


FILED IN CLERK'S OFFICE  
U.S.D.C. - Atlanta

OCT 24 2019

By: JAMES N. HATTEN, Clerk  
 Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

NATHANIEL BORRELL DYER, :

Plaintiff, :

: CIVIL ACTION FILE

v. : NO. 1:18-CV-03284-CAP

:

ATLANTA INDEPENDENT :

SCHOOL SYSTEM, :

Defendant. :

\_\_\_\_\_ :

**PLAINTIFF'S MEMORANDUM OF LAW**  
**IN OPPOSITION OF MOTION FOR SUMMARY JUDGMENT**

Plaintiff Pro Se, Nathaniel Borrell Dyer, files this Memorandum of Law in Opposition of its Motion for Summary Judgment, showing the Court the following:

## **INTRODUCTION**

Plaintiff is no stranger to Atlanta Independent School System's (AISS) abuse of power. Over the years, the Plaintiff has been falsely arrested and threatened with arrest, manhandled from community meetings by AISS officers just for sitting in attendance, accused of calling APS children "sambos" and even slandered as being a pedophile to APS staff. The Defendant even crafted Board Policy to suit their agenda as a means to violate the Plaintiff's constitutional rights. (Exhibit 16)

The Defendant's motion for summary judgment relies heavily on the premise that the regulations placed on the Plaintiff's speech were viewpoint neutral and narrowly tailored to exclude offensive speech. The Defendant's reoccurring theme throughout this motion has been that Plaintiff "offended the board" to validate their unconstitutional and malicious behavior. However, Justice Alito reasoned that the law was viewpoint discriminatory even though it applied to all groups, because "[g]iving offense is a viewpoint." Because the law discriminated on the basis of content and viewpoint, Alito then addressed whether the Court should apply strict scrutiny or whether the law should be evaluated under intermediate scrutiny as a regulation of commercial speech under *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm. of N.Y.* (1980).

The Defendant was offended by Dyer's protected speech in a limited public forum. As a result, the Defendant consecutively suspended and issued trespass warnings against Plaintiff totaling 2 years and 8 months (32 months). Under U.S. law, prior restraint is forbidden.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The governmental body may not, however, discriminate among speakers on the basis of their speech, although it may confine the scope of public comment to the subject matter of the meeting. *City of Madison*, 429 U.S. at 176, 97 S. Ct. at 426. As the Supreme Court has observed:[U]nder the . . . First Amendment . . . , government may not grant the use of a forum to people whose views it finds acceptable, but deny use of those wishing to express less favored or more controversial views . . . Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone.” *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972).

In order to be narrowly tailored, a time, place, or manner restriction must not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Ward*, 491 U.S. at 799. On October 11, 2016, Plaintiff was suspended and issued a trespass warning under the accusation that he called APS students “sambos”. Plaintiff submitted video evidence during discovery countering this argument. The record will show that the Defendant no longer rest on this assertion. AISS offered no due process to address the suspensions and trespass warnings which could have allowed the Plaintiff to vindicate himself in the matter. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). “Parties whose rights are to be affected are entitled to be heard.” *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863).

The Defendant believed that they could continuously bully and violate Plaintiff’s constitutional rights without being held accountable. After being banned for a third

time, the Plaintiff had no other option but to pursue legal action. The Defendant also believes that they can manipulate the judicial system by submitting tampered evidence. Case in point, the suspension letter submitted by the Defendant labeled Ex. 12 was dated February 6, 2018. The Plaintiff submitted the a similar document with his complaint which was dated February 8, 2018 (Doc 1-1 at 52; Pl. Ex. J) (Exhibit 3). The dates are different and the language had been altered as well. The Defendant's February 6, 2018 letter omits the following language:

You are instructed not to set foot on Atlanta Public Schools ("APS") property during this one year suspension. If you do, you will be arrested for trespassing. You are further instructed not to have any communication whatsoever with any employee or representative of the ABOE or AISS for the duration of this suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication.

The Plaintiff's letter dated February 8, 2018 included the language above. Both letters were documented as being sent Via Personal Delivery, however; the Plaintiff only received the February 8, 2018 letter. The February 8, 2018 letter was personally delivered to the Plaintiff by Chief Ronald Applin as the Plaintiff was in attendance at a Perkerson Elementary community meeting (Exhibit 3). This willful action of submitting tampered evidence constitutes a case of perjury by the Defendant. Inherent Authority of the Court and Fed. R. Civ. P. 37: A district court has inherent power to sanction a party who "has willfully abused the judicial process or otherwise conducted litigation in bad faith." *Secrease v. Western & Southern Life Ins. Co.*, 800

F.3d 397 (7th Cir. 2015); *Salmeron v. Enterprise Recovery Systems, Inc.*, 579 F.3d 787, 793 (7th Cir.2009); see *Chambers v. NASCO, Inc.*, 501 U.S. 32, 48-49 (1991); *Greviskes v. Universities Research Ass'n*, 417 F.3d 752, 758-59 (7th Cir.2005). A district court may also dismiss a case for discovery violations or other egregious conduct in litigation under Federal Rule of Civil Procedure 37 or under the inherent authority of the district court. See *Greviskes*, 417 F.3d at 758-59; *White v. Williams*, 423 Fed.Appx. 645 (7th Cir. 2011)(“Dismissal may be appropriate when a party has shown a lack of respect for the court or proceedings.”). Willfulness and bad faith are associated with conduct that is either “intentional or reckless[.]” *Long v. Steepro*, 213 F.3d 983, 987 (7th Cir.2000); see also *Maynard v. Nygren*, 332 F.3d 462, 467-68 (7th Cir. 2003). Fault, however, “does not speak to the non complying party’s disposition at all, but rather only describes the reasonableness of the conduct-or lack thereof-which eventually culminated in the violation.” *Id.* Thus, a court may use its inherent powers to dismiss a case or enter default judgment even when the innocent party “incur[s] no real inconvenience” and “suffer[s] no real prejudice .” *Id.*; see also *Secrease*, 800 F.3d at 402 (“Even if it is not successful, the effort imposes unjust burdens on the opposing party, the judiciary, and honest litigants who count on the courts to decide their cases promptly and fairly.”); see also *Fuery v. City of Chicago*, 2016 WL 5719442, at \*11 (N.D. Ill. Sept. 29, 2016)

This court should deny the Defendant’s motion for summary judgment and enter a judgment for Nathaniel Borrell Dyer.

## **ARGUMENT AND CITATION TO AUTHORITY**

### **I. Summary Judgment Standard.**

Summary judgment is proper when no genuine issues of material fact are present and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The movant carries its burden by showing there is “an absence of evidence to support the non-moving party’s case.” *Celotex v. Catrett*, 477 U.S. 317, 325 (1986). Once the movant carries that burden, the non-moving party must “demonstrate that there is indeed a material issue of fact that precludes summary judgment.” *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). The non-movant present competent evidence identifying “specific facts showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 324. Rule 56 mandates the entry of summary judgment against a party that fails to establish the existence of every essential element it will have to prove at trial. *Celotex*, 477 U.S. at 322. In deciding a motion for summary judgment, the court must view all evidence and draw any factual inferences in the light most favorable to the non-moving party to determine “whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). But “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Anderson*, 477 U.S. at 247-48. To avoid summary judgment,

the non-moving party must identify a “genuine issue of material fact.” *Id.* at 248 (emphasis in original).

**a. Board meetings and AISS community meetings are limited public forums.**

Both parties agree that the Board’s public comment sessions constitute a limited public forum. “In limited public forums, to avoid infringing on First Amendment rights, the government regulation of speech only need be viewpoint-neutral and ‘reasonable in light of the purpose served by the forum.’” *Galena v. Leone*, 638 F.3d 186, 198 (3d Cir. 2011). To determine whether a restriction on speech in a limited public forum passes constitutional muster, the court must analyze whether the restriction on speech is a valid time, place, or manner restriction. *Id.* at 199. A restriction on speech is a valid time, place, or manner restriction if it (1) is justified without reference to the content of the regulated speech, (2) is narrowly tailored to serve a significant governmental interest, and (3) leaves open alternative channels for communication of the information. *Id.* Defendant’s restriction on Plaintiff’s speech were a violation of his First and Fourteenth Amendment Rights.

**II. AISS acted unlawfully when it suspended Dyer from attending Board and community meetings after he repeatedly disrupted prior meetings by using racial slurs and other derogatory language.**

“When the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply ‘posit the existence of the disease sought to be cured.’ It must demonstrate that the recited harms are real, not merely conjectural . . .” *Turner Broadcasting System, Inc. v. Federal Commc’n Comm’n*, 512 U.S. 622, 664 (1994). AISS and the Board consider the use of racial slurs, such as the “n-word” to be inappropriate, disruptive speech and prohibits the use of racial slurs during public comment. (Jernigan Dec. at ¶ 20; Dyer Depo. at 117:14-25, 118:1-2.) [W]e cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. *See Cohen*, 403 U.S. at 26

All I can do is provoke thought within that period of time. (Dyer Depo. 138:2) Accordingly, “[t]he right to free speech includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker’s message may be offensive to his audience.” *Hill v. Colorado*, 530 U.S. 703, 716 (2000). Any other rule “would effectively empower a majority to silence dissidents simply as a matter of personal predilections,” *Cohen v. California*, 403 U.S. 15, 21 (1971), and the government might be inclined to “regulate” offensive speech as “a convenient guise for banning the expression of unpopular views.” *Id.* at 26.



**i. AISS restricted Dyer's speech because it was disruptive and offensive, not because of disagreement with Dyer's message.**

The Plaintiff entered an AISS community meeting being held at Grove Park Elementary School and was manhandled out of the meeting by three AISS officers. As soon as the Plaintiff sat down, he was being escorted out. He had not uttered a word to be considered disruptive and offensive. (Exhibit 9) The Defendant acknowledges this in their statement:

To prevent Dyer from disrupting other meetings, AISS needed to stop him from even entering the room in which these meetings occurred because Dyer was equally disruptive at the podium as he was when sitting in the audience. The least restrictive means of curtailing Dyer's offensive, disruptive behavior was to suspend him from meetings. (Def. Memo of Law at 19)

The restrictions are a form of prior restraint on Dyer's speech. Such restraints occur when the Government has "den[ied] access to a forum before the expression occurs." *Bourgeois v. Peters*, 387 F.3d 1303, 1319 (11th Cir. 2004) (*quoting United States v. Frandsen*, 212 F.3d 1231, 1236-37 (11th Cir. 2000)). And a "prior restraint of expression comes before [the] court with 'a heavy presumption against its constitutional validity.'" *Universal Amusement Co. v. Vance*, 587 F.2d 159, 165 (5th Cir. 1978) (*quoting Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)).

Viewpoint discrimination occurs when the government is not only banning certain content or topics, but certain ideas. *Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991) The test for viewpoint discrimination is "[o]ther things being equal, viewpoint discrimination occurs when government allows one message while prohibiting the messages of those who can reasonably

be expected to respond.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 894 (1995). Additionally, viewpoint discrimination involves intent to discourage one viewpoint and advance another. *United States v. Kokinda*, 497 U.S. 720, 736 (1990) (citing *Monterey County Democratic Cent. Comm. v. United States Postal Serv.*, 812 F.2d 1194, 1198-1199 (9th Cir. 1987)). The general concern being that the government will try to eradicate, not just content from the marketplace, but certain viewpoints—whether positive or negative. *In re Tam*, 808 F.3d at 1334-35. If something rises to the level of viewpoint-based discrimination, it is deemed to be unconstitutional. *Sons of Confederate Veterans v. Comm’r of the Va. Dept. of Motor Vehicles*, 288 F.3d 610, 623 (4th Cir. 2002).

In *Reed v. Town of Gilbert*, the court said that, “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015). The Court further determined that, “This commonsense meaning of the phrase ‘content based’ requires a court to consider whether a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.” *Reed*, 135 S. Ct. at 2227 (citing *Sorrell*, 131 S. Ct. 2653, 2663, 180 L. Ed. 2d 544-55). For that reason, content-based discrimination is presumptively invalid *Id.* and if something is found to be discriminating on the basis of content, it must survive strict scrutiny. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009).

The Defendant’s Board Policy BC-R(1) is problematically similar to the “personal attacks” policy in the case of *MacQuigg v. Albuquerque Pub. Sch. Bd. of Educ* (APS). In this case, the APS Board adopted the following policy:

Personal attacks upon Board of Education members, district personnel, or other persons in attendance or absent[,] by individuals who address the Board of Education

shall be prohibited and may be justification for removal from the meeting.

The Court concludes that on its face the “personal attacks” policy discriminates against speech on the basis of content by discriminating between attacks—unfavorable or critical comments—and neutral or favorable comments about a given individual. The more difficult question is whether the personal attacks policy is viewpoint-based. In an analogous context, the Honorable James O. Browning has concluded that a village governing body’s “no negative mention” policy is viewpoint-based “because it allows praise or neutral comment, but not criticism or disapproval. . .” *Griffin v. Bryant*, 30 F. Supp. 3d 1139, 1181 (D.N.M. 2014); accord *Moore v. Asbury Park Bd. of Educ.*, 2005 WL 2033687 \*11-13 (D.N.J. 2005) (collecting cases). Judge Browning’s reasoning has considerable intuitive appeal. As one commentator has observed, “[t]his is a crabbed definition of viewpoint, to say the least. Allowing affirmative and uncritical opinions to be expressed but not negative or critical ones, appears to be classic viewpoint discrimination, even in its narrowest sense.” Marjorie Heins, *Viewpoint Discrimination*, 24 *Hastings Const. L.Q.* 99, 118-19 (Fall 1996). The Board bears the burden of proof on justification. *Doe*, 667 F.3d 1131. *Doe* makes it clear that even in the context of a facial challenge this is a genuine evidentiary burden that is not satisfied by conjecture. *Doe*, 667 F.3d at 1131.

Under the Defendant’s Policy BC-R(1), participants at public comments may not use certain types of speech. For instance, a speaker could not use profanity, make defamatory statements about an AISS official, or make threats. (Dyer Depo. at 115:14-20, 116:17-25, 117:1-13; Jernigan Dec. at ¶ 17.) The Supreme Court has used viewpoint neutrality interchangeably with the phrase “[are] not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 485 U.S. 788, 800 (1985) (quotation marks omitted).

The statute at issue in *Boos* arguably satisfied this definition of viewpoint neutrality because it banned all criticism of foreign governments, regardless of the identity of a particular country (ally or foe) or a particular policy (favored by Congress or disfavored). Here, as in *Boos*, the Board's policy is content-based because it distinguishes between critical and favorable speech, restricting only critical speech. But the Board's policy is distinguishable from the statute at issue in *Boos* in a critical respect: Congress restricted critical speech aimed entirely at third parties; the Board's policy expressly restricts critical speech aimed at the individual members of the Board. The Board's express designation of its members for protection from personal attacks gives the members of the Board a personal interest in suppressing critical speech. The Court is inclined to confine the *Boos* plurality's conclusion about viewpoint neutrality to the context of the statute at issue in that case and to follow Judge Browning's compelling reasoning: the Board's policy is viewpoint-based because it "permits praise and neutral feedback, but not criticism of both government employees and worse, [the Board] itself." *Griffin*, 30 F. Supp. 2d at 1173.

The Defendant references *Kirkland v. Luken*, 536 F. Supp. 2d 857 (S.D. Ohio 2008), concluded that the First Amendment permitted a city council to restrict racially charged comments like Dyer's. Kirkland was not tried and convicted of using the word "Nigganati" but for refusing to leave the meeting when asked by Sergeant Gladden several times. Kirkland directed the term "Nigganati" to citizens in the audience, who were already restive, it was likely to incite the members of the audience during the meeting, cause disorder, and disrupt the meeting. His permission to speak was granted to address City Council, not the ministers in attendance.

ii. **Removing Dyer from meetings and suspending him were narrowly tailored restrictions on his speech.**

Overbreadth and prior restraint can be seen in this egregious statement ordered by the Defendant's February 8, 2018 letter which states:

"Furthermore, he is not to have any communication whatsoever with any employee or representative of the ABOE or APS for the duration of the suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication from February 6, 2018 through February 5, 2019". (Exhibit 3)

First, a categorical ban on speech is not tailored at all, as it entirely forecloses a means of communication. *Cf. Hill v. Colo.*, 530 U.S. 703, 726 (2000) ("when a content-neutral regulation does not entirely foreclose any means of communication, it may satisfy the tailoring requirement even though it is not the least restrictive or least intrusive means of serving the statutory goal"). In order to be narrowly tailored, a time, place, or manner restriction must not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward*, 491 U.S. at 799. Here, ostensibly because of a satirical flyer and words the Defendant view as offensive, Plaintiff was banned not only from the AISS school grounds, but from all premises owned by the AISS. (Exhibit 13, Exhibit 14) He was not banned only during regular school hours, but at all hours, for a total of 2 years and 8 months.

AISS's conduct was similar to *Visors*. In *Visors*, the injunctions also prohibited "mak[ing], post[ing] or distribut[ing] comments, letters, faxes, flyers or emails regarding [*Hansen or Streeter*] to the public" at large. This broad restriction expressly forbidding future speech is a classic example of a prior restraint. *See Alexander v. United States*, 509 U.S. 544, 550 (1993). Prior restraints, which we have characterized

as “the most serious and least tolerable infringement on First Amendment rights,” carry a heavy presumption of invalidity. *Nash v. Nash*, 232 Ariz. 473, 481–82, ¶ 32, 307 P.3d 40, 48–49 (App. 2013). A restriction like this based on the content of speech is permissible only if narrowly tailored to achieve a compelling state interest. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983). Because of the dangers of prior restraints, even content-neutral injunctions should not burden more speech than necessary to serve a significant government interest. *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). Here, the injunctions at issue were not narrowly tailored and were overbroad because they prohibited all public speech regarding *Hansen or Streeter*.

The tailoring threshold here is even higher than in *Ward*, as a notice against trespass targeting an individual rather than the public generally is equivalent to an injunction against speech, and the Supreme Court has explained, “[i]njunctions... carry greater risks of censorship and discriminatory application than do general ordinances.” *Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 764 (1994). A potentially serious problem with Defendant’s reliance on this rationale is that it incorporates Plaintiff’s conduct leading up to his ejection from the February 8, 2018 Board Meeting. As explained above, there is a view of the evidence by which a jury could find that Defendant suspended Plaintiff from the January 2016 Board Meeting without constitutionally adequate justification. Under this view of the evidence, Defendant’s reliance on the earlier incident as grounds for banning Plaintiff from future Board Meetings compounds his initial violation of Plaintiff’s constitutional rights.

Defendant’s reliance on Plaintiff’s behavior at the October 2016 committee meeting is similarly problematic. (Exhibit 2, Exhibit 6) As noted earlier, the test applicable to a limited public forum comprises two prongs: any restriction on speech must be (1) viewpoint neutral and (2) reasonable given the purposes of the forum. Under

the second prong of the test, Defendant's understanding that Plaintiff had engaged in conduct justifying his ejection from October 2016 meeting need not be right, but it must have been reasonable. There is a noticeable absence of evidence as to what information Defendant had about the events of October 2016. Given the allocation of the burden of persuasion on justification to the governmental defendant, a reasonable jury could find that Defendant has not shown that his reliance on Plaintiff's alleged misconduct at the October 2016 meeting was objectively reasonable.

The third ground for banning Plaintiff from future meetings cited by Defendant in his February 8, 2018 trespass warning states "were offensive to the Board, our Superintendent, and our staff and community." (Exhibit 3, Exhibit 7) The Court does not doubt that at least some Defendants and AISS employees could be offended by the Plaintiff's presentation. But to justify the exclusion of Plaintiff from a limited public forum on grounds of being offended, Defendants' apprehension of harm must be reasonable, not merely subjectively genuine. "Listeners' reaction to speech is not a content neutral basis for regulation... Speech cannot be ... punished or banned[ ] simply because it might offend a hostile" member of the Santa Cruz City Council. *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992). The council members should have known that the government may never suppress viewpoints it doesn't like. See *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). For the government to "shut off discourse solely to protect others from hearing it" in the absence of "a showing that substantial privacy interests are being invaded in an essentially intolerable manner ... would effectively empower a majority to silence dissidents simply as a matter of personal predilections." *Cohen v. California*, 403 U.S. 15 (1971)

**iii Dyer had alternative channels of communication.**

The Defendant suggests that Plaintiff had ample channels through which he could communicate with community members and other elected officials. The Defendant failed to acknowledge the blaring fact that the trespass warning dated February 8, 2018 forbids any contact with AISS elected officials or APS employees which could be considered community. In stark contrast to the tampered evidence dated February 6, 2018, the Defendant's nasty and malicious tone of the official letter states in part:

“You are not to set foot on Atlanta Public Schools (“APS”) property during this one-year suspension. If you do, you will be arrested for trespassing. You are further instructed not to have any communication whatsoever with any employee or representative of the ABOE or APS for the duration of this suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication.” (Exhibit 3, Exhibit 12)

The “strong medicine” of overbreadth invalidation need not and generally should not be administered when the statute under attack is unconstitutional as applied to the challenger before the court. *See U.S. v. Stevens*, [130 S.Ct. 1577, 1592](#) (Alito, J., dissenting). The overbreadth doctrine is to “strike a balance between competing social costs”. *U.S. v. Williams*, [553 U.S. 285, 292](#). Specifically, the doctrine seeks to balance the “harmful effects” of “invalidating a law that in some of its applications is perfectly constitutional” as a possibility that “the threat of enforcement of an overbroad law deters people from engaging in constitutionally protected speech”.



**III. AISS violated Dyer's First Amendment rights and caused him to suffer a deprivation of his due process rights.**

“A procedural due process claim is composed of two elements: (1) the existence of a property or liberty interest that was deprived and (2) deprivation of that interest without due process.” *Bryant v. N.Y. Educ. Dep't*, 692 F.3d 202, 218 (2d Cir. 2012). As discussed above, the Defendant deprived the Plaintiff of his First Amendment right to freedom of expression by barring him from participating in school Board Meetings. To determine whether the Defendant afforded Plaintiff adequate process before barring him from school Board Meetings, “it is necessary to ask what process the [AISS] provided, and whether it was constitutionally adequate.” *Rivera-Powell v. N.Y.C. Bd. of Elections*, 470 F.3d 458, 465 (2d Cir.2006) (citation omitted). As part of this analysis, “the Supreme Court has distinguished between (a) claims based on established state procedures and (b) claims based on random, unauthorized acts by state employees.” *Id.* (internal quotation marks and citation omitted). A meaningful post-deprivation remedy automatically satisfies deprivations caused by random, unauthorized acts. *Id.* at 465-66. This rule recognizes that state and local governments cannot predict when deprivations will occur. *Id.* at 465. For deprivations based on established state procedures, a court must balance the three factors identified in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine the process due: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335. The *Mathews* test also only requires a meaningful, post-deprivation remedy. *See Nnebe v.Daus*, 644 F.3d 147, 158-59 (2d Cir. 2011) (no pre-

deprivation hearing necessary to suspend taxi driver following arrest), but a post-deprivation remedy is just not adequate ipso facto. *See Rivera- Powell*, 470 F.3d at 465. Plaintiff alleges he was deprived of due process when the Defendant issued him trespass warnings. The trespass warnings were not issued randomly or without authority, but were decisions approved by AISS Superintendent Carstarphen, the chief administrator of the school district, Jason Esteves, AISS Board Chair and D. Glenn Brock, AISS General Counsel. Accordingly, the Court must weigh the *Mathews* factors. A single decision or course of action, even if “tailored to a particular situation and not intended to control decisions in later situations,” may give rise to municipal liability if it was “properly made by that government’s authorized” policymakers. *Pembaur*, 475 U.S. at 481.

As previously discussed, Plaintiff has a strong interest in attending school boarding meetings, where he has a right to express himself. *See Berlickij v. Town of Castleton*, 248 F. Supp. 2d 335, 344 (D. Vt. 2003) (stating that plaintiff “has a First Amendment right not to be excluded from a forum that is generally held open to the public”); *Rowe v. Brown*, 157 Vt. 373, 376 (1991) (same).

The trespass warnings created a high risk of erroneous deprivation because they were not issued pursuant to any protocol or Board Policy, because they did not set out a process to contest the ban, and because Plaintiff did not receive a meaningful opportunity to contest his ban. First, the fact that there is no protocol or Board Policy in place governing when a Defendant official may issue a trespass warning increases the risk of erroneous deprivation because it grants officials broad discretion to ban members of the public from school premises and, consequently, school Board Meetings. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 153 (1969) (“[W]e have consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper

regulation of public places.”) (*quoting Kunz v. New York*, 340 U.S. 290, 293-94 (1951)).

Second, neither trespass warning sets out any process for contesting the notice. *Cf. Catron v. City of St. Petersburg*, 658 F.3d 1260, 1268-69 (11th Cir. 2011) (trespass ordinance that lacked an appeal process is procedurally inadequate). Third, Plaintiff did not receive a meaningful opportunity to contest the notices against trespass. *See Wright v. Yacovone*, No. 5:12-cv-27, 2012 U.S. Dist. LEXIS 157544, at \*49 (D. Vt. Nov. 2, 2012) (“The opportunity to be heard must thus occur ‘at a meaningful time and in a meaningful manner.’”) (*quoting Mathews*, 424 U.S. at 333). Because the letters serving as trespass warnings were not issued pursuant to any protocol, the notices did not set out a process for contesting the notices, and Plaintiff had no meaningful opportunity to contest the notices, the notices posed a high risk of erroneously depriving Plaintiff of his First Amendment right to freedom of expression. The notices against trespass violated Plaintiff’s due process rights by depriving him of his First Amendment right to express his views at school Board Meetings without adequate process.

## CONCLUSION

For the foregoing reasons, the Defendant’s Motion for Summary Judgment should be denied and judgement should be entered for Nathaniel Borrell Dyer.

Respectfully submitted this 23rd day of October, 2019.

  
Nathaniel Borrell Dyer

*Plaintiff Pro Se*

**CERTIFICATE OF COMPLIANCE**

I certify that the foregoing was prepared using Times New Roman font, 14-point type, which is one of the font and print selections approved by the Court in L.R.5.1(B).

This 23rd day of October, 2019.


  
Nathaniel Borrell Dyer  
*Plaintiff Pro Se*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of October, 2019, a copy of the document entitled **PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION OF MOTION FOR SUMMARY JUDGMENT** was delivered by first class mail to:

Nelson Mullins Riley & Scarborough LLP  
Atlantic Station / 201 17th Street, NW / Suite 1700  
Atlanta, GA 30363

Nathaniel Borrell Dyer  
*Plaintiff Pro Se*

A handwritten signature in blue ink, appearing to read 'N. Borrell Dyer', is written over two horizontal lines. The signature is stylized and cursive.



Courtney D. English  
Chair, Atlanta Board of Education  
Center for Learning & Leadership  
130 Trinity Avenue, S.W.  
Atlanta, Georgia 30303  
Phone 404-802-2801  
Fax 404-802-1801  
[www.atlantapublicschools.us](http://www.atlantapublicschools.us)

January 15, 2016

**Via Email ([nate@natbotheedge.com](mailto:nate@natbotheedge.com)) and U.S. Mail**

Nathaniel B. Dyer  
202 Joseph E. Lowery Blvd NW  
Atlanta, GA 30314

**Re: Suspension from Public Comment at Atlanta Board of Education Meetings**

Dear Mr. Dyer:

This letter is to inform you that your privilege to speak at any meeting sponsored by the Atlanta Board of Education (ABOE) is hereby suspended until July 2016.

This action is taken as a result of your public comments during community meeting portion of the January meeting of the ABOE. Using race-based slurs (including the "N" word, "coons," and "buffoons") was outside the bounds decorum that such a setting demands. They were not only disrespectful but were offensive to our board, our superintendent and our staff. Further, those abusive comments failed to advance any meaningful discourse upon which the board or superintendent could possibly act. As Chairman of the Board, I cannot and will not allow such abhorrent and hate-filled epithets, that can create a hostile work environment, during a meeting of an organization where the sole purpose is to advance the education of children. Members of our staff must attend our meetings as well as children along with their families are often present and none of them deserve to be subjected to such behavior.

I would further advise you that any further demonstration of such conduct may result in additional consequences including permanent suspension of your privilege to speak at APS board meetings.

Sincerely,

/s/ Courtney D. English

Courtney D. English

cc: Meria J. Carstarphen, Superintendent  
D. Glenn Brock, General Counsel

For school system directory information, dial 404-802-3500. The Atlanta Public School System does not discriminate on the basis of race, color, religion, sex, age, national origin, disability, veteran status, or sexual orientation in any of its employment practices, education programs, services or activities. For additional information about nondiscrimination provisions, please contact the Office of Internal Resolution, 130 Trinity Street, Atlanta, Georgia 30303, 404-802-2361.

**EXHIBIT**

**1**



ATLANTA  
PUBLIC  
SCHOOLS

Courtney D. English  
Chair, Atlanta Board of Education  
Center for Learning & Leadership  
130 Trinity Avenue, S.W.  
Atlanta, Georgia 30303  
Phone 404-802-2801  
Fax 404-802-1801  
[www.atlantapublicschools.us](http://www.atlantapublicschools.us)

October 11, 2016

**Via Personal Delivery**

Nathaniel B. Dyer  
202 Joseph E. Lowery Blvd NW  
Atlanta, GA 30314

**Re: Suspension from Public Comment at Atlanta Board of Education Meetings**

Dear Mr. Dyer:

This letter is to inform you that, once again, your privilege to speak at any meeting sponsored by the Atlanta Board of Education ("ABOE") is hereby suspended until December 31, 2017. In addition, this will serve as a trespass warning. You are instructed not to set foot on Atlanta Public Schools ("APS") property for the remainder of this year and next year. If you do, you will be arrested for trespassing. These actions are a direct result of your inappropriate and disruptive behavior at yesterday's October 10, 2016 ABOE meeting.

As you know, on January 15, 2016, you were suspended from speaking at any ABOE meeting because of your use of several racial slurs during the public comment portion of the January ABOE meeting (see attached 1/15/2016 letter from C. English to you). You then attended a town hall meeting and disrupted the meeting being led by Dr. Carstarphen's senior staff. As a result of that behavior, Former APS Chief of Police Sands issued a trespass warning against you, prohibiting you from coming onto school property. (Copy attached). You were notified that any future similar demonstration may result in additional suspensions. Your suspension at that time ended in July 2016.

Nevertheless, on October 10, 2016, you brazenly ignored our previous warnings and again, you used a racial slur when you referred to APS students as "sambos" during the public comment portion of the ABOE meeting. You also referenced on the official sign-in sheet to speak at the ABOE meeting having previously spoken to "[a]ll of these fools." (Copy attached). Your insulting comments, particularly your reference to APS students as "sambos," are completely outside the bounds of civility and, as before, were offensive to the Board, our Superintendent, and our staff and community. Your comments failed to advance any meaningful discourse upon which the Board or Superintendent could possibly act.

In addition to subjecting everyone in the meeting to your offensive language, you refused to leave the podium after I repeatedly directed you to do so. Police ultimately escorted you from

EXHIBIT

2

Nathaniel B. Dyer  
October 11, 2016

Page 2 of 2

the meeting room, but you continued to disrupt the meeting by shouting within and outside of the room. We cannot and we will not allow such abhorrent and hate-filled behavior in a meeting of an organization whose sole purpose is to educate children.

I would further advise you that any further demonstration of such conduct may result in additional consequences, including permanent suspension of your privilege to speak at APS board meetings.

Sincerely,

*/s/ Courtney D. English*

Courtney D. English

Enclosures

cc: Meria J. Carstarphen, Superintendent  
Ronald Applin, APS Chief of Police  
D. Glenn Brock, General Counsel





ATLANTA  
PUBLIC  
SCHOOLS

Jason Esteves  
Chair, Atlanta Board of Education  
Center for Learning & Leadership  
130 Trinity Avenue, S.W.  
Atlanta, Georgia 30303  
Phone 404-802-2801  
Fax 404-802-1801  
[www.atlantapublicschools.us](http://www.atlantapublicschools.us)

February 8, 2018

**Via Personal Delivery**

Nathaniel B. Dyer  
202 Joseph E. Lowery Blvd NW  
Atlanta, GA 30314

**Re: Suspension from Public Comment at Atlanta Board of Education Meetings**

Dear Mr. Dyer:

This letter is to inform you that your privilege to speak at any meeting sponsored by the Atlanta Board of Education ("ABOE") is hereby suspended for one year beginning on February 6, 2018. In addition, this letter will serve as a trespass warning. You are instructed not to set foot on Atlanta Public Schools ("APS") property during this one-year suspension. If you do, you will be arrested for trespassing. You are further instructed not to have any communication whatsoever with any employee or representative of the ABOE or APS for the duration of this suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication. These actions are a direct result of yet another instance of inappropriate and disruptive behavior by you at the February 5, 2018 ABOE meeting. This is your *third* violation of ABOE directives to you, and future occurrences will not be tolerated.

As you know, on January 15, 2016, you were suspended from speaking at any ABOE meeting because of your use of several racial slurs during the public comment portion of the January 2016 ABOE meeting. You then attended a town hall meeting and disrupted the meeting being led by Dr. Carstarphen's senior staff. As a result of that behavior, Former APS Chief of Police Sands issued a trespass warning against you, prohibiting you from coming onto school property. You were notified that any future similar demonstration may result in additional suspensions. (Exhibit A – January 15, 2016 Letter). Your suspension at that time ended in July 2016. However, despite that warning, on October 10, 2016, you used a racial slur when you referred to APS students as "sambos" during the public comment portion of the ABOE meeting. That behavior led to another suspension and trespass warning through December 31, 2017. (Exhibit B – October 11, 2016 Letter). You were also warned that similar conduct in the future could lead to additional consequences, including permanent suspension of your privilege to speak at APS board meetings.

Nevertheless, on February 5, 2018, you once again introduced racist and hate-filled epithets at an ABOE meeting. Specifically, you passed out flyers to audience members that contained the

Nathaniel B. Dyer  
February 8, 2018

Page 2 of 2

phrase “unnigged coming soon” and that contained a picture of Superintendent Carstarphen wearing a photoshopped football jersey with the name “FALCOONS” on it. (Exhibit C – February 5, 2018 Flyer). These insulting references are completely outside the bounds of civility and, as before, were offensive to the Board, our Superintendent, and our staff and community. These references fail to advance any meaningful discourse upon which the Board or Superintendent could possibly act. We cannot and we will not allow such abhorrent and hate-filled behavior in a meeting of an organization whose sole purpose is to educate children.

I once again further advise you that any further demonstration of such conduct may result in additional consequences, including permanent suspension of your privilege to speak at APS board meetings.

Sincerely,

*/s/ Jason Esteves*

Jason Esteves

cc: Meria J. Carstarphen, Superintendent  
Ronald Applin, APS Chief of Police  
D. Glenn Brock, General Counsel



# ATLANTA PUBLIC SCHOOLS CRIMINAL TRESPASS WARNING

Case Number: \_\_\_\_\_

*Our Focus... Student Success*

I, Nate Dyer hereby understand that I have been issued a criminal trespass warning by an official of the Atlanta Public Schools. I also understand that I am not permitted to enter upon any property owned or leased by the Atlanta Public Schools or attend any extra-curricular activities such as athletic events, plays, etc. Any violation of this warning may result in arrest for violating the Official Code of Georgia Annotated: 16-7-21(b): Criminal Trespass - a person commits the offense of criminal trespass when he or she knowingly and without authority:

- 1) Enters upon the land or premises of another person or into any part of any vehicle, railroad car, aircraft, or watercraft of another person for an unlawful purpose;
- 2) Enters upon the land or premises of another person or into any part of any vehicle, railroad car, aircraft, or watercraft of another person after receiving, prior to such entry, notice from the owner, rightful occupant, or, upon proper identification, an authorized representative of the owner or rightful occupant that such entry is forbidden; or
- 3) Remains upon the land or premises of another person or within the vehicle, railroad car, aircraft, or watercraft of another person after receiving notice from the owner, rightful occupant, or, upon proper identification, an authorized representative of the owner or rightful occupant to depart.

A person who commits the offense of criminal trespass shall be guilty of a misdemeanor.  
(Chgd. by Ga.L. 2001 Act 353(1), eff. 7/1/2001)

I understand that I may return to school on:

2/2/16 Atlanta Public School Property (Board Meeting)  
Date: refuse to sign Signature: Off. J. E. [Signature]  
Officer

White: Offender

Yellow: Police Department

Pink: File

EXHIBIT  
4



# ATLANTA PUBLIC SCHOOLS

## CRIMINAL TRESPASS WARNING

Case Number: \_\_\_\_\_

*Our Focus... Student Success*

Nathaniel Dyer hereby understand that I have been issued a criminal trespass warning by an official of the Atlanta Public Schools. I also understand that I am not permitted to enter upon any property owned or leased by the Atlanta Public Schools or attend any extra curricular activities such as athletic events, plays, etc. Any violation of this warning may result in arrest for violating the Official Code of Georgia Annotated: 16-7-21(b): Criminal Trespass - a person commits the offense of criminal trespass when he or she knowingly and without authority:

- 1) Enters upon the land or premises of another person or into any part of any vehicle, railroad car, aircraft, or watercraft of another person for an unlawful purpose.
- 2) Enters upon the land or premises of another person or into any part of any vehicle, railroad car, aircraft, or watercraft of another person after receiving, prior to such entry, notice from the owner, rightful occupant, or upon proper identification, an authorized representative of the owner or rightful occupant that such entry is forbidden; or
- 3) Remains upon the land or premises of another person or within the vehicle, railroad car, aircraft, or watercraft of another person after receiving notice from the owner, rightful occupant, or upon proper identification, an authorized representative of the owner or rightful occupant to depart.

A person who commits the offense of criminal trespass shall be guilty of a misdemeanor.  
(Chgd. by Ga L. 2001 Act 353(1), eff. 7/1/2001)

I understand that I may return to school on July 1, 2016

2/29/16  
Date

Marqueta A. Hall  
Signature

[Signature]  
Witness/Officer

White: Offender

Yellow: Police Department

Pink: File

**EXHIBIT**  
**5**

**Video Evidence**

**EXHIBIT  
6**

- AISS Board Meeting pubic comment portion based on the letter sent from Courtney English to Plaintiff on October 11, 2016

**EXHIBIT  
7**

- AISS Board Meeting pubic comment portion based on the letter sent from Jason Esteves to Plaintiff on February 8, 2019

**EXHIBIT  
8**

- AISS Board Meeting pubic comment portion not allowing Plaintiff to speak after signing up on February 1, 2016

**EXHIBIT  
9**

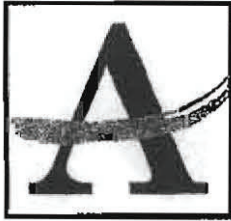
- AISS community meeting held at Grove Park Elementary pertaining to the Criminal Trespass Warning issued by former Chief Marquenta Hall Sands on February 2, 2016

**EXHIBIT  
10**

- AISS community meeting held at Carver High School where Plaintiff was harassed by former Chief Marquenta Sands-Hall and board members for raising hand to ask Superintendent Meria Carstarphen a question

**EXHIBIT  
11**

- Comments at January 11, 2016 AISS Board Meeting by Former Board Chair Courtney English and Superintendent Meria J. Carstarphen



ATLANTA  
PUBLIC  
SCHOOLS

Jason Esteves  
Chair, Atlanta Board of Education  
Center for Learning & Leadership  
130 Trinity Avenue, S.W.  
Atlanta, Georgia 30303  
Phone 404-802-2801  
Fax 404-802-1801  
[www.atlantapublicschools.us](http://www.atlantapublicschools.us)

February 6, 2018

**Via Personal Delivery**

Nathaniel B. Dyer  
202 Joseph E. Lowery Blvd NW  
Atlanta, GA 30314

**Re: Suspension from Public Comment at Atlanta Board of Education Meetings**

Dear Mr. Dyer:

This letter is to inform you that, once again, your privilege to speak at any meeting sponsored by the Atlanta Board of Education ("ABOE") is hereby suspended for the remainder of my current term as a Board Member. In addition, this letter will serve as a trespass warning. You are also instructed not to set foot on Atlanta Public Schools ("APS") property for the remainder of my current term as a Board Member. If you do, you will be arrested for trespassing. These actions are a direct result of yet another instance of inappropriate and disruptive behavior by you at yesterday's February 5, 2018 ABOE meeting. This is your *third* violation of ABOE directives to you, and future occurrences will not be tolerated.

As you know, on January 15, 2016, you were suspended from speaking at any ABOE meeting because of your use of several racial slurs during the public comment portion of the January 2016 ABOE meeting. You then attended a town hall meeting and disrupted the meeting being led by Dr. Carstarphen's senior staff. As a result of that behavior, Former APS Chief of Police Sands issued a trespass warning against you, prohibiting you from coming onto school property. You were notified that any future similar demonstration may result in additional suspensions. (Exhibit A – January 15, 2016 Letter). Your suspension at that time ended in July 2016. However, despite that warning, on October 10, 2016, you used a racial slur when you referred to APS students as "sambos" during the public comment portion of the ABOE meeting. That behavior led to another suspension and trespass warning through December 31, 2017. (Exhibit B – October 11, 2016 Letter). You were also warned that similar conduct in the future could lead to additional consequences, including permanent suspension of your privilege to speak at APS board meetings.

Nevertheless, on February 5, 2018, you once again introduced racist and hate-filled epithets at an ABOE meeting. Specifically, you passed out flyers to audience members that contained the phrase "unnigged coming soon" and that contained a picture of Superintendent Carstarphen wearing a photoshopped football jersey with the name "FALCOONS" on it. These insulting



Nathaniel B. Dyer  
February 6, 2018

Page 2 of 2

references are completely outside the bounds of civility and, as before, were offensive to the Board, our Superintendent, and our staff and community. These references fail to advance any meaningful discourse upon which the Board or Superintendent could possibly act. We cannot and we will not allow such abhorrent and hate-filled behavior in a meeting of an organization whose sole purpose is to educate children.

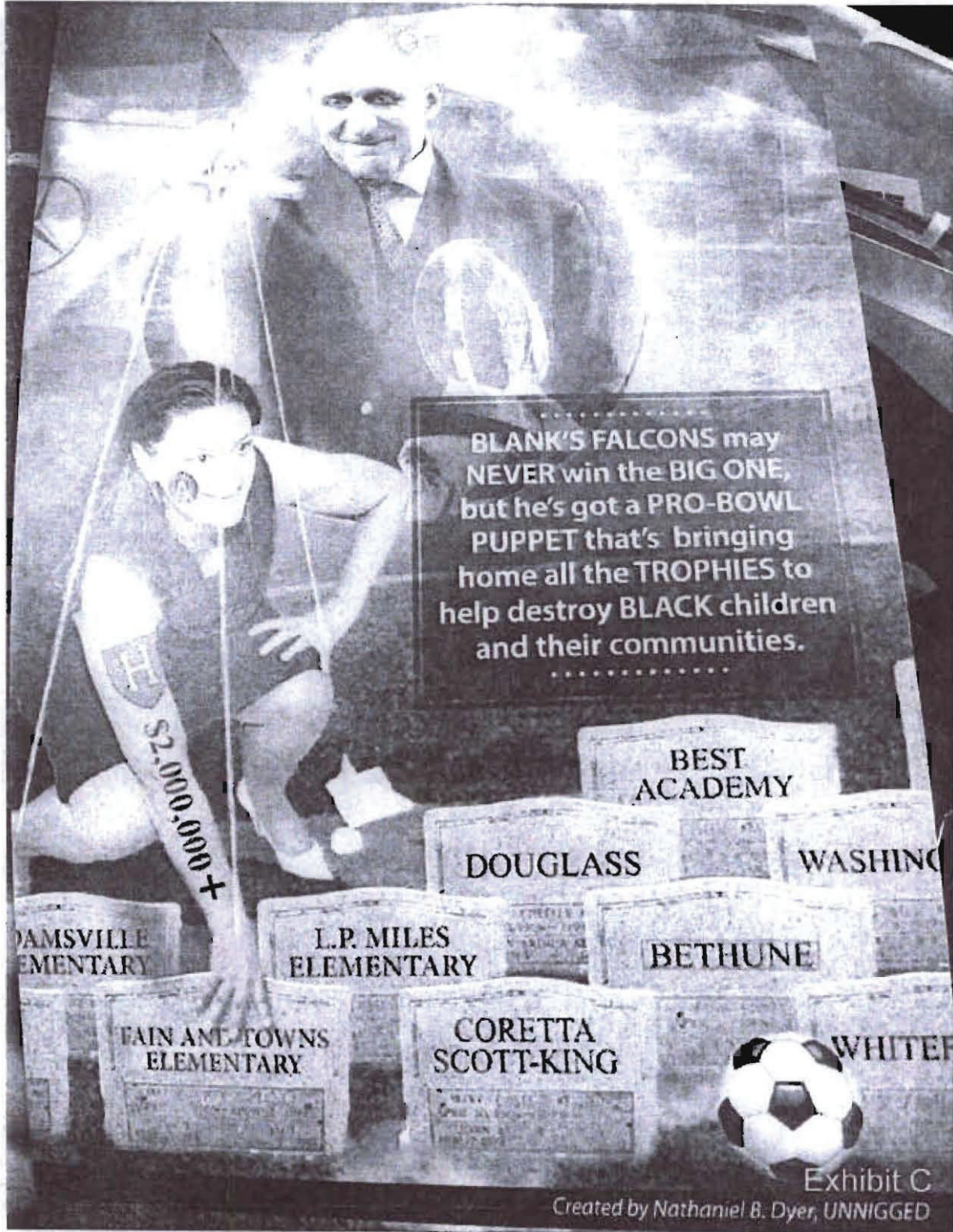
I once again further advise you that any further demonstration of such conduct may result in additional consequences, including permanent suspension of your privilege to speak at APS board meetings.

Sincerely,

*/s/ Jason Esteves*

Jason Esteves

cc: Meria J. Carstarphen, Superintendent  
Ronald Applin, APS Chief of Police  
D. Glenn Brock, General Counsel





ROOKIE CATASTROPHE

ALL-STAR

2015  
2018



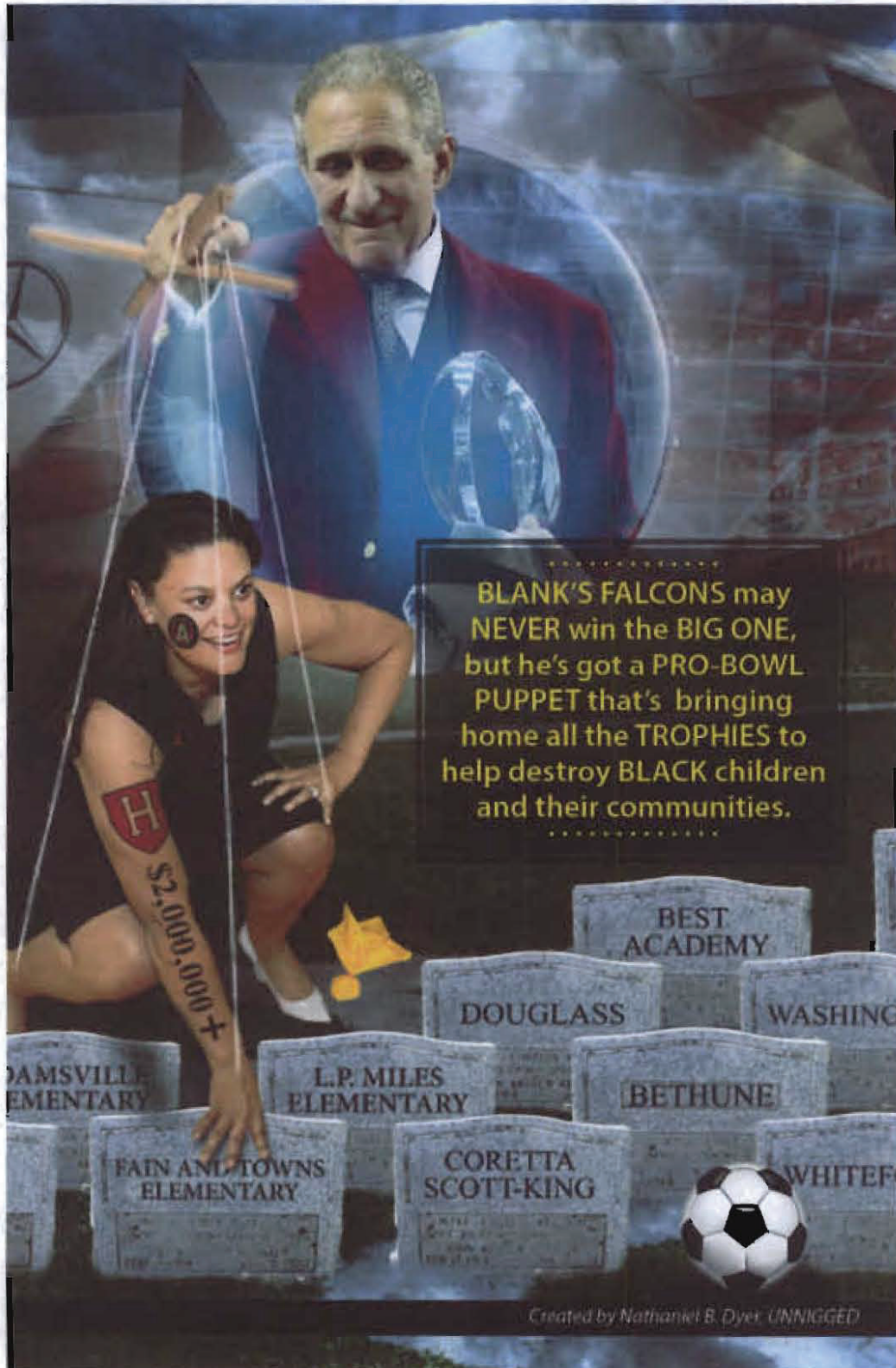
# SUPERINTENDENT *Meria Catastrophe's* TOP 10 CATASTROPHIC PLAYS

- 1 SELLING SCHOOLS** - She tackles the issues of deeds from the city to sell them to developers for gentrification of Black neighborhoods.
- 2 CLOSING SCHOOLS** - She closed schools such as Bethune ES and Kennedy MS located in the midst of a minimum of five billion dollars in development which includes Arthur Blank's Mercedes Benz Stadium Project.
- 3 MERGING SCHOOLS** - She has merged Black students together into overcrowded situations while proposing options to alleviate overcrowding for White students.
- 4 PRIVATIZING SCHOOLS** - She gives private operators, Purpose Built Communities and Kidesi, carte blanc and long contracts with little to no accountability.
- 5 CHARTER SCHOOLS** - She places Kidesi and KIPP schools in the heart of neighborhoods where she claims there is low student population. Her latest KIPP move will kill Douglas High School.
- 6 OPPORTUNITY SCHOOL DISTRICT (OSD)** - She hired the architect of Gov. Nathan Deal's OSD proclaiming to save schools from takeover but she closed them instead.

- 7 AGE DISCRIMINATION** - More than 100 teachers over 40 are suing this rookie for age discrimination. The culture of fear and intimidation still exists within Atlanta Public Schools and it may have intensified.
- 8 POLICE FORCE** - She created a police force claiming they are to aid with mentoring students. To date, bullying and discipline issues are still prevalent within APS at an all-time high.
- 9 BODY CAMERAS FOR OFFICERS** - Offering little money for exposure and resources to help children, this rookie wants to expose them in a hi-tech manner to be legally profiled for life.
- 10 INEQUITIES** - She caters heavily to White communities through whatever measures it takes to help them maintain stability and an uninterrupted learning experience. Anything to the contrary, this would cause White Flight. And Lawdy, She's Sho nuffin Don't Wants Dat!

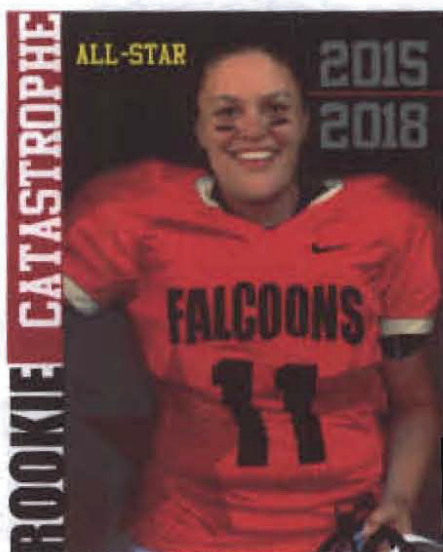
**It's time to retire this rookie. A new contract cannot be an option for what this third year rookie has done to Atlanta's children who possess so much promise and potential.**

**UNNIGGED COMING SOON!** For more information, please contact Nathaniel B. Dyer at 404.964.6427 or email [district7@nathanielb...](mailto:district7@nathanielb...)



BLANK'S FALCONS may NEVER win the BIG ONE, but he's got a PRO-BOWL PUPPET that's bringing home all the TROPHIES to help destroy BLACK children and their communities.

Created by Nathaniel B. Dyer. UNNIGGED



# SUPERINTENDENT *Meria Catastrophe's* TOP 10 CATASTROPHIC PLAYS

- 1 SELLING SCHOOLS** - She tackles the issues of deeds from the city to sell them to developers for gentrification of Black neighborhoods.
- 2 CLOSING SCHOOLS** - She closed schools such as Bethune ES and Kennedy MS located in the midst of a minimum of five billion dollars in development which includes Arthur Blank's Mercedes Benz Stadium Project.
- 3 MERGING SCHOOLS** - She has merged Black students together into overcrowded situations while proposing options to alleviate overcrowding for White students.
- 4 PRIVATIZING SCHOOLS** - She gives private operators, Purpose Built Communities and Kinesis, carte blanc and long contracts with little to no accountability.
- 5 CHARTER SCHOOLS** - She places Kinesis and KIPP schools in the heart of neighborhoods where she claims there is low student population. Her latest KIPP move will kill Douglas High School.
- 6 OPPORTUNITY SCHOOL DISTRICT (OSD)** - She hired the architect of Gov. Nathan Deal's OSD proclaiming to save schools from takeover but she closed them instead.
- 7 AGE DISCRIMINATION** - More than 100 teachers over 40 are suing this rookie for age discrimination. The culture of fear and intimidation still exists within Atlanta Public Schools and it may have intensified.
- 8 POLICE FORCE** - She created a police force claiming they are to aid with mentoring students. To date, bullying and discipline issues are still prevalent within APS at an all-time high.
- 9 BODY CAMERAS FOR OFFICERS** - Offering little money for exposure and resources to help children, this rookie wants to expose them in a hi-tech manner to be legally profiled for life.
- 10 INEQUITIES** - She caters heavily to White communities through whatever measures it takes to help them maintain stability and an uninterrupted learning experience. Anything to the contrary, this would cause White Flight. And Lawdy, She's Sho nuffin Don't Wants Dat!

**It's time to retire this rookie. A new contract cannot be an option for what this third year rookie has done to Atlanta's children who possess so much promise and potential.**

**UNNIGGED COMING SOON!** For more information, please contact Nathaniel B. Dyer at 404.964.6427 or email [district7@nathanielbdyer.com](mailto:district7@nathanielbdyer.com).



Book	Board Policy Manual
Section	1. Governance & School Board Operations
Title	BC Board Meetings
Code	BC
Status	Active
Adopted	April 17, 1995
Last Revised	October 5, 2015

All meetings of the Atlanta Board of Education shall be open to the public. The public will be given limited time to voice opinions or describe problems, as provided herein. All actions of the board shall be taken in open session, and the deliberations leading to the board action shall likewise be conducted openly, except in those instances where closed sessions are authorized by law. Since the board exists as an entity, its business can be transacted only in regularly called "regular board meetings" and specially called "special board meetings." Meetings of the board shall be scheduled and conducted in accordance with the provisions herein.

**Regular Meetings**

The regular monthly meetings of the board shall include a work session for presentations and discussion, a community meeting and a legislative meeting.

**A. Community Meetings**

The monthly community meeting provides an opportunity for the board to receive input from community members regarding policy issues, the educational program, or any other aspect of APS business except confidential personnel issues. The community meeting or special meetings may also be used as a public forum to address controversial issues or matters of deep community concern. The chairperson may delegate the responsibility for chairing community meetings to other board members.

**C. Legislative Meetings**

During the monthly legislative meeting, the board may receive presentations by the superintendent and take action on any other recommendations made by the superintendent. The board may also take action on board-initiated resolutions and any other actions required by law.

Members of the general public will not be allowed to address the board during the regular monthly legislative meeting.

**D. Organizational Meeting**



At the first regular meeting of the board in January following each regular election, the board shall organize, take and subscribe before a judge of the Superior Court the oath prescribed in the charter. During the first regular meeting in January of even-numbered years, the board will hold an organizational meeting to elect its officers for a term of two years. The organizational meeting shall immediately precede the convening of the regular monthly board meeting.

The time and place of all board meetings will be announced to the public in accordance with the Georgia Open Meetings Act.

### **Special Meetings**

Special meetings of the board may be called by the chairperson whenever he/she deems it necessary or at the request of three (3) or more members. Only business specifically noticed shall be conducted at a special meeting.

Emergency meetings are special meetings and may be called when special circumstances occur in a manner consistent with the Georgia Open Meetings Act.

### **Operational Procedures**

#### **A. Conduct at Meetings**

Board members and members of the public will faithfully and impartially conduct themselves in ways that demonstrate mutual respect, fair play, and orderly decorum. In particular, they will treat each other, APS employees, and other citizens with respect and courtesy, even when expressing disagreement, concern, or criticism about any issue or incident. Board members will also refrain from making statements in public meetings that have the direct and intended effect of impugning another person's motives or intelligence, attacking others on a purely personal basis, or disparaging anyone's racial, sexual, social, or religious background.

#### **B. Executive Sessions**

All meetings of the board shall be open to the public. However, the board may hold executive sessions in accordance with state law. Executive sessions shall not exclude the superintendent unless a discussion of the superintendent is the subject of the executive session.

The board may enter into executive session upon a majority vote of the board present and voting for the following reasons:

1. To review an appeal from a Student Disciplinary Tribunal [Hearing Officer, Panel] (O.C.G.A. § 20-2-757);
2. To consider a matter involving the disclosure of personally identifiable information from a student's educational records (20 U.S.C. §1232g.);
3. To discuss the future acquisition of real estate (O.C.G.A. § 50-14-3(4));
4. To discuss or deliberate upon the appointment, employment, compensation, hiring, disciplinary action, dismissal, periodic evaluation, or rating of a public officer or employee (O.C.G.A. § 50-14-3(6));
5. To consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought, or to be brought, by or against the school district or an officer or employee, or in which an officer or employee may be directly involved (O.C.G.A. §50-14-2).

All official action of the board shall be taken at an open meeting.

Following any executive session, the chairperson or other presiding officer shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting of the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

#### C. Minutes of Regular and Special Board Meetings

The board executive assistant shall keep, or cause to be kept, complete records of the actions of board meetings. The minutes of the board shall be kept in an official minute book, which may be maintained in electronic format and shall be a complete record of such minutes including resolutions and motions in full. Records that are not a part of a formal motion may be omitted if they are referred to and identified by some method.

Copies of the minutes of a meeting shall be sent to the members of the board before the meeting at which they are to be approved. Corrections in the minutes may be made at the meeting at which they are to be approved.

Permanent minutes, when placed in a permanent minute book after approval, shall be signed by the board executive assistant and the person presiding at the board meeting

No speeches or extracts or outlines of speeches of board members or others shall be entered upon the minutes, except that remarks explaining one's vote or remarks on a question of personal privilege shall be recorded in the minutes as may be directed by unanimous consent of the board.

Within 21 days of a regular or special meeting, the board shall post a preliminary report of the minutes and votes taken at regular and special meetings online and via any other reasonable method. The board shall post the final, approved minutes of regular and special meetings online within two (2) business days after the minutes are approved by the board.

#### D. Notification of Meeting

Notice of each regular meeting of the board, with agenda, will be delivered to each board member at least three (3) business days prior to each meeting. Notice of all special meetings, except as provided below for an emergency meeting, shall be given to the members of the board at least twenty-four (24) hours prior to the scheduled time of the meeting.

Notice of all regular and special meetings shall be in accordance with the Georgia Open Meetings Act.

#### E. Preparation for Board Meetings

1. Regular Agenda - The superintendent and the board executive assistant in consultation with the board chairperson shall prepare the agenda for the regular monthly board meetings and special meetings in accordance with sections 2, 3 and 4 below. Any board member or the superintendent may submit suggested items for inclusion on the agenda. Board members who wish to suggest items for the board's consideration must do so to the board chairperson prior to the agenda setting meeting. Items not on the agenda may be presented from the floor for discussion and/or action during the meeting if approved by a majority of board members present.
2. Consent Agenda - A consent agenda shall be included as a part of the regular agenda.
3. Schedule for Board Members Receiving the Agenda - The superintendent shall provide the agenda including all action items and supporting documentation to all members of the board no later than three (3) business days prior to the meeting, except in the instance of a *bona fide* emergency.

4. Reports and Other Information - Before actions by the board are requested or recommended, the board shall be provided with adequate information to assist the board in reaching sound and objective decisions consistent with established goals. The superintendent shall provide reports and other requested data no later than one (1) business day prior to the board meeting at which action is requested.

#### F. Procedures for Hearing from Individuals and Delegations

The board requires that all meetings be formal enough to maintain orderly procedure. At the same time, it is the desire of the board that meetings be informal enough to encourage open discussion and to promote creative thinking and action. While striving always to be cognizant of the problems, requests, complaints, and suggestions of employees, individuals, and groups from the community, the board cannot allow excessive perusal of any issues to interfere with its continuous, diligent attention to those activities vital to the effective operation of the APS. The board chairperson shall control the tenor of all board meetings.

1. Input Regarding Policy Additions or Revisions - Interested persons may suggest additions to, or revisions of, policy by putting those in writing and presenting them to the board executive assistant or the superintendent at least one week prior to the regular meeting. Appropriate consideration will be given to these suggestions as the board develops the agenda for the respective board committees.
2. Monthly Community Meeting - Citizens and representatives from organizations are encouraged to appear before and address the board at its community meeting. To address the board, citizens and representatives from organizations should register at a designated place in the building where the meeting is being held. Community members will speak in order of registration.
3. Special Legislative Meetings - Citizens and representatives from organizations may sign up to speak on a specific agenda item noticed on the agenda for a specially called legislative meeting. To address the board, citizens and representatives must contact the board executive assistant at least one hour prior to the scheduled starting time of the meeting, and the comments must be limited to the specific agenda item designated.
4. Protocol for Community Comments - Any person who has registered to speak to the board shall first be recognized by the chairperson. He/she shall then identify himself/herself and proceed with his/her comments as briefly as the subject permits, but in any case, within a two-minute time period at the community meeting or a three-minute period at a specially called legislative meeting. Community members may defer their comment periods to other speakers, not to exceed a total of four minutes at a community meeting or six minutes at a specially called legislative meeting for any individual speaker addressing the board. Elected officials may be granted a six-minute time period for comments.

#### G. Quorum

Five members of the board shall constitute a quorum for the transaction of business. A majority of members present may vote to compel the attendance of its members, to adjourn, or to fix a time of meeting.

#### H. Rules of Order and Suspension of Rules

In all cases of deliberation and procedure, the board shall observe the rules of parliamentary procedure set forth in *Robert's Rules of Order, Revised*, except as otherwise provided by law or by board policy.

#### I. Voting Method

Board members, as required by law, shall publicly state their votes on each item considered by the board.

Last Revised: 10/5/2015

Revised: 8/8/2011, 3/4/2013, 8/12/2013, 8/11/2014

First Adopted: 4/17/1995

**See also:**

Board Policy AA School District Legal Status (the statutory charter of the Atlanta Public Schools)

**Legal citations:**

O.C.G.A. 50-14-0002 Privileges

O.C.G.A. 50-14-0003 Excluded proceedings

O.C.G.A. 50-14-0005 Jurisdiction to enforce Open Meetings Act

O.C.G.A. 50-14-0006 Penalty for violation of Open Meetings Act; defense

O.C.G.A. 50-14-0004 Closed meeting procedures

O.C.G.A. 20-02-0058 Regular monthly meetings; notice

O.C.G.A. 50-14-0001 Open Meetings Act; notice; minutes; telecommunication conferences

O.C.G.A. 20-02-0757 Applicability of public inspection and open meeting laws

20 USC 1232g Family Educational Rights and Privacy Act of 1974 (FERPA)

**Keywords:**

regular meetings, community meetings, committee of the whole, legislative meetings, board, parliamentary procedure, public comments, address the board





Book	Board Policy Manual
Section	1. Governance & School Board Operations
Title	Board Meetings - Public Comment
Code	BC-R(1)
Status	Active
Adopted	July 9, 2012
Last Revised	November 2, 2015

**EXHIBIT**  
**16**

All Atlanta Board of Education meetings, other than executive sessions, shall be open to the public. Meetings shall be advertised by meeting notices posted at the Atlanta Public Schools (APS) Center for Learning and Leadership (CLL), notifications in the news media, and other appropriate means such as the APS Web site. Opportunities for public comments shall be provided at one or more meetings prior to a meeting where official board action is taken.

Public comment opportunities are available for the board to hear from interested members of the community. Board members do not provide responses or engage in direct conversation during public hearings. If stakeholders wish to receive an answer to a specific question, inquiries should be directed to the board office. For public hearings and the monthly community meetings, stakeholders may request a response by completing a written comment form at the speaker sign-in table. Members of the community may also submit public comments to the board at the following email address: [boardcomments@atlantapublicschools.us](mailto:boardcomments@atlantapublicschools.us).

### **Guidelines for Receiving Public Comment**

#### **A. Board Work Sessions for Presentations and Discussion**

1. Work sessions shall be scheduled as necessary for the board to review and discuss pending issues and to receive presentations from the administration.
2. The work session agenda shall be posted online and in the CLL. The news media shall be notified of the date, time, place and agenda at least 24 hours in advance.
3. No official board action shall be taken during a work session.
4. Minutes shall be kept of all work sessions. Following official approval, work session minutes are open to the public.
5. Work sessions shall be open to the public, however, time will not be provided for public comment.

#### **B. Public Hearings**

1. The board will conduct all legally required public hearings in accordance with state statute and these guidelines.

- Case 1:18-cv-03284-TGB Document 35-2 Filed 10/24/19 Page 42 of 44
2. At its discretion, the board may schedule public hearings for the purpose of receiving public comment on topics of high public interest or concern.
  3. Public hearing notices shall be posted in the CLL and local schools, as well as distributed via various outlets such as news media, APS websites, and e-mail as appropriate.
  4. Stakeholders wishing to speak during a public hearing must sign up at least 10 minutes before the start of the hearing at the sign-in table.
  5. Elected officials may request time to address the board by contacting the board office.
  6. Each speaker shall be heard only once during the hearing. The board shall allocate one hour for public comment during public hearings.
  7. Each speaker will be given up to two (2) minutes. At the end of the two-minute limit, individuals will be asked to end their comments and leave the podium. The board may elect to hear community comments in any order or sequence and is not limited by the arrangement shown on the sign-up sheets.
  8. Community members presenting highly detailed or complex information are asked to provide a written outline of their comments for the board members.
  9. In order to maintain appropriate meeting decorum, follow appropriate protocols, protect the confidentiality of students, and ensure the impartiality of the board, the board will not entertain comments on matters involving individual students, parents or the character, professional competence, or the physical or mental health of an individual. The board will not take public comment on personnel matters that specifically include the names or titles of employees; this includes but is not limited to: contract non renewals, position abolishment, the hiring or firing of staff, and investigative proceedings regarding allegations of misconduct. Communications regarding personnel issues should be sent in writing to: Atlanta Board of Education, 130 Trinity Ave, Atlanta, Georgia 30303 or via email at boardcomments@atlantapublicschools.us.
  10. Persons are expected to honor meeting decorum. Applause, cheering, jeering, or speech that defames individuals, stymies or blocks meeting progress will not be tolerated and may be cause for removal from the meeting or suspension and/or adjournment of the meeting by the board.

### **C. Community Meeting**

1. The board shall allocate one hour to hear from the community during the monthly community meeting on any agenda and non-agenda items other than matters listed in section 7 below. If there are more speakers than time allotted, the board may elect to continue the community meeting after the conclusion of its legislative actions.
2. Stakeholders wishing to address the board must register in person at the sign-in table from 5:00 pm to 5:50 pm on the day of the community meeting. When signing up to speak, each person must provide the following information: name, address, telephone number, the agenda item or other topic to be addressed and, if applicable, the group or organization the person represents. An individual may not sign up for another person.
3. First priority will be given to APS students who sign in to speak. Students will be followed by any elected officials who have requested to address the board by contacting the board office in advance of the meeting. Third priority will be given to speakers who sign up to speak on agenda items. Additional speakers will be called in the order in which they signed up to speak.
4. If several individuals from the same group are concerned with the same issue and share the same opinion, they are encouraged to select a spokesperson to represent the group. The board reserves the right to limit repetitive comments.
5. Community members signing up to speak will be given up to two (2) minutes. At the end of the two-minute limit, individuals will be asked to end their comments and leave the podium.
6. Stakeholders presenting highly detailed or complex information are asked to provide a written outline of their comments for the board members.
7. In order to maintain appropriate meeting decorum, follow appropriate protocols, protect the confidentiality of students, and ensure the impartiality of the board, the board will not entertain comments on matters involving individual students, parents or the character, professional competence, or the physical or mental health of an individual. The board will

Case 1:18-cv-03281-TOB Document 35-2 Filed 10/24/19 Page 43 of 44  
 not take public comment on personnel matters that specifically include the names or titles of employees; this includes but is not limited to: contract non renewals, position abolishment, the hiring or firing of staff, and investigative proceedings regarding allegations of misconduct. Communications regarding personnel issues should be sent in writing to: Atlanta Board of Education, 130 Trinity Ave, Atlanta, Georgia 30303 or via email at boardcomments@atlantapublicschools.us

8. Persons are expected to honor meeting decorum. Applause, cheering, jeering, or speech that defames individuals or stymies or blocks meeting progress will not be tolerated and may be cause for removal from the meeting or for the board to suspend or adjourn the meeting. Those wishing to display place cards, signs and/or banners must remain behind the seating area, or on the side of the seating area, and may not block any attendee's view of the proceedings. Place cards, signs and banners may not have wooden or metal sticks or poles attached to them.
9. Minutes shall be kept of all regular school board meetings. After the minutes are officially approved by the board, which is generally at the next meeting, the minutes will be open for public inspection via the online board agenda or by contacting the board office. Copies of board meeting minutes may be requested for a fee of \$0.10 per page.

#### **D. Executive (Closed) Sessions**

1. Closed sessions shall be held pursuant to the Georgia Open Meetings Act and board policy BC Board Meetings.
2. A notice of the closed session shall be posted in the CLL and the news media shall be notified of the date, time, place and purpose of the meeting at least 24 hours in advance.
3. Closed sessions are not open to the public or news media.
4. Records of the meetings shall be consistent with state law.

Last Revised: 11/2/2015

Date Adopted: 7/9/2012

See the statutory charter of the Atlanta Public Schools.

See also:

BC Board Meetings

[O.C.G.A. 50-18-0071 Right of access; timing; fees; denial of requests; impact of electronic records](#)

[O.C.G.A. 50-18-0073 Jurisdiction to enforce article; attorney's fees and litigation expenses; good faith reliance](#)

[O.C.G.A. 50-18-0074 Penalty for violations of Open Records Act; prosecution proceedings](#)

#### **Keywords:**

board work sessions, public hearings, public comments, community, public input

