IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

JIM BARRETT,	)	
	)	
Plaintiff,	)	**CIVIL ACTION NO.:**
	)	**4:15-CV-0055-HLM**
v.	)	
	)	
WALKER COUNTY SCHOOL DISTRICT, MR. DAMON RAINES in his official and individual capacities, MR. MIKE CARRUTH, in his official Capacity,	)	
	)	
Defendants.	)	

RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY AND CONSOLIDATED PERMANENT INJUNCTION

COME NOW Walker County School District ("School District"), Superintendent Mr. Damon Raines ("Mr. Raines" or "Superintendent"), in his official and individual capacities, and Board Chairperson Mr. Mike Carruth ("Mr. Carruth"), in his official capacity, (collectively "Defendants"), and pursuant to Fed.R.Civ.P. 65 and L.R. 7.1, hereby submit their Response to Plaintiff's Motion for Preliminary and Consolidated Permanent Injunction, showing that Plaintiff's motion is to be denied, as follows:

I. INTRODUCTION

This is a civil rights claim arising under 42 U.S.C. §1983 ("§1983"), the First and Fourteenth Amendment of the United States Constitution, and the Georgia Constitution[1], alleging that the School District's procedures for speaking at public comment during meetings of the Board of Education violate Plaintiff's right to free speech. Ironically, Plaintiff makes these allegations despite the fact that, in this case, Plaintiff was scheduled to speak at the next available public comment after submitting his request, yet he did not appear to speak.

The School District is a public school district in Walker County, Georgia, based in LaFayette, Georgia. (Ex. 1 - Affidavit of Damon Raines, ¶ 4) It serves approximately 9,000 students in the communities of Chattanooga Valley, Chickamauga, Fairview, Flintstone, Fort Oglethorpe, LaFayette, Lakeview, Lookout Mountain, and Rossville, Georgia with ten (10) elementary schools, four (4) middle schools, and two (2) high schools. (Ex. 1 - Affidavit of Damon Raines, ¶ 5)

[1] Though Count II of Plaintiff's Complaint arises under the State Constitution, the Motion for Preliminary and Consolidated Permanent Injunction does not cite to the State Constitution or any State cases. As such, issues of the State Constitution do not appear to be presently before the Court.

Mr. Carruth is the Chairperson of the Board of Education and was first elected to the Board of Education in 2004. (Ex. 1 - Affidavit of Damon Raines, ¶ 6) Mr. Raines is the Superintendent of the School District, responsible for the day-to-day operations of the School District and implementation of the policies set by the Board of Education. (Ex. 1 - Affidavit of Damon Raines, ¶ 7)

Dr. Jim Barrett ("Plaintiff") is an employee of the School District, teaching middle school social students. (Doc. 1 ¶1)

II. STATEMENT OF FACTS

A. Duties and Responsibilities of the Board and Superintendent

Under Georgia law, the duties and responsibilities of the board of education and the Superintendent are clearly defined. The board of education is responsible for management and control of the School District. Ga. Const. art. VIII, § 5, ¶ 2. The fundamental role of the board of education is to establish policy for the local school system with a focus on student achievement. O.C.G.A. § 20-2-61[2]. The

[2] To that end, the board of education has legislative, executive, and judicial duties. Its "legislative" duties include adopting policies to govern the operation of the schools. O.C.G.A. § 20-2-59. Its "executive" duties include the employment and assignment of personnel on the recommendation of the superintendent, O.C.G.A. § 20-2-211, acquiring and disposing of property, O.C.G.A. § 20-2-520, adopting a budget, O.C.G.A. § 20-2-167, and entering into contracts, O.C.G.A. §§ 20-2-50, -

superintendent shall implement the policy established by the local board. O.C.G.A. § 20-2-61.

Thus, the board of education is not to micromanage the school district but shall hold the superintendent accountable for the performance of his or her duties. O.C.G.A. § 20-2-61.

As applied in this case, the Walker County School District Board of Education ("Board") adopted a code of ethics as required by O.C.G.A. § 20-2-72(b). *See* Ex. 2 - Board Policy BH. Under that policy, members of the Board will, in pertinent part:

> 2. Support the delegation of authority for the day-to-day administration of the school system to the local superintendent and act accordingly.
>
> 3. Honor the chain of command and refer problems or complaints consistent with the chain of command.
>
> . . .
>
> 5. Not undermine the authority of the local superintendent or intrude

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109, -520. It's "judicial" duties include serving as a tribunal in an evidentiary hearing when the superintendent seeks to terminate the employment of an employee or take adverse personnel action against an employee who has a contract for a definite term or when the superintendent has not recommended the rehiring of a tenured employee. O.C.G.A. § 20-2-942. A local board also acts as a tribunal for matters of local controversy. O.C.G.A. § 20-2-1160.

> into responsibilities that properly belong to the local superintendent or school administration, including such functions as hiring, transferring or dismissing employees.

Board Policy BH at Domain I, ¶¶ 2, 3, & 5.

B. Board Meetings

The Board meets on the third Monday of each month, except those months where the third Monday is a legal holiday. (Ex. 1 - Affidavit of Damon Raines, ¶ 8, Ex. A - Board Policy BC) The Board holds planning sessions on the Tuesday preceding each meeting. *Id*. The Board's meetings and planning sessions are open to the public and media in accordance with O.C.G.A. §50-14-1 *et seq*. ("Georgia's Open Meetings Act"). *Id*. (Ex. 1 - Affidavit of Damon Raines, ¶ 9)

The full Board is present at both meetings.[3] (Ex. 1 - Affidavit of Damon Raines, ¶ 10) The agenda for the Board's meetings is prepared by the Superintendent in collaboration with the Chairman of the Board. *Id*. An agenda is prepared for each planning session and each regular monthly meeting. The

[3] Plaintiff seems to suggest there is some meaningful difference for First Amendment purposes between the Board's planning sessions and its regular meetings because the public and media allegedly only attend the regular Board meeting. Doc. 2-1 at 2. Since both meetings are open to the public and the full Board is present at both meetings, there is no meaningful difference between the two meetings. Significantly, when Plaintiff made his request to address the Board,

Superintendent provides to each member of the Board a copy of the tentative agenda for the regular monthly meeting at the Board's planning sessions. *Id*. (Ex. 1 - Affidavit of Damon Raines, ¶ 11)

C. Board Policy BCBI Concerning Public Participation

On July 17, 2006, the Board adopted a policy concerning public participation in Board meetings. (Ex. 1 - Affidavit of Damon Raines, ¶ 12, Ex. B - Board Policy BCBI; *see* Doc. 1-1 at Ex. A.)

The introduction to said policy provides that:

> Meetings of the Board of Education (hereinafter "the Board") are held to conduct the affairs and business of the school system. Although these meetings are not meetings of the public, the public is invited to attend all meetings and members of the public are invited to address the Board at appropriate times and in accordance with procedures established by the Board or the Superintendent.

Id.

In pertinent part, said policy further provides as follows:

> The Superintendent shall make available procedures allowing members of the public to address the Board on issues of concern. . . .
>
> Prior to making a request to be heard by the Board, individuals or organizations shall meet with the Superintendent and discuss their concerns. If necessary, the Superintendent shall investigate their

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he requested to address the Board at "its next Planning Session." Doc. 1-1 at Ex. D.

> concerns, and within ten work days, report back to the individual or organization. After meeting with the Superintendent, individuals or organizations still desiring to be heard by the Board shall make their written request to the Superintendent at least one week prior to the scheduled meeting of the Board[4] stating name, address, purpose of request, and topic of speech. Any individual having a complaint against any employee of the Board must present the complaint to the Superintendent 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.[5]

Id. Said policy further provides that "All presentations to the Board are to be brief[6] and are intended for the Board to hear comments or concerns without taking action." *Id*.

After a person complies with these prerequisites, the Superintendent does not have discretion to not put that person on the Board's agenda for the next scheduled meeting. (Ex. 1 - Affidavit of Damon Raines, ¶ 13)

The Superintendent adopted procedures to implement said policy. (Ex. 1 -

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[4] This same time limit exists for any matter to be considered by the Board at a meeting. That is, any matter to be considered by the Board has to be placed on the agenda at least one week prior to the scheduled meeting. For example, if a contract needs to be approved by the Board, the contract needs to be in final form and received by the Superintendent at least one week prior to the scheduled meeting.

[5] This same provision is also contained in the Board's policy on meetings. *See* Board Policy BC.

[6] Speakers during public comment are given five minutes to make their comments. Doc. 1-1 at Ex. B, ¶ 3.

Affidavit of Damon Raines, ¶ 14, Ex. B; *See* Doc. 1-1 at Ex. B). The preamble to said procedures states as follows: "Meetings of the Board of Education are structured to allow the Board to conduct its public business. Meetings of the Board are open to the public, but are not to be confused with public forums." *Id*.

The procedures reiterate the necessity of meeting with the Superintendent and the time limit for making the written request to speak to the Board. *Id*. at ¶¶ 1, 2. Said procedures also provide that "The Board will not respond to comments or questions posed by citizens in their presentations, but will take those concerns and questions under advisement." *Id*. at ¶ 8.

In addition to public comment, the Board often recognizes certain accomplishments at Board meetings, such as student, team, or school achievements. These recognitions are distinct and different from public comment under Board policy BCBI. This portion of the agenda is by invitation from the Superintendent for the sole purpose of recognizing success. (Ex. 1 - Affidavit of Damon Raines, ¶ 15)

D. <u>Application of Board Policy BCBI to Plaintiff's Public Comment</u>

In September, 2014, Plaintiff first contacted Defendant Raines regarding the

issue of standards-based grading[7]. (Ex. 1 - Affidavit of Damon Raines, ¶ 16) On

[7] Under a standards-based grading system, teachers are encouraged to assess students to determine their level of mastery and then develop differentiated groups or strategies for remediation, re-teaching, or acceleration for students. This system encourages teachers to have those necessary conversations with students about their learning and reassess them in a manner that reveals the true level of each respective student's mastery. The standards-based grading system does not take into account the large number of homework assignments, home projects, daily work, participation, or effort grades that have been part of the traditional average grade. Georgia adopted a new teacher evaluation system called Teacher Keys Effectiveness System ("TKES"). TKES considers ten performance standards, two of which are Assessment Strategies and Assessment Uses. The School District was concerned that its current practices would not be sufficient to allow its teachers to attain a proficient rating on their TKES evaluation with regard to the Assessment Strategies and Assessment Uses standards; therefore, the School District began implementation of a standards-based grading system in the 2014-2015 school year. In connection with the implementation of the standards based grading system, the Superintendent made multiple efforts to generate feedback about this grading procedure. A number of discussions with the Board during open planning sessions and Board meetings occurred. Progress has been detailed with the Board and all other stakeholders (i.e., school administrators, teachers and parents) during this process. The Director of Curriculum and Instruction and the Director of Student Services developed a weekly communication entitled, "An Ongoing Conversation." All Board employees have been encouraged to submit questions, comments, or concerns through their building level administrator, academic coach, leadership team, or directly to the Superintendent. The Superintendent also made this issue part of his weekly, "Friday Board Notes," which is available to all Board employees. The Board members requested the Superintendent to develop and administer a survey for students, teachers, and parents to determine the level of success evidenced by the new grading procedures. The survey window was actually extended after the request of one Board member to assure that the Superintendent and his staff received the comments and participation from as many stakeholders as possible. (Ex. 1 - Affidavit of Damon Raines, ¶ 17)

September 10, 2014, Plaintiff requested and was timely provided with a copy of Policy BCBI, but Plaintiff did not at that time take any further action to comply with said policy.

On January 20, 2015, more than four months after Plaintiff's original contact, requested to address the Board at its next planning session. *Doc. 1-1 at Ex. D.* On January 21, 2015, Plaintiff was advised that the Superintendent was available to meet on January 28, 2015 if that date was convenient with Plaintiff's schedule. (Ex. 1 - Affidavit of Damon Raines, ¶ 18) Plaintiff agreed to that meeting date without offering any other date. At the meeting, Plaintiff presented a memo of his concerns regarding standards-based grading, the District's Strategic Plan, the District's attendance policy, and teacher evaluations. (Ex. 1 - Affidavit of Damon Raines, ¶ 19, Ex. C) Consequently, the Superintendent began his investigation. (Ex. 1 - Affidavit of Damon Raines, ¶ 19)

The Superintendent scheduled a follow-up meeting with Plaintiff to take place on February 9, 2015 (on the eighth day of the ten working days detailed in the Board approved policy), in order to answer any of Plaintiff's questions. At that meeting, Plaintiff said nothing to the Superintendent about wanting to speak to the Board. (Ex. 1 - Affidavit of Damon Raines, ¶ 8) (Ex. 1 - Affidavit of Damon

Raines, ¶ 20)

On that same date, February 9, 2015, Plaintiff alleges he mailed[8] a letter to the Superintendent requesting to be placed on the agenda for public comment at the February 2015 Board meeting. (Ex. 1 - Affidavit of Damon Raines, ¶ 21; Doc. 1-1 Ex. G)[9]

The Superintendent did not receive Plaintiff's letter until February 11, 2015. On that same date, the Superintendent wrote Plaintiff a letter advising him that he would be placed on the agenda for the March 10, 2015, Board planning session because his request to address the Board was not timely to be placed on the agenda for the February 17th Board meeting. (Ex. 1 - Affidavit of Damon Raines, ¶ 22; Doc. 1-1; Ex. H)

As it turns out, the February 17th meeting of the Board was cancelled due to inclement weather. (Ex. 1 - Affidavit of Damon Raines, ¶ 23; Ex. D) Thus, the first

[8] Plaintiff could have but chose not to hand deliver a written request to the Superintendent at their face-to-face meeting on February 9, 2015, and never emailed such a request to the Superintendent, or even fax the letter to the Superintendent, but instead placed the letter in the regular mail for delivery.

[9] Notably, Plaintiff's letter was misdated as February 9, 2014 instead of 2015. Furthermore, Plaintiff requested to speak at the February 16, 2015 regular meeting of the Board of Education; however, the February, 2015 Board meeting was scheduled for the 17th.

opportunity Plaintiff would have had to address the Board following his written request was the March 10th planning session. (Ex. 1 - Affidavit of Damon Raines, ¶ 24) Plaintiff was placed on the agenda for public comment for the Board meeting on March 10, 2015. (Ex. 1 - Affidavit of Damon Raines, ¶ 24, Ex. E).

Without any notice to the Superintendent or the Board, ***Plaintiff did not appear at the March 10th board meeting*** even though he was on the agenda. (Ex. 1 - Affidavit of Damon Raines, ¶ 25)

Notably, under policy BCBI, a local parent spoke at public comment on April 20, 2015 to address the Board regarding standards-based grading. (Ex. 1 – Affidavit of Damon Raines, ¶ 26)

E. Plaintiff's Complaint

On March 31, 2015 Plaintiff filed his Verified Complaint (Doc. 1) and Motion for Preliminary and Consolidated Permanent Injunction and Brief in Support Thereof (Doc. 2)[10] On April 6, 2015, Defendants waived service.

[10] Defendants do not consent to consolidating the preliminary injunction with permanent injunctive relief in the absence of a hearing. *Budlong v. Graham*, 488 F. Supp. 2d 1245, 1249-50 (N.D. Ga. 2006). Moreover, granting a preliminary injunction without a hearing would also be improper in this case. This is because, as should be clear from the foregoing. Plaintiff's constitutional rights under the First Amendment were not violated. Even had Plaintiff been scheduled to speak

In short, Plaintiff alleges that Board Policy BCBI imposes unconstitutional prior restraint to citizens making public comment. (Doc. 1, ¶¶ 52 and 62)

III. ARGUMENT AND CITATION OF AUTHORITY

To obtain injunctive relief, a movant must demonstrate: "(1) a substantial likelihood of success on the merits of the underlying case, (2) the movant will suffer irreparable harm in the absence of an injunction, (3) the harm suffered by the movant in the absence of an injunction would exceed the harm suffered by the opposing party if the injunction issued, and (4) an injunction would not disserve the public interest." *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246-47 (11th Cir. 2002). Plaintiff cannot satisfy this standard.

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on February 17th he would not have spoken because the meeting was cancelled due to inclement weather. "A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the burden of persuasion as to the four requisites." *All Care Nursing Serv. v. Bethesda Mem'l Hosp.*, 887 F.2d 1535, 1537 (11th Cir.1989). An injunction is unnecessary to "correct" a right if there was not Constitutional violation. *Bruce v. Gregory*, 2012 WL 5907058, at *11 (M.D. Fla. 2012); *Bailey v. Hughes*, 815 F. Supp. 2d 1246, 1271 (M.D. Ala. 2011) (denying motion for injunctive relief because plaintiff "failed to establish that any constitutional violation occurred."); *Braswell v. Bd. of Regents of Univ. Sys. of Georgia*, 369 F. Supp. 2d 1362, 1371 (N.D. Ga. 2005) (denying request for temporary injunctive relief where plaintiff could not establish a constitutional violation).

A. Plaintiff is Not Likely to Succeed on the Merits

The First Amendment to the United States Constitution states, "Congress shall make no law… abridging the freedom of speech…." U.S. Const. Amen. I. The limits of speech in public meetings depend on the nature of the forum. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001)[11]. Meetings of a governing body for the purpose of conducting business, such as a school board, are analyzed as a "limited public forum." *Cleveland v. City of Cocoa Beach, Florida*, 221 F. App'x 875, 877 (11th Cir. 2007) (citing *Crowder v. Housing Auth. of City of Atlanta*, 990 F.2d 586, 591 (11th Cir.1993) (citing *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 n. 7, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983))); *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Employment*

[11] Courts "classify fora for expression in four categories that, correspondingly, fall along a spectrum of constitutional protection." *Peck ex rel. Peck v. Baldwinsville Cent. Sch. Dist.*, 426 F.3d 617, 625–26 (2d Cir.2005). First, the "traditional public forum" is "comprised of those places - streets, parks, and the like - which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Id*. Second, the "designated public forum" is a place not traditionally open to public assembly and debate "that the government has taken affirmative steps to open for general public discourse." *Id*. Third, a "limited public forum" is created when the State opens a non-public forum but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects. *Id*. Fourth, a "non-public forum" is neither traditionally open to

Relations Comm'n, 429 U.S. 167, 176, n. 8 (1976) (stating that public bodies may limit their meetings to specified subjects); *Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951, 957 (S.D. Cal. 1997) (finding that board of education meeting is analyzed under limited public forum standard); *Caldwell v. Roseville Joint Union High Sch. Dist.*, 2007 WL 2669545, at *15 (E.D. Cal. 2007) (analyzing school board meeting under "limited public forum"); *Am. Freedom Def. Initiative v. Metro. Transp. Auth.*, 880 F. Supp. 2d 456, 470 (S.D.N.Y. 2012) (stating a school board meeting is a "common example of limited public forums"); *Lowery v. Jefferson Cnty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009) (finding school board meeting is "limited public forum").

Restrictions on speech in a limited public forum must be reasonable and view-point neutral. *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 662 (2010). The regulation of speech is viewpoint-neutral if it is "justified without reference to the content of the regulated speech." *Clark v. Cmty. for Creative Non–Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984). "The freedom of expression protected by the First Amendment is not inviolate; the Supreme Court has

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public expression nor designated for such expression by the State. *Id.*

established that the First Amendment does not guarantee persons the right to communicate their views 'at all times or in any manner that may be desired.'" *Rowe v. City of Cocoa, Fla.*, 358 F.3d 800, 802 (11th Cir. 2004) (citing *Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989)). Indeed, the "Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Minn. State Bd. of Community Colleges v. Knight*, 465 U.S. 280, 283 (1984).

Public comment policies requiring disclosure of certain information before being placed on the meeting agenda have consistently been upheld and are not an inappropriate prior restraint of free speech. *Ballard v. Patrick*, 163 F. App'x 584, 584-85 (9th Cir. 2006) (requirement for speakers at public comment to reveal their intended topic did not violate first amendment); *Timmon v. Jeffries*, 2009 WL 270043, at *3 (W.D. Mich. 2009) (no First Amendment violation where Plaintiff missed time period to register for speaking at public comment because, in part, Plaintiff could have registered and spoken at next city council meeting); *Lowery v. Jefferson Cnty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009) (affirming school district's policy of requiring public to apply for speaking at board meetings so that director of schools can review request to ensure that it is not "frivolous, repetitive

nor harassing in nature").

1. Policy BCBI is Reasonable and View-Point Neutral

In this case, there is no evidence indicating any intent by the Board to make its meetings generally available "for indiscriminate public use for communicative purposes." Rather, the policy and the procedures adopted to implement public comment demonstrate that the Board allows selective access to participation in Board meetings to individual speakers who have satisfied the necessary prerequisites.

Public comments at Board meetings are limited to "issues of concern." *See* Doc. 1-1 at Ex. A ("Meetings of the Board of Education (hereinafter 'the Board') are held to conduct the affairs and business of the school system. Although these meetings are not meetings of the public, the public is invited to attend all meetings and members of the public are invited to address the Board at appropriate times and in accordance with procedures established by the Board or the Superintendent."); *Id*. at Ex. B ("Meetings of the Board of Education are structured to allow the Board to conduct its public business. Meetings of the Board are open to the public, but are not to be confused with public forums.") In light of the limitations established by the Board, the Board has opened a limited public forum

"limited to use by certain groups or dedicated solely to the discussion of certain subjects."

Restrictions on speech in a limited public forum must be reasonable and view-point neutral. *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46 (1983). "The necessities of confining a forum to the limited and legitimate purposes for which it was created may justify the State in reserving it for certain groups or for the discussion of certain topics." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (citations omitted). The reasonable and view-point neutral nature of the Board's policy BCBI is addressed below.

a. "Issues of Concern" Is Reasonable and Neutral

The Board's policy provides as follows: "The Superintendent shall make available procedures allowing members of the public to address the Board on issues of concern." The Board has thus limited public comment at its meetings to issues of concern.[12] This limitation is reasonable because it not only serves the interest in the Board conducting efficient meetings, *see Rowe*, 358 F.3d at 803, it

[12] Contrary to Plaintiff's argument, Doc. 2-1 at 14-15, this policy *encourages* the presenting of concerns and complaints. Notably, this category of speech is broader than a limitation restricting public comment to items on the Board's agenda, which more restrictive limitation has been upheld by courts. *See Rowe*, 358 F.3d at 803.

also furthers the purpose of said meetings, which is to conduct the business of the school system, by focusing on problems and concerns.

Plaintiff argues that those persons wishing to express agreement with the Board's policies and decisions or to speak complimentary of the Board or its employees are not required to follow the public comment procedures. As described above, recognition at a board meeting is fundamentally different than public comment. Recognition of a student, team, or school's success is not part of public comment; therefore, policy BCBI is inapplicable to that portion of the meeting. Recognition is initiated by Superintendent invite. As such, the fact that policy BCBI relates to issues of "concern" does not make it view-point specific. Instead, policy BCBI and Board recognition serve two separate and distinct functions. Thus, BCBI is, in fact, view-point neutral.

b. Prerequisite of Meeting With the Superintendent Is Reasonable and Neutral

The Board's policy provides as follows: "Prior to making a request to be heard by the Board, individuals or organizations shall meet with the Superintendent and discuss their concerns. If necessary, the Superintendent shall investigate their concerns, and within ten work days, report back to the individual

or organization."[13] This provision is reasonable because it promotes efficiency in resolving problems and concerns. This provision routes concerns to the most efficient method of having the concerns remedied. This is because the Superintendent is the executive officer of the Board. O.C.G.A. § 20-2-109. He is the person who is able to solve problems or resolve concerns. The members of the Board are not allowed to interfere with the day-to-day functioning of the school system and are obligated to refer problems and complaints to the Superintendent. Thus, speaking with the Superintendent is the most efficient way for concerns to be resolved. Should the Board micromanage the Superintendent by usurping his authority in managing the policy of the District, the School District will possibly be in violation of State law and risk losing accreditation.

"The Board has a strong and speech-neutral interest in setting an agenda and paths to Board hearings to avoid irrelevant topics or extended contentious debate." *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 760 (5th Cir. 2010). Policy BCBI clearly serves the purpose of avoiding irrelevant or extended contentious

[13] Contrary to Plaintiff's argument, Doc. 2-1 at 14, the subject policy only requires the Superintendent to report back to the individual or organization, but does not require a second meeting. In the present matter, the Superintendent scheduled a second meeting with Plaintiff to not only present his findings to Plaintiff, but to

debate by requiring the public speaker to work through comments with the Superintendent. This prerequisite of meeting with the Superintendent before being placed on the agenda applies to all individuals, regardless of the topic to be addressed. Therefore, it is clearly reasonable and view-point neutral.

Moreover, the Superintendent does not have discretion to not allow public comment once the procedures are followed. Thus, meeting with the Superintendent is reasonable and view-point neutral. To that end, a parent spoke at public comment, pursuant to policy BCBI, on the topic of standards based grading, which is one of Plaintiff's concerns, on April 20, 2015.

c. Requirement for Written Request Is Reasonable and Neutral

The Board's policy provides as follows: "After meeting with the Superintendent, individuals or organizations still desiring to be heard by the Board 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." This provision is valid for two reasons. First, a written request is reasonable because it allows the Superintendent to ensure that the subject of the

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also answer any of Plaintiff's questions.

person's comments is within the class of subjects authorized by the Board. Second, the one week time limit is reasonable because the agenda for the Board's meeting is prepared six days in advance in order to ensure an efficient meeting. This time limit is the same for placing any matter on the Board's meeting agenda. Thus, the time limit exists to ensure the request is received in sufficient time to be placed on the agenda is the same as any other matter to be placed on the Board's meeting agenda.[14] Again, the policy is reasonable and view-point neutral.

d. Procedures for Complaints against Board Employees Are Reasonable and Neutral

The Board's policy provides as follows: "Any individual having a complaint against any employee of the Board must present the complaint to the Superintendent 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." Three reasons support these provisions. First, the Board has a legitimate interest, if not a state-law duty, to protect student

[14] Contrary to Plaintiff's argument, Doc. 2-1 at 16-18, the subject policy does not suppress spontaneous speech. Plaintiff did not cite any law requiring a public body to allow spontaneous speech at its meetings. Moreover, "spontaneous protests", Doc. 2-1 at 16, would not even be appropriate at such a meeting because public bodies are allowed to maintain decorum at their meetings. *Steinberg v. Chesterfield*

and teacher privacy and to avoid naming or shaming as potential frustration of its conduct of business. *Fairchild*, 597 F.3d at 760. Moreover, to allow the charges of one side would force the Board to allow a response from the other side, which would frustrate the Board's interest in conducting efficient meetings. *Id*.

Second, under Georgia's Fair Dismissal statute, the Board serves as a tribunal when the Superintendent seeks to terminate an employee who has a contract for a definite term or when the Superintendent has not recommended the rehiring of a tenured employee. O.C.G.A. §§ 20-2-940, -942. Said hearings are mandatory. Allowing persons to present complaints about employees to the Board could affect the impartiality of the Board in the event such a hearing is held. Accordingly, this limitation exists to protect the due process right to an impartial tribunal of the employee complained about.

Third, the requirement that complaints about employees be presented to the Superintendent is necessary because the Superintendent, and not the Board, can take any necessary remedial action.

For these three reasons, this provision is reasonable and view-point neutral.

Cnty. Planning Comm'n, 527 F.3d 377, 387 (4th Cir. 2008).

e. Policy BCBI Is Not a Delay Tactic

Plaintiff's citation to *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999) and *United State v. Fransden* 212 F.3d 1231, 1240 (11th Cir. 2000) are irrelevant to the analysis of District Policy BCBI. In both of those cases, there was no time limit in which a decision would be made for someone wishing to exercise their free speech. Contrary to those cases, the District's Policy BCBI merely requires that, after meeting with the Superintendent, the request to be made with enough time to be placed on the agenda. In this case, Plaintiff did not make a timely request for the February meeting. As such, he was placed on the March meeting, which was the next available opportunity for public comment. Despite being placed on the agenda, Plaintiff was a no call/no show for this speaking opportunity.

Importantly, Plaintiff cannot show that he experienced any unreasonable delay in participating at public comment. The Superintendent met with Plaintiff to discuss his concerns within a week of Plaintiff's initial request, and the Superintendent completed his investigation within eight (8) days of receiving the Plaintiff's complaints. Thus, there is no evidence of impermissible delay.

To the extent Plaintiff argues that policy BCBI suppresses spontaneous

speech, such argument is undermined by the facts of this case. Plaintiff originally requested information on public comment in September, 2014 but did not actually request public comment until January, 2015. Thus, this is not a case of "spontaneous speech."

2. Strict Scrutiny Does Not Apply to this Case

It is plain that the Board's meetings, not being parks or public streets, are not a traditional public forum. This is because school board meetings have not "'by long tradition or by government fiat,' . . . been 'devoted to assembly and debate.'" *Ark. Educ. Tv Comm'n v. Forbes*, 523 U.S. 666, 677 (1998) (citations omitted).

The Board's meetings are also not a designated public forum. "A government entity may create 'a designated public forum' if government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose." *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) (citation omitted). "[A] designated public forum is open for *indiscriminate public use for communicative purposes*." *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 392 (1993) (emphasis supplied). "To create a forum of this type, the government must intend to make the property 'generally available' to a class of speakers." *Forbes*, 523 U.S. at 678 (citation omitted). "A designated

public forum is not created when the government allows selective access for individual speakers rather than general access for a class of speakers." *Id*. Thus, "the government does not create a designated public forum when it does no more than reserve eligibility for access to the forum to a particular class of speakers, whose members must then, as individuals, 'obtain permission' to use it." *Id*. (citations omitted). The Supreme Court further recognized that "[n]ot every instrumentality used for communication, however, is a traditional public forum or a public forum by designation. . . . We will not find that a public forum has been created in the face of clear evidence of a contrary intent, nor will we infer that the government intended to create a public forum when the nature of the property is inconsistent with expressive activity." *Cornelius*, 473 U.S. at 803 (citations omitted)[15]. Because a meeting of a school board is neither a "traditional public

[15] Plaintiff's assertion that the Board's meetings is a public forum is erroneous and Plaintiff incorrectly uses the label "limited public forum" where Plaintiff appears to be arguing, incorrectly, that the Board's meetings are a designated public forum. Doc. 2-1 at 11. First, as set forth above, speech can be limited to specific subjects in a limited public forum, but not in a traditional or designated public forum. Moreover, Plaintiff's argument that after the classes of topics of speech that will be allowed in the public forum are established any content based restrictions on speech must satisfy strict scrutiny is illogical. Doc. 2-1 at 13. It makes no sense to say that a public forum can be limited to certain topics, which by definition is content based regulation, to then say that any other restrictions must be content

forum" nor is it a "designated public forum," strict scrutiny does not apply to the School District's Policy BCBI.

3. Plaintiff Will Not Likely Succeed on the Merits Because He Lacks Standing, as There Is No Injury

Because standing and ripeness are jurisdictional inquiries, Plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing that that he has standing to sue. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) ("The party invoking federal jurisdiction bears the burden of establishing these elements."); *Am. Civil Liberties Union of Florida, Inc. v. Dixie Cnty., Fla.*, 690 F.3d 1244, 1247 (11th Cir.2012) ("Standing is a jurisdictional inquiry, and a party invoking federal jurisdiction bears the burden of establishing that he has standing to sue."). Standing requires a plaintiff to provide evidence of an injury in fact, causation and redressibility. *Dermer v. Miami–Dade Cnty.*, 599 F.3d 1217, 1220 (11th Cir.2010). A First Amendment plaintiff therefore "has standing if he

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neutral. Admittedly, the Supreme Court's use of terminology in labeling the various types of public fora has not been consistent. Initially, the Supreme Court classified the three types of public fora as traditional public forum, designated public forum, and nonpublic forum. *Cornelius*, 473 U.S. at 802. In *Summum* and *Martinez*, the Supreme Court has changed the label on the third category from nonpublic forum to limited public forum. *Summum*, 555 U.S. at 469-70; *Martinez*, 561 U.S. at 679 n.11.

demonstrates a realistic danger of sustaining direct injury as a result of the statute's operation or enforcement." *Jacobs v. The Florida Bar*, 50 F.3d 901, 904 (11th Cir.1995); *Granite State Outdoor Adver., Inc. v. City of Fort Lauderdale*, 194 F. App'x 754, 758 (11th Cir. 2006) (affirming dismissal of complaint where plaintiff lacked standing); *Advantage Adver., LLC v. City of Hoover, Ala*, 200 F. App'x 831, 836 (11th Cir. 2006) (plaintiff lacked standing to challenge municipal sign ordinance when plaintiff had no intention of engaging in business which was prohibited by ordinance).

At hand, there is no possible set of circumstances in Plaintiff's Complaint which reveal realistic danger of sustaining direct injury under the District's policy BCBI. To that end, Plaintiff was placed on the agenda for public comment at the next available Board meeting after Plaintiff requested to speak. Plaintiff did not attend that meeting despite being placed on the agenda. Plaintiff cannot show that he was subject to, or threatened of, adverse employment actions, criminal action, or any other form of injury. Instead, he was placed on the agenda for public comment.

Moreover, Plaintiff claims he was prevented from speaking at the Board meeting on February 17th. This meeting was cancelled because of inclement

weather; thus, speaking at this meeting was an impossibility, and Plaintiff suffered no injury. Further, Plaintiff, technically, requested in his letter to the Superintendent to speak at the Board meeting on February 16th; there was no Board meeting on February 16th. As such, Plaintiff cannot show that policy BCBI caused any injury, and is not likely to succeed on the merits of his claim.

4. Plaintiff Will Not Likely Succeed on the Merits Because of His Failure to Argue the *Monell* Policy or Custom

The "policy or custom" requirement of *Monell* applies in § 1983 cases irrespective of the relief sought. *Los Angeles Cnty., Cal. v. Humphries*, 562 U.S. 29, 29 (2010). "A local government may not be sued under Section 1983 for an injury inflicted solely by its employees or agents. Instead, it is when the execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983." *Monell v. Department of Human Servs., 436 U.S. 658, 694 (1978).* In order to prevail, Plaintiff must evidence an unconstitutional policy. *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991). As discussed above, Plaintiff cannot evidence an unconstitutional policy; however, Plaintiff's Brief in Support of Motion for

Preliminary and Consolidated Permanent Injunction is completely void of the *Monell* analysis. (Doc. 2-1).

5. Plaintiff Will Not Likely Succeed on the Merits Because Mr. Raines Is Entitled to Qualified Immunity

Qualified immunity offers "complete protection for government officials sued in their individual capacities as long as their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known," *Lee v. Ferraro*, 284 F.3d 1188, 1193-94 (11th Cir. 2002). (quotation marks omitted), "protecting from suit all but the plainly incompetent or one who is knowingly violating the federal law." *Terrell v. Smith*, 668 F.3d 1244, 1250 (11th Cir. 2012). Qualified immunity is an immunity from suit rather than a mere defense to liability, and it is effectively lost if a case is erroneously permitted to go to trial. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). If the public official first shows that he was acting within the scope of his discretionary authority, the burden shifts to the plaintiff to establish that qualified immunity is not appropriate. *Id*. To determine whether a plaintiff has met his burden, a court must both "decide whether the facts that a plaintiff has alleged . . . make out a violation of a constitutional right" and "whether the right at issue was 'clearly established' at the

time of [defendant's] alleged misconduct." *Pearson v. Callahan,* 555 U.S. 223, 232, 129 S.Ct. 808 (2009). A court may undertake these two inquiries in either order. *Id*. At 236.

a. Mr. Raines' Actions Were Discretionary

For purposes of federal qualified immunity analysis, a government official acts within his discretionary authority when "his actions were undertaken pursuant to the performance of his duties and within the scope of his authority." *Rich v. Dollar*, 841 F.2d 1558, 1564 (11th Cir.1988) (internal quotes omitted). For this inquiry, "[w]e ask whether the government employee was (a) performing a legitimate job-related function (that is, pursuing a job-related goal), (b) through means that were within his power to utilize." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1265 (11th Cir.2004). When it is "undisputed ... that the [defendants] were acting within their discretionary authority," the Court can deem that element of qualified immunity established. *Lewis v. City of West Palm Beach*, 561 F.3d 1288, 1291 (11th Cir.2009).

In this case, state law requires the superintendent to implement the Board's policies. O.C.G.A. § 20-2-109. Thus, implementation of Board policy BCBI is clearly a legitimate, job-related function within the Superintendent's power.

b. Implementation of Board Policy BCBI Does Not Violate a Clearly Established Constitutional Right

In reviewing the assertion of entitlement to qualified immunity, the court must determine whether the plaintiff has alleged the deprivation of a clearly established constitutional right. *Conn v. Gabbert*, 526 U.S. 286, 290 (1999); *Youmans v. T.A. Gagnon*, 626 F.3d. 557, 562 (11th Cir. 2010) (Plaintiff bears the burden that the Defendant committed a constitutional violation.); *see e.g. Anderson v. Creighton*, 483 U.S. 635, 643, 107 S.Ct. 3034 (1987) (public officials who have to make difficult decisions in complex situations should not have to face individual liability).

For starters, there was no constitutional violation. As shown above, public comment policies requiring disclosure of certain information before being placed on the meeting agenda have consistently been upheld and are not an inappropriate prior restraint of free speech. *Ballard*, 163 F. App'x at 584-85; *Timmon*, 2009 WL 270043 at *3; *Lowery*, 586 F.3d at 432. As a limited public for a, the policy need only be reasonable and view-point neutral. *Perry Ed. Assn.*, 460 U.S. at 46. Policy BCBI is reasonable because it ensures that the public's concerns are presented to the Superintendent, who may actually act on the concern, as opposed to the Board

of Education, who by state law is explicitly prohibited from micromanaging the District. As the policy applies to all speakers at public comment, it is view point neutral, especially since the Superintendent does not have the discretion to prohibit someone from public comment, so long as the process is timely followed.

Even if there is a colorable issue of a constitutional violation (and there is not), the law must be so "clearly established" that all but an incompetent public official or an official acting with malice would fail to know the law governing her conduct. *Harlow v. Fitzgerald*, 457 U.S. 800, 818-19 (1982). This test is referred to as the "objective reasonableness" standard. *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (clarifying the objective reasonableness test by rendering it more fact-specific: "contours of the [constitutional' right] in question must be sufficiently clear that a reasonable official would understand that what he is doing violates that right"). The reasonableness standard is an objective one and should be judged from the perspective of the public official on the scene rather than from 20/20 vision of hindsight. *Graham v. Connor*, 490 U.S. 386, 396 (1989) (an officers objectively evil intentions will not a Fourth Amendment violation out of an objectively reasonable action.)

In this case, Plaintiff has failed to provide a single citation to a case in which

a board of education was prohibited from implementing procedures for a citizen to speak at public comment. *See e.g.* Doc. 2. Even if Plaintiff could establish a Constitutional violation (and he cannot), Plaintiff cannot meet his burden of showing that the violation was clearly established.

The Eleventh Circuit has held that "[u]nless a government agent's act is so obviously wrong, in the light of pre-existing law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing, the government actor has immunity from suit. Because qualified immunity shields government actors in all but exceptional cases, courts should think long and hard before stripping defendants of immunity." *Lassiter v. Alabama A & M University. Bd. of Trustees*, 28 F.3d 1146, 1149 (11th Cir. 1994).

"If case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant." *Rodgers v. Horsley*, 39 F. 3d. 308 (11th Cir. 1994). Except in the most extraordinary instances, this burden requires the plaintiff to come forward with examples of "preexisting law [that] make it obvious that the defendant's acts violated the plaintiff's rights in the specific set of circumstances at issue." *Evans v. Stephens*, 407 F.3d 1272, 1282 (11th Cir. 2005). Moreover, any case law that is "materially similar" to the facts in the case at bar

must "truly compel the conclusion that the plaintiff had a right under federal law." *Ensley v. Soper*, 142 F.3d 1402, 1406 (11th Cir. 1998). To be clearly established, plaintiff must point to law as interpreted by the U.S. Supreme Court, the Eleventh Circuit, or the Supreme Court of Georgia. *Willingham v. Ploughman*, 321 F.3d 1299, 1304 (11th Cir. 2003); *Anderson v. Creighton*, 483 U.S. 635, 642, 107 S.Ct. 3034 (1987).

Thus, Plaintiff is not likely to succeed on the merits of his claim because Mr. Raines is entitled to qualified immunity.

6. Plaintiff Is Not Likely to Succeed on the Merits Because His Official Capacity Claims are Redundant

Plaintiff's official capacity claims against Mr. Raines and Mr. Carruth are subject to dismissal as redundant, given Plaintiff's claim against the District. *See Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself."); *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir.1991) (affirming district court's dismissal of § 1983 claims against official capacity defendants, stating, "To keep both the City and the officers sued in their

official capacity as defendants in this case would have been redundant"); *Id*. at 772 ("We think the proper method for a plaintiff to recover under Title VII is by suing the employer, either by naming the supervisory employees as agents of the employer or by naming the employer directly.").

B. Plaintiff Will Not Suffer Irreparable Harm

Plaintiff has not and will not suffer irreparable harm. Indeed, any harm Plaintiff has allegedly suffered was the result of his own conduct. Because the February 17, 2015 Board meeting was cancelled due to inclement weather and Plaintiff was put on the agenda for the Board's March 10, 2015, planning session (the next scheduled meeting of the Board) but failed to appear at said meeting, Plaintiff has ***not*** been denied an opportunity to address the Board. That is, Plaintiff has no one but himself to blame for not taking his opportunity to address the Board.

C. Alleged Injury to Plaintiff Does Not Outweigh Harm Injunction Would Cause Defendants

Plaintiff is using this action to convert Board meetings from a "limited public forum" to a "traditional" or "designated public forum" where any restrictions on speech must satisfy strict scrutiny. *See* Doc. 2-1 at 23 ("Defendants

suffer no cognizable hardship by allowing the free flow of ideas for all members of the community.") That would completely vitiate the Board's intent in opening the limited public forum at its meetings. Such a result would also undermine the Board's interest in having efficient and orderly meetings and in regulating irrelevant debate. *Rowe*, 358 F.3d at 803 ("There is a significant governmental interest in conducting orderly, efficient meetings of public bodies."); *see also Jones*, 888 F.2d at 1333 (holding that the removal of a public speaker by the mayor at a city commission meeting was not a First Amendment violation and thus permissible because "to deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting . . . would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions"); *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266, 272 (9th Cir. 1995) ("Meetings of a public body do not become free-for-alls simply because the body goes beyond what a member of the public believes (even correctly) to be the body's proper purview."); *Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984) (noting that restriction during public debate "may be said to have served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak").

The Board has plainly chosen to channel concerns and complaints through the more efficient mechanism of meeting with the Superintendent since he is the one with the authority to take remedial action. If the person is not satisfied with the Superintendent's action, he or she can then address the Board. Plaintiff's requested relief would frustrate that mechanism.

D. An Injunction Would Not Serve the Public Interest

Any injunction enjoining enforcement of Board Policy BCBI would actually disserve the public interest. The "Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Minn. State Bd. of Community Colleges v. Knight*, 465 U.S. 280, 283 (1984). It is through Board Policy BCBI that the Board has made allowance for any kind of public comments at its meetings. If that policy is enjoined, that limited public forum would be closed to any and all public comments. That certainly does not serve the public interest.

III. CONCLUSION

Based upon the above and foregoing, the Court should deny Plaintiff's motion.

RESPECTFULLY SUBMITTED,

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AND CARRUTH IN HIS OFFICIAL
CAPACITY

CERTIFICATION OF COUNSEL

The undersigned pursuant to this Court's Local Rules hereby certifies that this document has been prepared with Times New Roman 14 point.

THIS 8th DAY OF MAY, 2015.

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on May 8, 2015, I electronically filed the foregoing **Defendants' Response to Plaintiff's Motion for Preliminary and Consolidated Permanent Injunction** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorney of record:

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AND CARRUTH IN HIS OFFICIAL
CAPACITY

1928865_5

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

JIM BARRETT,	)	
	)	
Plaintiff,	)	**CIVIL ACTION NO.:**
	)	**4:15-CV-0055-HLM**
v.	)	
	)	
WALKER COUNTY SCHOOL DISTRICT, MR. DAMON RAINES in his official and individual capacities, MR. MIKE CARRUTH, in his official Capacity,	)	
	)	
Defendants.	)	

AFFIDAVIT OF MR. DAMON RAINES

BEFORE ME the undersigned authority duly authorized to administer oaths and take acknowledgements, personally appeared, who being first duly sworn and deposes and says that:

1.

My name is Damon Raines and I am employed as Superintendent for the Walker County School District.

2.

I am over the age of 18 years.

3.

I have first-hand knowledge of the facts contained in this Affidavit.

Exhibit 1

4.

The School District is a public school district in Walker County, Georgia, based in LaFayette, Georgia.

5.

The School District serves approximately 9,000 students in the communities of Chattanooga Valley, Chickamauga, Fairview, Flintstone, Fort Oglethorpe, LaFayette, Lakeview, Lookout Mountain, and Rossville, Georgia with ten (10) elementary schools, four (4) middle schools, and two (2) high schools.

6.

Mr. Mike Carruth is the Chairperson of the Board of Education and was first elected to the Board of Education in 2004.

7.

I, as the Superintendent of the School District, am responsible for the day-to-day operations of the School District and implementation of the policies set by the Board of Education.

8.

The Board meets on the third Monday of each month, except those months where the third Monday is a legal holiday. (Ex. A - Board Policy BC)

9.

The Board holds planning sessions on the Tuesday preceding each meeting.

Id. The Board's meetings and planning sessions are open to the public and media in accordance with O.C.G.A. §50-14-1 *et seq.* ("Georgia's Open Meetings Act"). *Id.*

10.

The full Board is present at both meetings.

11.

The agenda for the Board's meetings is prepared by me in collaboration with the Chairman of the Board. *Id.* An agenda is prepared for each planning session and each regular monthly meeting. I provide to each member of the Board a copy of the tentative agenda for the regular monthly meeting at the Board's planning sessions. *Id.*

12.

On July 17, 2006, the Board adopted a policy concerning public participation in Board meetings. (Ex. B - Policy BCBI)

13.

After a person complies with these prerequisites, I do not have discretion to not put that person on the Board's agenda for the next scheduled meeting.

14.

The superintendent adopted procedures to implement said policy. See Doc. 1-1 at Ex. B.

15.

In addition to public comment, the Board often recognizes certain accomplishments at Board meetings, such as student, team, or school achievements. These recognitions are distinct and different from public comment under Board policy BCBI. This portion of the agenda is by invitation for the sole purpose of recognizing success.

16.

In September, 2014, Plaintiff first contacted me regarding the issue of standards-based grading.

17.

Under a standards-based grading system, teachers are encouraged to assess students to determine their level of mastery and then develop differentiated groups or strategies for remediation, re-teaching, or acceleration for students. This system encourages teachers to have those necessary conversations with students about their learning and reassess them in a manner that reveals the true level of each respective student's mastery. The standards-based grading system does not take

into account the large number of homework assignments, home projects, daily work, participation, or effort grades that have been part of the traditional average grade. Georgia adopted a new teacher evaluation system called Teacher Keys Effectiveness System ("TKES"). TKES considers ten performance standards, two of which are Assessment Strategies and Assessment Uses. The School District was concerned that its current practices would not be sufficient to allow its teachers to attain a proficient rating on their TKES evaluation with regard to the Assessment Strategies and Assessment Uses standards; therefore, the School District began implementation of a standards-based grading system in the 2014-2015 school year. In connection with the implementation of the standards based grading system, the Superintendent made multiple efforts to generate feedback about this grading procedure. A number of discussions with the Board during open planning sessions and Board meetings occurred. Progress has been detailed with the Board and all other stakeholders (i.e., school administrators, teachers and parents) during this process. The Director of Curriculum and Instruction and the Director of Student Services developed a weekly communication entitled, "An Ongoing Conversation." All Board employees have been encouraged to submit questions, comments, or concerns through their building level administrator, academic coach, leadership team, or directly to the Superintendent. The Superintendent also made this issue part of his weekly, "Friday Board Notes," which is available to all Board

employees. The Board members requested the Superintendent to develop and administer a survey for students, teachers, and parents to determine the level of success evidenced by the new grading procedures. The survey window was actually extended after the request of one Board member to assure that the Superintendent and his staff received the comments and participation from as many stakeholders as possible.

18.

On January 21, 2015, Plaintiff was advised that I was available to meet on January 28, 2015 in accordance with Board Policy BCBI.

19.

Plaintiff agreed to the meeting on January 28, 2015. At that meeting, Plaintiff provided me with a memo stating that the following were "concerns for investigation":

1. The Board of Education's decision to switch to the Standards Based Grading policy and whether proper input was obtained from the stakeholders.

2. The School District's Strategic Plan and the underrepresentation of teachers in the development of goals for the plan.

3. The district administration's philosophy and policy on tardiness, absences, and attendance in general, and the consistent application of the policy across buildings?

4. Why have teachers been told it is not possible to receive a "4" in their first TKES formal evaluation?

Consequently, I began investigating. (Ex. C)

20.

A follow-up meeting with Plaintiff was scheduled to take place on February 9, 2015 (on the eighth day of the ten working days detailed in the Board approved policy), in order to answer any of Plaintiff's questions. At that meeting, Plaintiff said nothing to me about wanting to speak to the Board.

21.

On that same date, February 9, 2015, Plaintiff alleges he mailed a letter to the Superintendent requesting to be placed on the agenda for public comment at the February 2015 Board meeting.

22.

I did not receive Plaintiff's letter until February 11, 2015. On that same date, I wrote Plaintiff a letter advising him that he would be placed on the agenda for the March 10, 2015, Board planning session because his request to address the Board was not timely to be placed on the agenda for the February 17th Board meeting. (Doc. 1-1; Ex. H)

23.

The February 17th meeting of the Board was cancelled due to inclement weather. (Ex. D)

24.

Thus, the first opportunity Plaintiff would have had to address the Board following his written request was the March 10th planning session. Plaintiff was placed on the agenda for public comment for the Board meeting on March 10, 2015. (Ex. E)

25.

Without any notice to me, the School District, or the Board, Plaintiff did not appear at the March 10th planning session even though he was on the agenda for that meeting.

26.

A local parent spoke at public comment on April 20, 2015, pursuant to policy BCBI, to address the Board regarding standards-based grading.

FURTHER AFFIANT SAYETH NOT.

Damon Raines

Damon Raines

Sworn to and subscribed before me
this 7th day of May, 2015.

NOTARY PUBLIC
My commission expires: 05-21-2019

1932179_1

JANET COBB NOTARY PUBLIC WALKER COUNTY GEORGIA EXPIRES May 21, 2019

Exhibit **Descriptor Code: BC**

Meetings of the Board of Education

Regular meetings of the Board are held on the third Monday of each month at the Board of Education building, 201 South Duke Street, LaFayette at 6:00 p.m. except for those months when a holiday precludes the meeting. The chairperson or the Superintendent may call special meetings whenever deemed necessary or when requested to do so by two or more members of the Board. Planning sessions shall be held on the previous Tuesday of each month when possible.

All regular and special meetings of the Board shall be open to the public except when executive session has been requested by a majority vote of the members present. Action on all Board matters will be taken at open meeting, this rule applying equally to matter considered in executive sessions. Under the provision of O.C.G.A Section 20-2-57, the Superintendent will have minutes of the official proceedings recorded.

The Board may go into executive session to discuss certain matters that are exempted from the Open Meetings Law. The reasons for going into executive session shall be entered in the official minutes.

All regular and special meetings of the Board shall be presided over by the Chairman. In the absence of the Chairman, the Vice-Chairman will preside. Robert's Rules of Order will be followed in the conduct of Board business.

Three members of the Board shall constitute a quorum for transaction of business. A majority vote of all members present shall be necessary for any action of the Board. The superintendent does not vote. Every person present and authorized to vote on any issue considered shall openly and publicly vote in the affirmative or the negative or openly and publicly abstain from voting.

The Board agenda will be developed by the Superintendent and his/her staff in collaboration with the Board Chairman.

Prior to making a request to be heard by the Board, individuals or organizations shall meet with the Superintendent and discuss their concerns. If necessary, the Superintendent shall investigate their concerns, and within ten work days, report back to the individual or organization. After meeting with the superintendent, individuals or organizations still desiring to be hear by the Board 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. Any individual having a complaint against any employee of the Board must present the complaint to the Superintendent for investigation. The Board will not hear complaints against employees of the Board except in the manner provided for elsewhere in Board policies, regulations, and Georgia law.

Exhibit A

The Superintendent shall provide a copy of the tentative agenda to each member of the Board at the Planning Session and to the principals of each school the day after the Planning Session. Following the meeting, a copy of the minutes shall be sent to teacher member of the Board and each school principal.

O.C.G.A. Section 20-2-57 requires the Superintendent as ex-officio secretary to the Board "to keep the minutes of its meetings and make a permanent record of them. The Superintendent shall record in a book, to be provided for the purpose, all official proceedings of the Board, which shall be public record open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the Chairman and counter-signed by the Secretary."

Individuals desiring additional information about any item of the agenda should direct such inquires to the office of the Superintendent.

If a meeting is to be held at a time other than the regular monthly meeting, the public must receive 24 hour notice. A written notice posted at the place of regular meetings and giving of written or oral notice at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff"s sales are published in the county where the regular meetings are held are considered sufficient. In an emergency, the Board can meet without a 24 hour notice as long as the above notice is provided under the circumstances and the reason for the emergency and the nature of the notice is recorded in the minutes.

Policy **Descriptor Code: BCBI**

Public Participation in Board Meetings

Meetings of the Board of Education (hereinafter "the Board") are held to conduct the affairs and business of the school system. Although these meetings are not meetings of the public, the public is invited to attend all meetings and members of the public are invited to address the Board at appropriate times and in accordance with procedures established by the Board or the Superintendent.

The Superintendent shall make available procedures allowing members of the public to address the Board on issues of concern. These procedures shall be available at the Superintendent's office and shall be given, upon request, to anyone requesting a copy.

Prior to making a request to be heard by the Board, individuals or organizations shall meet with the Superintendent and discuss their concerns. If necessary, the Superintendent shall investigate their concerns, and within ten work days, report back to the individual or organization. After meeting with the Superintendent, individuals or organizations still desiring to be heard by the Board 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. Any individual having a complaint against any employee of the Board must present the complaint to the Superintendent 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.

All presentations to the Board are to be brief and are intended for the Board to hear comments or concerns without taking action.

Walker County Schools Date Adopted: 7/17/2006

Exhibit B

TO: Damon Raines, Superintendent
Walker County Schools

FROM: Jim Barrett, President
Walker County Association of Educators

DATE: January 28, 2015

RE: Addressing Board of Education

CONCERNS FOR INVESTIGATION

1. The Board of Education's decision to switch to the Standards Based Grading policy and whether proper input was obtained from the stakeholders.

2. The School District's Strategic Plan and the underrepresentation of teachers in the development of goals for the plan

3. The district admin stration's philosophy and policy on tardiness, absences, and attendance in general, and the consistent application of the policy across buildings?

4. Why have teachers been told it is not possible to receive a "4" in their first TKES formal evaluations?

Exhibit C

TRANSMISSION VERIFICATION REPORT

TIME : 02/16/2015 20:25
NAME : WALKER CTY BD OF ED
FAX : 706-638-7827
TEL : 706-639-0174
SER.# : BROG1J288442

DATE,TIME	02/16 20:25
FAX NO./NAME	7066387045
DURATION	00:00:11
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

TO:

Walker County Messenger
706-638-7045

Due to impending inclement weather,
the
Winter Work Session
and the
Regular Session
of the
Walker County Board of Education,
scheduled for February 17, 2015,
will be scheduled at a later date.

Exhibit D

TRANSMISSION VERIFICATION REPORT

TIME : 02/16/2015 20:22
NAME : WALKER CTY BD OF ED
FAX : 706-638-7827
TEL : 706-639-0174
SER.# : BROG1J288442

DATE,TIME	02/16 20:22
FAX NO./NAME	7066383896
DURATION	00:00:17
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

TO:

WQCH Radio
706-638-3896

Due to impending inclement weather,
the
Winter Work Session
and the
Regular Session
of the
Walker County Board of Education,
scheduled for February 17, 2015,
will be scheduled at a later date.

AGENDA
PLANNING SESSION
ADVANCING EDUCATION CENTER
MARCH 10, 2015

A. CALL TO ORDER

B. INVOCATION

C. SPECIAL RECOGNITIONS

1. Facility of the Month – Fairyland Elementary School
2. STAR Students
   - LaFayette High School- Robert Benson
   - Ridgeland High School – Chad Smith

D. INDIVIDUAL ACTION ITEMS

1. Financial Report
2. FY2016 Draft Calendar
3. FY2015 School Year Weather Related Days

E. CONSENT ACTION ITEMS

1. Minutes of Previous Meetings
2. Medical Provider Services, Inc.
3. Stellar Therapy Services, LLC
4. Purchase of iMacs – North LaFayette Elementary School
5. Purchase of MacBook Air Computers – Rossville Middle School
6. School Nutrition Bid for Large Equipment
7. School Year 2015- School Nutrition Bid for Diswasher
8. School Contracts
   - Beeler Impression Products, Inc. – Transportation Center
   - Great American Savings Products Program – LaFayette Middle School
   - Lattimore Transportation – North LaFayette Elementary – Huntsville, AL – April 29, 2015
   - Madden Coach Line & Tours – Ridgeland High School – Mercer University in Macon, GA and Georgia College in Milledgeville, GA – March 23, 2015
   - Tri Green Equipment, LLC – LaFayette and Ridgeland High Schools – Gator Vehicles

F. ITEMS OF INFORMATION

1. Facilities Update
2. Winter Work Session Agenda
3. Legislative Update
4. Review Tentative Agenda

G. PUBLIC PARTICIPATION

- Dr. Jim Barrett – WAE Representative

H. EXECUTIVE SESSION

I. PERSONNEL RECOMMENDATIONS

J. ADJOURNMENT

Exhibit E

BOARD POLICY
Descriptor Code: BH

Board Code of Ethics

The Walker County Board of Education desires to operate in the most ethical and conscientious manner possible and to that end the board adopts this Code of Ethics and each member of the board agrees that he or she will:

Domain I: Governance Structure

1. Recognize that the authority of the board rests only with the board as a whole and not with individual board members and act accordingly.
2. Support the delegation of authority for the day-to-day administration of the school system to the local superintendent and act accordingly.
3. Honor the chain of command and refer problems or complaints consistent with the chain of command.
4. Recognize that the local superintendent should serve as secretary, ex-officio to the board and should be present at all meetings of the board except when his or her contract, salary or performance is under consideration.
5. Not undermine the authority of the local superintendent or intrude into responsibilities that properly belong to the local superintendent or school

administration, including such functions as hiring, transferring or dismissing employees.

6. Use reasonable efforts to keep the local superintendent informed of concerns or specific recommendations that any member of the board may bring to the board.

Domain II: Strategic Planning

1. Reflect through actions that his or her first and foremost concern is for the educational welfare of children attending schools within the school system.
2. Participate in all planning activities to develop the vision and goals of the board and the school system.
3. Work with the board and the local superintendent to ensure prudent and accountable uses of the resources of the school system.
4. Render all decisions based on available facts and his or her independent judgment and refuse to surrender his or her judgment to individuals or special interest groups.

5. Uphold and enforce all applicable laws, all rules and regulations of the State Board of Education and the board and all court orders pertaining to the school system.

Domain III: Board and Community Relations

1. Seek regular and systemic communications among the board and students, staff and the community.

2. Communicate to the board and the local superintendent expressions of public reaction to board policies and school programs.

Domain IV: Policy Development

1. Work with other board members to establish effective policies for the school system.

2. Make decisions on policy matters only after full discussion at publicly held board meetings.

3. Periodically review and evaluate the effectiveness of policies on school system programs and performance.

Domain V: Board Meetings

1. Attend and participate in regularly scheduled and called board meetings.
2. Be informed and prepared to discuss issues to be considered on board agenda.
3. Work with other board members in a spirit of harmony and cooperation in spite of differences of opinion that may arise during the discussion and resolution of issues at board meetings.
4. Vote for a closed executive session of the board only when applicable law or board policy requires consideration of a matter in executive session.
5. Maintain the confidentiality of all discussions and other matters pertaining to the board and the school system, during executive session of the board.
6. Make decisions in accordance with the interests of the school system as a whole and not any particular segment thereof.

7. Express opinions before votes are cast, but after the board vote, abide by and support all majority decisions of the board.

Domain VI: Personnel

1. Consider the employment of personnel only after receiving and considering the recommendation of the local superintendent.
2. Support the employment of persons best qualified to serve as employees of the school system and insist on regular and impartial evaluations of school system staff.
3. Comply with all applicable law, rules and regulations and all board policy regarding employment of family members.

Domain VII: Financial Governance

1. Refrain from using the position of board member for personal or partisan gain or to benefit any person or entity over the interest the school system.

Conduct as Board Member

1. Devote sufficient time, thought and study to the performance of the duties and responsibilities of a member of the board.
2. Become informed about current educational issues by individual study and through participation in programs providing needed education and training.
3. Communicate in a respectful professional manner with and about fellow board members.
4. Take no private action that will compromise the board or school system administration.

5. Participate in all required training programs developed for board members by the board or the State Board of Education.

6. File annually with the local superintendent and with the State Board of Education a written statement certifying that he or she is in compliance with this Code of Ethics.

Conflicts of Interest

1. Announce potential conflicts of interest before board action is taken.

2. Comply with the conflicts of interest policy of the board, all applicable laws and Appendix B of the Standards document. Upon a motion supported by a two-thirds (2/3) vote, the board may choose to conduct a hearing concerning a possible violation of this Code of Ethics by a member of the board. The board member accused of violating this Code of Ethics will have thirty (30) days notice prior to a hearing on the matter. The accused board member may bring witnesses on his or her behalf to the hearing, and the board may elect to call witnesses to inquire into the matter. If found by a vote of two-thirds of all the members of the board that the accused board member has violated this Code of Ethics, the board shall determine an appropriate sanction. A board member subject to sanction may, within thirty (30) days of such sanction vote, appeal such decision to the State Board of Education in accordance with the rules and regulations of the State Board of Education. A record of the decision of the board to sanction a board member for a violation of this Code of Ethics shall be placed in the permanent minutes of the board.

Walker County Schools

Date Adopted: 7/17/2006
Last Revised: 12/1/2010

State Reference	Description
O.C.G.A. 20-02-0049	Standards for local board of education members
O.C.G.A. 20-02-0051	Election of county board members; persons ineligible to serve
O.C.G.A. 20-02-0063	Prohibit certain conflicts of interest of board members
O.C.G.A. 20-02-0072	Code of ethics for local board of education members
O.C.G.A. 20-02-0073	Removal of board members under certain circumstances
Rule 160-4-9-.06	Charter Authorizers, Financing, Management, and Governance Training
Rule 160-5-1-.36	Local School Board Governance

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.