



November 19, 2021

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**Re: Independent School District 728's Viewpoint Discrimination and
Unconstitutional Trespass Notices**

Dear Dr. Bittman and Members of the School Board:

We represent Maria Isabel Harju, Cassandra Bonine, and Sarah Ronchak, who are residents and taxpayers of ISD 728 (the "District").

Simply put, the District trampled on its residents and taxpayers' First Amendment rights when it prohibited our clients from discussing the School Board's failure to address sexual assault in its classrooms—a topic essential to the Board's fundamental purpose of keeping students safe. It further violated Ms. Harju and Ms. Bonine's First Amendment rights when it banned them from School Board meetings for a *year* just to shut down their speech—even though they committed no crime, or anything coming close to justifying a trespass notice.

I therefore write to demand that ISD 728 immediately (1) rescind the trespass notices provided to Ms. Harju and Ms. Bonine, and (2) cease and desist from its content and viewpoint-based discrimination against parents at School Board meetings. If ISD 728 does not formally rescind the trespass notices and commit in writing to stopping its unconstitutional censorship at School Board meetings by **November 26, 2021**, our clients have authorized us to bring a lawsuit against the District in federal court to gain its compliance with the law.

ISD 728 Is Trampling on Parents' First Amendment Rights Via Policy 206

The District cannot ban speakers from speaking their viewpoint about important topics of political nature at public forum during School Board meetings. *Marshall v. Amuso*, No. 21-4336, 2021 WL 5359020, at *5 (E.D. Pa. Nov. 17, 2021). The District also cannot ban speech germane to the purpose of a forum based on either content or viewpoint. *See id.*

Nonetheless, ISD 728 banned parents from speaking about the District's failure to deal with alleged sexual assault within District schools at the November 8, 2021 Board Meeting based on Policy 206's prohibition on speech about "data privacy concerns," including "preliminary allegations, or [speech] which may be potentially libelous or slanderous in nature."

ISD 728 specifically banned Cassandra Bonine and Sarah Ronchak from speaking about the District's failure to segregate alleged assaulters from their alleged victims to prevent potential recurrence of violence in school. The District also specifically banned Ms. Ronchak from speaking about past physical assaults on her own children, including a March 2021 assault on her special needs son, who wanted to tell his story to the Board as well.

The District's prohibition in Policy 206 against speaking about issues which *might* invoke "data privacy concerns" or "**potentially** libelous or slanderous" statements is a prior restraint on speech that also creates too much discretion for the District to regulate speech just because the speech makes the Board uncomfortable. This kind of regulation is a classic First Amendment violation. *E.g., Near v. State of Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931) (injunctions against speech because it could be libelous are *per se* unconstitutional); *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (sweeping in protected expression). The laws against defamation and libel provide ample recourse for victims of defamation or libel. Even privacy interests are insufficient to justify restraints on First Amendment expression on matters of public concern. *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 732 (C.D. Cal. 1996).

In addition, any reasonable observer would understand that the School Board's "mission" squarely includes student safety and consideration of whether to segregate students within District classrooms and hallways who are accused of, and alleged victims of, sexual assault. Denying Ms. Ronchak and Ms. Bonine's attempt to speak about this issue is undoubtedly a content-based restriction which has nothing to do with keeping Board meetings limited to the Board's purpose, mission, and functions.

Further, the Board's denial of Ms. Ronchak and Ms. Bonine's attempt to speak out about District policies related to how it addresses alleged assaults between students is really viewpoint discrimination. The Board simply seeks to prohibit our clients from criticizing

the Board's failure to address an ongoing problem in its schools. This prohibition on criticism is viewpoint discrimination. *See Marshall v. Amuso*, 2021 WL 5359020, at *5.

The Board cannot restrain political speech before it happens out of fear of its contents. The Board must stop this prior restraint on speech and allow Ms. Ronchak, Ms. Bonine, and others to address District policies on how alleged assaulters and their alleged victims are treated within District classrooms.

The Trespass Notices

ISD 728's trespass notices delivered to Ms. Harju and Ms. Bonine are, without qualification, intended to stop them from attending and speaking at School Board meetings. There is no valid non-speech reason for these notices. Neither Ms. Harju nor Ms. Bonine committed any act which could possibly justify the District's ham-fisted attempt to squelch their First Amendment rights, and they only visit the District Office to attend Board meetings or discuss matters of public concern with administration.

Ms. Harju's notice bans her from the ISD 728 District Office, where school board meetings are held, for an entire year. ISD 728's reasoning is that Ms. Harju supposedly "disrupted" the November 8, 2021 School Board meeting by speaking out of turn. The only reason Ms. Harju spoke at the meeting without recognition by the Board is due to the Board's unconstitutional prior restraint on speech and viewpoint discrimination noted above. Courts have noted that School Boards cannot create an environment lacking in decorum and then blame parents for "interruptions" of their unconstitutional behavior. *Marshall v. Amuso*, 2021 WL 5359020, at *10 ("The primary instances in which speakers became heated at the school board meetings at issue here involved yelling by Board representatives and/or the application of Policy 903 to force speakers to leave the microphone."). The notice also falsely states that Ms. Harju was escorted out by law enforcement. Ms. Harju left out of frustration with the Board's unwillingness to address real problems in the District, instead affording *three* speaking spots to people who wanted to talk about gymnastics. Talk about misplaced priorities.

Ms. Bonine's notice also bans her from not only the District Office, but also the Zimmerman Middle/High School, where her daughter attended at the time, for an entire year. This egregious act made Ms. Bonine and her minor daughter feel unsafe at Zimmerman High School, so Ms. Bonine felt forced to withdraw her daughter from the District and enroll her in a different school. The District's reasoning? Ms. Bonine allegedly had a "verbal altercation" with Principal Marco Voce, which apparently means a conversation with strong emotions involved. Forcing a parent out of School Board meetings and even from *visiting her daughter's school* because of an emotional discussion with the principal is an obscene abuse of power.

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The District's actions here are reprehensible and a clear attempt to prevent Ms. Harju and Ms. Bonine from speaking at School Board meetings about matters of public concern—this is the *only* important effect of the trespass notices. Courts do not take governmental pretext at face value—they analyze “the effect of the challenged legislation.” *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 161 (1939). The *only* effect of the trespass notices here is to stop our clients from speaking at School Board meetings.

The trespass notices are a clear abuse of the Minnesota trespass statute, Minn. Stat. § 609.605, which cannot be applied to individuals in this manner for such trivial reasons. And while trespass laws can certainly be applied to individuals based on reasons unrelated to the suppression of speech, they cannot be applied for the purpose of stopping speech. *E.g., Marsh v. Alabama*, 326 U.S. 501, 508 (1946) (cannot trespass Jehovah's Witnesses from company town to stop them from handing out religious literature); *United States v. O'Brien*, 391 U.S. 367, 377 (1968) (laws supposedly regulating non-speech conduct must “further[] an important or substantial governmental interest,” be “unrelated to the suppression of free expression,” and “no greater [a restriction on speech] than is essential to the furtherance of that interest”).

Again, the trespass notices are designed purely to stop Ms. Harju and Ms. Bonine's speech. The only reason they go to the District Office is to attend Board meetings or discuss with administration important public issues. The District has no non-speech purpose other than stopping “interruptions” that the Board itself creates via its content and viewpoint-based discrimination. The trespass notices are completely illegitimate.

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For the reasons stated in this letter, **the School District has until November 26, 2021 to rescind the trespass notices and confirm in writing that it allows public comment on the District's treatment of sexual assault allegations on its campuses.** Absent this action, our clients have authorized us to bring a federal lawsuit and seek a temporary restraining order to gain the District's immediate compliance.

Very truly yours,



James V. F. Dickey
Senior Trial Counsel

cc: Douglas P. Seaton, Esq.
Gregory J. Joseph, Esq.