v. Mass. Inst. of Tech.*, 950 F.2d 13, 22 n.7 (1st Cir. 1991) (“Courts are entitled to expect represented parties to incorporate all relevant arguments in the papers that directly address a pending motion.”).

On appeal, McBreairty acknowledges that he did not develop his vagueness argument in his motion for a temporary restraining order, but he argues that he at least mentioned it in his opening motion and thereafter “expanded” on it in his reply memorandum such that it was not “new argument” in his reply. Blue Br. 38. A review of the citation McBreairty provides to support this contention demonstrates that what he argued in his moving brief was that RSU 22 was vague in its *application* of the policy, not that the language of the policy was vague. *See App. 033* (“Defendants apply Rule 2 in an inconsistent and vague manner.”). This does not and cannot rescue the District Court's correct conclusion of waiver. Indeed, McBreairty's mere usage of the word “vague” in his moving brief is not

the same as squarely raising a void-for-vagueness argument. In fact, in his brief below and at oral argument, McBreairty clearly represented to the court that the only portion of Policy BEDH that he challenged was that portion printed in bold letters in his brief—i.e., “No complaints or allegations will be allowed at Board meetings concerning any person employed by the school system. . . complaints concerning . . .staff issues will not be considered.” *See* App. 025, 112.¹⁰ Having specifically excluded the term “personnel matters” from the subject of his complaint, McBreairty cannot now contend that he preserved an argument that that term is void for vagueness.¹¹

Moreover, this “stake-your-claim” argument is not the practice. The District of Maine’s Local Rules, like many districts, “strictly confines” the content of a reply memorandum to “new matter raised in the objection or opposing memorandum.” D. Me. L. Cv. R. 7(c). Under that rule, the District Court will not address arguments raised for the first time in a reply memorandum. *See, e.g., In re One Bancorp. Sec. Litig.*, 134 F.R.D. 4, 10 n.5 (D. Me. 1991). This Court will not review such an unpreserved argument that was not “raised squarely” before the

¹⁰ Despite the Board’s adoption of an updated Policy BEDH, including its adoption of changes to the personnel-matter rule, McBreairty continues to challenge before this Court, too, only these bolded portions of the former personnel-matter rule in the 2020 BEDH Policy. *See* Blue Br. 5.

¹¹ Nor could McBreairty factually argue, as he does, Blue Br. 37, for the vagueness of the term “personnel matters” on the basis that it took Miller ten years to understand the term: the personnel-matter rule was first adopted in 2020, and it therefore has not been in existence for ten years, App. 060, ¶ 6.

trial court. *See United States v. Lindsey*, 3 F.4th 32, 41 (1st Cir. 2021) (“[L]itigants [must] spell out their legal theories face-up and squarely in the trial court; if a claim is ‘merely insinuated’ rather than ‘actually articulated,’ that claim ordinarily is deemed unpreserved for purposes of appellate review.”).

In any case, the weight of authority is against McBreairy’s purported vagueness argument, as Circuit Courts have expressed no concern for any ambiguity in personnel-matter restrictions such as the one challenged by McBreairy here, *see Pollak*, 2022 WL 17958787, at *2, *8; *Fairchild*, 597 F.3d at 761 (noting that plaintiff, who challenged a school board policy that did not permit discussion of individual personnel matters, “wisely [did] not push the vagueness” argument because it lacked merit).

VI. The District Court Properly Concluded that the Remaining Factors Weigh Against Injunctive Relief.

A. McBreairy Has Not and Cannot Establish Irreparable Injury.

McBreairy argues that he has met the requirement of showing irreparable injury solely on the basis that he claims an infringement on his First Amendment rights. That was the only irreparable injury asserted by the plaintiff in *Respect Maine PAC v. McKee*, 622 F.3d 13 (1st Cir. 2010), where this Court explained:

The fact that appellants are asserting First Amendment rights does not automatically require a finding of irreparable injury Whether there is any such harm is the issue that will ultimately be addressed on the merits of the case. We recognize the importance of rights asserted under the First Amendment, but every case depends on its own facts.

Id. at 15 (citations, alterations, and quotation marks omitted).

The facts in this case show that McBreairty has been and will be permitted to offer his views on education, including his desire to ban certain books despite the threat that such bans would pose to the very First Amendment rights that he here asserts. And he has been and will be permitted to criticize RSU 22; in fact, he offered three minutes of mostly critical comments at the April 26 meeting immediately following the court's denial of his request for a preliminary injunction. Further, nothing stops McBreairty from voicing his opinions about individual school personnel to the Board via its established policy for doing so. Accordingly, the District Court was correct in holding that he has failed to show that he will suffer irreparable harm absent an injunction.

B. Injunctive Relief Would Pose Significant Harm to the School Board and Threatens the Public Interest.

Because McBreairty has failed to show a likelihood of success on the merits or irreparable injury, this Court need not address the balance of the harms or the public interest. *See New Comm Wireless Servs., Inc. v. SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir. 2002) (“[I]f the moving party cannot demonstrate that he is likely to succeed in his quest [on the merits,] the remaining factors become matters of idle curiosity.”). Nonetheless, both factors greatly weigh against injunctive relief and further highlight the reasonableness of the personnel-matter rule.

To start, allowing McBreairty and any members of the public to say whatever they want about school employees by name will leave the Board powerless in the face of its obligations to protect its employees from harassment and to provide a safe working environment. The Board would be put in a position of violating its statutory duties to protect employees' privacy and safety.

The Board's interest in conducting its business uninterrupted and efficiently would also be frustrated greatly. This is not insignificant, nor is it mutually exclusive from the public interest: school systems depend on the policy-making decisions and managerial tasks that occur at school board meetings, which take place in the evening hours and often run late into the night even absent disruptions. The Board also has no way of knowing in real time whether public comments are defamatory, and the Board has a significant interest in avoiding liability or allegations thereof. For his part, McBreairty is only prevented from expressing remarks regarding specific personnel during public comment, but he remains free to do so through alternative channels.

The effect that a preliminary injunction would have on the public interest likewise greatly weighs in favor of the School Board. RSU 22 has deep respect for the importance of public comment on education—and the videos of its board meetings bear out that fact—but the public harm at stake here cannot be overstated. The Maine Legislature has directed school boards to protect school employees

from harassment, 20-A M.R.S. §1001(22), and the Board's ability to fulfill that obligation will no doubt be frustrated if members of the public are allowed to offer carte blanche criticism and levy personal attacks on individually named RSU 22 employees. As the District Court found, "there is a substantial public interest in keeping RSU 22's educators safe," Add. 028-29, and concern for teachers' safety as a result of public comments made about them is not merely a hypothetical concern.

Finally, the School Board *and the public* have a significant interest in the Board's ability to conduct orderly and efficient meetings, which in turn promotes public participation and attention to the important issues discussed and heard by the Board at its meetings.

CONCLUSION

The District Court did not abuse its discretion when it denied McBreairty's request for injunctive relief because it properly concluded that McBreairty will fail on the merits of his claims. Therefore, RSU 22 and Heath Miller respectfully request that this Court affirm the District Court's Order denying injunctive relief in favor of the School.

Dated: August 25, 2023

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 8,910 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using serifs in Times New Roman 14 point font.

Dated: August 25, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2023, I electronically filed the Brief of Appellees with the U.S. Court of Appeals for the First Circuit by using the CM/ECF system which will send notification of such filing(s) to counsel of record.

I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

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ADDENDUM

BEDH

PUBLIC PARTICIPATION AT SCHOOL BOARD MEETINGS

The primary purpose of School Board meetings is to conduct the business of the Board related to Board policies, programs, and operations. The Board encourages residents to attend Board meetings so that they may become acquainted with the operations and programs of the schools.

The Board also recognizes the value of public comments on school and educational matters. To permit fair and orderly expression of public comments at Board business meetings while still allowing the Board to conduct its business efficiently, the Board has established the procedure below for regular business meetings.

At special, emergency, or workshop meetings, public comments may be limited to the topic(s) of the particular meeting or, in some cases, may not be permitted at all.

In addition to speaking during the designated public comment portion of the agenda at Board meetings, members of the public are welcome to submit written comments on school and educational matters to the Board and Superintendent. This policy sets forth general requirements for public comments during meetings.

1. Comments by individuals are limited to a maximum of three (3) minutes at a meeting. Individuals may not relinquish a portion of their allotted time to another speaker. The time limits in this paragraph may be modified at a particular meeting at the discretion of the Board.
2. Individuals who wish to speak during the public comment period are required to fill out the sign-in form available at each Board meeting, prior to the beginning of the public comment period, and to review a copy of this policy. Each individual will be required to state their name and town/city of residence before beginning their remarks.
3. The Board Chair is responsible for ensuring the orderly conduct of Board meetings and for ensuring compliance with this policy, including the following rules of order:
 - a. Speakers will be recognized by the Board Chair, and comments should be addressed to the Board Chair. Requests for information or concerns that require further research may be referred to the superintendent for further action, if necessary;
 - b. Speakers are expected to follow rules of common etiquette and decorum and refrain from engaging in disruptive conduct, including, but not limited to using vulgar and/or obscene language, yelling, threatening others using words or by other actions, making defamatory comments, exceeding the allotted time limits, talking over or interrupting

others, offering repetitive comments, and offering comment on matters unrelated to the school unit's programs, policies, or operations.

c. Discussion of personnel matters is not permitted during the public comment period due to the privacy, confidentiality and due process rights of school unit employees. For purposes of this policy, "discussion of a personnel matter" means any discussion, whether positive or negative, of job performance or conduct of a school unit employee.

d. Discussion of matters involving individual students are also not permitted during the public comment period due to the privacy, confidentiality, and due process rights of the school unit's students.

e. Any concerns about personnel matters and/or student matters should be directed to the Superintendent or another appropriate administrator outside of Board meetings so that they can be addressed through an alternative channel and in a manner consistent with privacy, confidentiality, and due process rights of the individuals involved.

f. The Board Chair will stop any public comment that is contrary to these rules.

g. Individuals who disrupt a Board meeting may be asked to leave in order to allow the Board to conduct its business in an orderly manner. The Board Chair may request the assistance of law enforcement if necessary to address disruptions or safety concerns.

Legal Reference: 20-A MRSA § 1001(20)
20-A MRSA § 6101
1 MRSA § 405

Cross Reference: BE – School Board Meetings
BEDB – Agenda
BEDB-R – Agenda Format
BEC – Executive Sessions
KE – Public Concerns and Complaints

Adopted: October 2, 1974

Updated: October 4, 1989; December 21, 2016; March 25, 2020, June 16, 2023