

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

JIM BARRETT,)	
)	
Plaintiff,)	Civil Action No.:
)	
v.)	
)	JURY TRIAL DEMANDED
WALKER COUNTY SCHOOL)	
DISTRICT, MR. DAMON RAINES in his)	
official and individual capacities, MR.)	
MIKE CARRUTH, in his official)	
capacity,)	
Defendants.)	

VERIFIED COMPLAINT
FOR INJUNCTIVE RELIEF AND DAMAGES

COME NOW Plaintiff Jim Barrett and bring this lawsuit under 42 U.S.C. § 1983 and the First and Fourteenth Amendment of the United States Constitution for declaratory relief, injunctive relief and damages arising from Defendants' prior restraint refusing to allow Plaintiff to speak during the public comment portion of Walker County Board of Education (“the Board”) meeting based on the content or viewpoint of his speech, and the unconstitutionality of the Board policy that requires a citizen to meet twice with the Superintendent over a period of over two weeks before even being allowed to apply for permission to make public comment

to the Board. In support thereof, Plaintiff offers the following:

Parties

1. Plaintiff Jim Barrett (“Mr. Barrett”) is a resident of Catoosa County, Georgia and is an employee of the Walker County School District. Mr. Barrett teaches seventh and eighth grade Social Studies at Saddle Ridge Middle School in the Walker County School District. He is president of the Walker County Association of Educators. He officiates high school football and soccer in Georgia and in 2010, was named Georgia’s Soccer Official of the Year. In July 2014, Mr. Barrett was appointed by Governor Deal to the Professional Standards Commission.
2. Defendant Walker County School District (“WCSD”) is a school district that exists under OCGA § 20-2-49. The Walker County School District is managed by the Walker County Board of Education. Five elected officials serve as members of the Board. The current members of the Board are Mike Carruth, Phyllis Hunter, Karen Stoker, Charles Wilson, and Dale Wilson. WCSD is sued for damages and equitable relief for their unconstitutional policy

restricting public comment at Board meetings.

3. Defendant Mike Carruth serves as Chairperson of the Board. Pursuant to Walker Board of Education Policy BBA, Mr. Carruth presides over all meetings of the Board, signs official documents of the Board and performs other duties as required by state and local law. He is sued in his official capacity for equitable relief.
4. Defendant Mr. Damon Raines is the Superintendent of the Walker County School District in Walker County, Georgia. As superintendent, Mr. Raines is responsible for all operations of the WCSD, including the implementation of WCSD policies and procedures. He is sued individually for damages and in his official capacity for equitable relief.

Jurisdiction and Venue

5. This case presents a federal question under 42 U.S.C. § 1983 and the First and Fourteenth Amendments of the Constitution. This Court has subject matter jurisdiction under 28 U.S.C. § 1331.
6. This Court has personal jurisdiction of the parties under Fed.R.Civ.P. 4(k)(1)(a) and GA. CONST., art. 6, § 4, ¶ I.

7. Venue is proper in the Northern District of Georgia under 28 U.S.C. § 1391(b) because all actions complained of occurred within the boundaries of this district and Defendants reside within this district.

Statement of Facts

WCSD POLICY AND PROCEDURES REGARDING PUBLIC COMMENT

8. The Board holds its regular full monthly meeting on the third Monday of each month except in January and February. The Board also conducts planning sessions on the second Tuesday of each month. The Board allows public comment at both the planning sessions and the regular Board meeting. In advance of the regular board meetings, an agenda of items to be discussed, including time for public comment, is publically displayed.
9. An accurate copy of the Board's current policy (“the Board’s Policy” or “the Policy”) governing how the Board receives comments from the public is attached as Exhibit A. The policy was effective at all times relevant to this lawsuit.
10. The policy requires that the Superintendent “make available procedures for allowing members of the public to address the Board

on issues of concern.”

11. The Superintendent procedures for allowing members of the public to address the Board on issues of concern refer back to Policy BCBI and require the speaker to follow specific application procedures that must be initiated no less than eighteen (18) days prior to the meeting with no exception for matters of more recent concern. Ex. B.
12. The policy requires a public speaker to first schedule and meet twice with the Superintendent before being placed on the Board public comment agenda, precluding timely consideration of urgent matters and often barring public comment on matters of urgency.
13. Under the policy, a mandatory condition of speaking publically to the Board is to schedule, meet, present and preview with the Superintendent matter sought to be raised by the citizen, including matters critical of the Superintendent himself. The policy requires the citizen to first “meet with the Superintendent and discuss their concerns.” Then, the person wishing to speak must wait for the Superintendent to “investigate their concerns, and within ten work days, report back to the individual or organization.”

14. According to the policy, the Superintendent will meet with the speaker to “report back,” and then if the speaker still desires to address the Board, they “shall make their written request to the Superintendent at least one week prior to the scheduled meeting of the Board stating name, address, purpose of request, and topic of speech.”
15. The layers of delay built into the policy do not permit speech concerning matters that have arisen so recently that timely application is impossible. The Policy places no time limits on the Superintendent in scheduling the meetings with the speaker necessary to ensure that the speaker may timely appear before the Board.
16. The Superintendent has promulgated procedures incorporating verbatim this Board policy and providing that “Each person whose name is placed on the agenda will be given five (5) minutes to make their comments.”
17. The Board's policy also states that if the content and viewpoint of a citizen's comments is “complaints against any employee of the Board” that the Superintendent must be given the critical complaint for investigation. “The Board will not hear complaints against employees

of the Board except in the manner provided for elsewhere in Board policies, procedures, and Georgia law,” but will entertain any comments of the opposite viewpoint that commend or approves of an employee.

18. For matters whose content “stimulate[s] high community interest, the Board may schedule special meetings...The Board will establish special guidelines for participation.” Ex. B, ¶6.
19. Comparable policies from neighboring school districts are not nearly as restrictive Board Policy BCBI. See Ex. C; *Policy BCBI of Catoosa, Rome, Chattooga County Board of Education*. Neighboring school districts’ public comment policies, including those of City of Rome, Chattooga County and Catoosa County Boards of Education, do not require an application be submitted through the Superintendent and for those that have such a vetting process, exceptions exist for missing deadlines or spontaneous speech. *Id.* See, *Catoosa BOE Policy BCBI* (exception to the application process).
20. Defendant Board Policy BCBI is the only policy that requires:
 - Two meetings with the Superintendent to be scheduled by the

Superintendents at his uncabined choice of date and time,

- Ten (10) day investigation window for the Superintendent, and
- Seven day advance notice to the Board that a citizen desires to speak at the upcoming meeting. (Rome City BOE Policy BCBI that requires notice at noon the day before a Board meeting)

PLAINTIFF BARRETT FOLLOWS THE BOARD POLICY TO THE LETTER

21. Barrett has publicly participated in Board meetings in the past by endorsing actions of the Board, commending the Board on past actions and recognizing employees of the Board for good deeds. Mr. Barrett has not been subjected to the procedural requirements of BCBI prior to making such public comments. However, critical comments were treated very differently.
22. From May 2014 to January 2015, Mr. Barrett became a vocal critic of the new grading procedures implemented by the Superintendent without official action by the Board. Mr. Barrett, as president of the Walker County Association of Educators (“WCAE”), an affiliate of the Georgia Association of Educators (“GAE”), has publicly criticized during association meetings and when speaking with the

Superintendent directly not only the impact of the policy on student performance, but also the direct negative impact the policy would have on teacher performance evaluations.

23. Mr. Barrett has engaged in several discussions with Superintendent Raines on this topic. Superintendent Raines vehemently disagreed with Mr. Barrett about the impact of his new procedures. Superintendent Raines often became agitated and upset with Mr. Barrett for his attempts to raise this issue with the Board and in public.
24. Mr. Barrett raised this matter with the membership of the WCAE and the organization agreed to publicly speak against the new grading policy. The February 2015 Board meeting was the first opportunity for WCAE to speak to the Board in opposition to the policy.
25. A regularly scheduled Board meeting was to be held on February 17, 2015.
26. On January 20, 2015, Plaintiff Barrett emailed Superintendent Raines and stated his desire to speak about a matter of urgency at the February 17, 2015 Board Meeting. Ex. D; *Email from Plaintiff to Defendant Raines dated January 20, 2015*. Plaintiff Barrett's email,

in accordance with Board policy that required him to preview with the Superintendent any complaint, was “requesting to meet with [him] in order to speak with the Walker County Board of Education.” *Id.* The next day, Superintendent Raines replied and in his unbridled discretion set a date to meet with Plaintiff Barrett a full week later on January 28, 2015.¹ Ex. E; *Email from Defendant Raines to Plaintiff dated January 21, 2015.*

27. Plaintiff Barrett complied with the date set and met with the Superintendent at that day and time. Plaintiff presented his concerns in writing and requested the process to be completed so that he could appear at the February Board meeting.
28. The January 28, 2015 meeting date set by the Superintendent was only twelve business days before the February 17, 2015 Board meeting at which Mr. Barrett sought to speak.
29. On February 9, 2015, one week before the Board meeting, Mr. Barrett and Superintendent Raines met to review the notes of the

¹ There were no school holidays between January 21 and January 28 that prevented an earlier meeting. This was the only day offered by the Superintendent for the initial meeting with Mr. Barrett. See Ex. I; *Walker County School 2014-15 School Calendar.*

Superintendent's investigation. The Superintendent set the date, time and place for the meeting via email in his unbridled discretion. Ex. F; *Email from Defendant Raines to Plaintiff dated February 4, 2015.*

The email from Superintendent Raines directed Mr. Barrett that "I will have written documentation prepared addressing the concerns mentioned in your memo...I will deliver them on Monday, February 9, around 4:00 p.m. there at Saddle Ridge." *Id.*

30. Mr. Barrett participated in the second meeting with the Superintendent as scheduled. The meeting lasted a little more than one hour. The Superintendent expressed his dissatisfaction with Mr. Barrett's views on the issues and Mr. Barrett's efforts to speak to the Board about education policy issues that were critical of actions taken by WCSD and the Superintendent.

31. Also at that meeting, Superintendent Raines provided Mr. Barrett four single spaced written pages as responses to the issues raised by Mr. Barrett. There was little substantive discussion between the two men about most of the issues raised by Mr. Barrett. Most of the meeting focused on the classroom teachers' involvement in the District switch

in grading systems. Superintendent Raines defended the new grading policy and the process by which the new policy was enacted.

32. Superintendent Raines used much of the meeting time to call into question Mr. Barrett's motivations and viewpoint. Superintendent Raines asked "when he was going to hear or see the 'masses' who are so upset," and Mr. Barrett indicated that a public showing in opposition to the switch in procedure was planned.
33. Immediately following the meeting, Mr. Barrett deposited into the U.S. Mail a letter addressed to Superintendent Raines stating, *inter alia*, "please accept this letter as my written request to speak at the February 16, 2015 regular meeting of the Walker County Board of Education." Ex. G; *Letter from Plaintiff to Defendant Raines dated February 9, 2015*.
34. Mr. Barrett made his request more than one full week prior to the Board meeting and as soon as he was eligible to speak as per the Board Policy.
35. Mr. Barrett complied with all Board policies and prerequisites necessary for a member of the public to be heard during the public

comment period, including

a) attending a first meeting with the Superintendent to preview the concerns he wished to raise with the Board;

b) attending a second meeting with the Superintendent within ten work days to receive his report of investigation;

c) *making a written request*² at least one week prior to the scheduled meeting.

36. Mr. Barrett sought to speak on subject matter related to several actions taken by the school district and the Superintendent as well as some decisions recently made by the Board about which he had concerns and criticisms, including a new grading system, the teacher evaluation system, and the perception that classroom teachers are not being involved in the District's strategic decision making process.

SUPERINTENDENT RAINES DENIES MR. BARRETT'S REQUEST TO SPEAK

37. On February 11, 2015, Mr. Barrett received a letter from Superintendent Raines postmarked the same day.

² The Board policy language does not require the Superintendent or the Board *to receive* the request within a week, only that the requesting party "shall make their written request to the Superintendent at least one week prior to the scheduled meeting..." Ex. A.

38. The February 11, 2015 letter stated that the Superintendent had received Mr. Barrett's written request to address the members of the Board of Education, however, the request "does not comply with the requirements of the policy."
39. The letter quoted, inaccurately however, the Policy language requiring that a request be made "one week prior to the scheduled meeting of the Board." Ex. H; *Letter from Defendant Raines to Plaintiff dated February 11, 2015*. The letter from Superintendent Raines barred Plaintiff from addressing the full Board at the regular meeting based on the content of Mr. Barrett's speech, known to Superintendent Raines through the multiple in person meetings required by Policy BCBI.
40. The letter further stated that the February 17, 2015 Board meeting would not include any public participation.
41. Superintendent Raines offered to place Mr. Barrett on the public agenda for the March Board Planning session, however, he would not let Mr. Barrett speak at a regular full Board meeting.

THE FEBRUARY 17, 2015 BOARD MEETING

42. In anticipation of the February 17, 2015 Board meeting Mr. Barrett had organized a large number of employees of the WCSD to appear at the Board meeting to show their dissatisfaction with the switch in grading procedures implemented by the Superintendent.
43. Mr. Barrett received assurances from a large portion of the membership of the WCEA that they intended to appear at the February 17, 2015 Board meeting to show their support for Mr. Barrett and the policy concerns he sought to raise.
44. Superintendent Raines was aware of Mr. Barrett's association with the WCAE. Superintendent Raines' decision to deny Barrett's request and to cancel all public comment at the February 17, 2015 Board meeting was for viewpoint-specific reasons related to Mr. Barrett, and the association he represents, and their critical views of the actions taken with respect to the switch in grading procedures.
45. Mr. Barrett seeks to speak to the Board in the future about timely matters, often in a manner critical of Defendants, but the policy and Defendants actions will often bar his speech by refusing to place him

on the meeting agenda.

Count I

First and Fourteenth Amendments

46. This Count is brought by Plaintiff against Defendants due to the prior restraint and refusal based on the content or viewpoint of the speech to permit Plaintiff an opportunity to timely make a public comment after fully complying with the Board Policy.
47. Defendants based their decision on the anticipated and known content or viewpoint of Plaintiff's speech and Plaintiff's previously stated political beliefs and associations.
48. The Board's policy requires that a public comment application be made, in writing, seven calendar days before the Board meeting, and only after two meetings with the Superintendent and a ten-day investigation period allowed the Superintendent.
49. If a citizen does not properly comply with the Policy, the Board will not allow the citizen to speak.
50. The Policy requires that any speaker must discuss the content of the speech and receive pre-approval from the Superintendent before the citizen is allowed to make a public comment. This is an impermissible

prior restraint that is also explicitly content based.

51. The Policy unconstitutionally places no limits on the Superintendent's scheduling of the required meetings. Specifically, the Superintendent's unbridled discretion in setting the primary meeting with a speaker, such as Mr. Barrett, allows sufficient delay to disqualify any potential speaker from making a timely application to be placed on the meeting agenda.
52. The Policy imposes unjustified and unconstitutional procedural barriers to citizens making comments, and does not contain an exception allowing citizens to address an event that occurred at a time where two meetings with the Superintendent are not possible.
53. The Board policy violates the First and Fourteenth Amendment by allowing the Board to restrict public speech based on viewpoint by barring only those speakers with "complaints against employees of the Board" from speaking before the Board. No such requirements or limitations exist for public commendations or compliments of Board employees. This unconstitutionally prohibits speech based on viewpoint.

54. Because the Board policy, facially and as applied, violates the First and Fourteenth Amendments, a declaratory judgment and preliminary and permanent injunctive relief should issue as well as damages for the WCSD's unconstitutional policy causing Plaintiff harm in not being allowed to petition and speak to the Board.
55. In addition, claims for damages are brought by Mr. Barrett against Defendant Mr. Damon Raines individually for denying him the opportunity to make a public comment after Mr. Barrett properly and fully complied with the Policy requirements.
56. As Superintendent, Mr. Raines is responsible for enforcing the Policy regarding public comment.
57. Mr. Raines specifically acted to prevent Mr. Barrett from expressing his political speech in a timely and effective public forum because of the content and viewpoint of his speech. Mr. Raines also manipulated the Policy application, in his unbridled discretion, to prevent critical comments at the February 17, 2015 Board meeting.
58. Mr. Raines has previously made negative comments about Mr. Barrett's substantive positions on the issues to be discussed by Mr.

Barrett and repeatedly criticized Mr. Barrett's intentions to generate public support for his views at the February 17, 2015 Board meeting.

59. Mr. Raines' decision was based on the content and viewpoint of Mr. Barrett's speech and his association with the Walker County Education Association.

Count II

*Georgia Constitution
Article I, Sect. I, Para. V*

60. Plaintiff incorporates by reference paragraphs 46-59 stated above.
61. Article I, section I, paragraph V of the Constitution of the State of Georgia states that "[n]o law shall be passed to curtail or restrain the freedom of speech or of the press."
62. This Count is brought by Plaintiff against Defendants as violation of the Georgia's Constitution's right to freedom of speech.
63. Defendants Board Policy BCBI imposes an unconstitutional prior restraint on Plaintiff, and all citizens wishing to speak at Board meetings. The Policy enables the unconstitutional refusal of certain speakers based on the content or viewpoint of the speech.
64. Defendants denied Plaintiff an opportunity to timely make a public

comment after fully complying with the Board Policy BCBI.

65. As a result of Defendants conduct, Plaintiff was not able to exercise his speech at the time and place he desired – that is the regular meeting of the Board of Education.
66. The Board policy violates the Article I, Section I, Paragraph V of the Georgia Constitution by allowing the Board to restrict public speech based on viewpoint by barring only those speakers with “complaints against employees of the Board” from speaking before the Board. No such requirements or limitations exist for public commendations or compliments of Board employees. This unconstitutionally prohibits speech based on viewpoint.
67. Because the Board policy, facially and as applied, violates the Georgia Constitution, a declaratory judgment and preliminary and permanent injunctive relief should issue as well as damages for the WCSD’s unconstitutional policy causing Plaintiff harm in not being allowed to petition and speak to the Board.
68. In addition, claims for damages are brought by Mr. Barrett against Defendant Mr. Damon Raines individually for denying him the

opportunity to make a public comment after Mr. Barrett properly and fully complied with the Policy requirements.

Request for Relief

WHEREFORE, Plaintiff requests this Court:

- a. Hold a trial by jury on all issues so triable;
- b. Declare that Defendants' denial of Plaintiffs' ability to make public comments during Board meetings violates both the First and Fourteenth Amendments of the United States Constitution and the Georgia Constitution;
- c. Declare unconstitutional and enjoin enforcement of the policy attached hereto, on its face and/or as applied to Plaintiff, or enjoin Defendants from engaging in standard-less prior restraint or pre-approval of speech based upon its content or viewpoint.
- d. Enjoin Mr. Raines from refusing to permit individuals' public comments for unconstitutional content or viewpoint reasons even when in compliance with the allegedly unconstitutional Board policy;
- e. Award nominal and actual damages against the WCSD and

nominal, actual and punitive damages against the individual defendant;

- f. Award reasonable attorneys' fees and expenses under 42 U.S.C. § 1988 and as otherwise permitted by law;
- g. Grant further relief as this Court deems just and proper.

Respectfully submitted, this the 13th day of March, 2015.

s/Gerald Weber
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Georgia Bar No. 744878

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VERIFICATION OF PLAINTIFF JIM BARRETT

I, Mr. Jim Barrett, appearing before the undersigned officer and after being first duly sworn, depose and state on oath and under penalty of perjury that the facts set forth in the foregoing Complaint are true and correct.

Sworn to and subscribed before me
this _____ day of March, 2015.

Jim Barrett

Notary Public

