

# MEMO

FROM: Junaid “J” Afeef, Member, CUSD 301 Board of Education<sup>1</sup>

TO: CUSD 301 Board of Education, Administration, Staff, and Community

DATE: December 22, 2024

RE: Individual Board Member Engagement with the Community and a Way Forward

## INTRODUCTION

Early on in my service on the CUSD 301 Board of Education, then Superintendent Todd Stirn and then President Jeff Gorman admonished me that individual members of the Board of Education are prohibited from engaging with the community on issues related to the District. It is for the President to be the face and voice of the Board. At first, I thought it was just a misunderstanding. Of course, not all the members of the Board of Education can be out in the community purporting to **speak for** the Board of Education or **on behalf of** the school district. But surely, as elected officials, we need to engage with the community, ask and field questions, and collaborate on issues that must be addressed.

I was quickly disabused of any notion that I misunderstood their meaning. It **was meant to be** a strictly enforced policy that Board members do not engage with the community on substantive issues.

In my first year on the Board, I planned a community engagement event at Country Donuts in Elgin, Illinois. It was to discuss a proposed schedule change at the high school. Using Facebook, I informed the community through one of the community-led Facebook groups for CUSD 301 that I would be there and welcomed people to have a cup of coffee with me and talk. The goal was to learn what the community was feeling and thinking.

Judging from the response of former Superintendent Stirn, former President Gorman, and several other Board members, one would think I proposed something apocalyptic.<sup>2</sup> I was on the phone with Dr. Stirn for over one hour, and finally, I had to end the conversation by saying that we’d have to agree to disagree. I spent a short but more contentious time on the phone with President Gorman. Suffice it to say we disagreed, but the call was far less professional.

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<sup>1</sup> ***The views set forth in this memo represent the individual beliefs and views of Junaid “J” Afeef only. They do not represent the views of the CUSD 301 Board of Education, Administration, teachers and staff, nor even, necessarily, of Junaid’s wife, children, parents, friends, associates, or anyone else.***

<sup>2</sup> Apparently, the Superintendent monitors private social media pertaining to the school district. “Someone tipped us off” was the framing of how they learned about the planned event. The implication of being “tipped off” was that the **publicly announced** event **on social media** was somehow meant to be a “cloak and dagger” secret event, but they uncovered it nonetheless.

I went ahead with my plan. At the last minute, Dr. Mongan (then Deputy Superintendent) asked if she could join. It was odd that the Administration was trying to keep tabs on me, but I said yes. My daughter and I were there, and about five or six parents from the community stopped in for a conversation. Dr. Mongan was there, too.

Sitting with community members outside my small circle of friends and neighbors was great. Did we solve all the problems of the moment? No. What we did accomplish, at least for that short moment in time, was to build a sense of trust, a sense of what is called “procedural justice.”<sup>3</sup>

There has been and continues to be a significant disagreement between me and the Administration (and possibly some of the current Board members) about engaging with the community on matters related to the school district. This memo will likely also be a source of great consternation.

The Administration’s position lacks legal authority. My most charitable assessment is that they completely misunderstand the applicable laws. This memo aims to support a discussion within the community, and hopefully by the Board in the January 2025 meeting’s open session, on the proper role of a Board member in engaging with the school district members.

## THE ILLINOIS SCHOOL CODE

The Illinois School Code makes it clear that a school board makes decisions for the district collectively, that the decisions of the majority of the board are binding, and that individual board members cannot act individually on behalf of the district. 105 ILCS 5/10-16.5. However, the Illinois School Code also provides that individual board members retain “the right to seek changes in such decisions through ethical and constructive channels.” 105 ILCS 5/10-16.5. Put simply, the Illinois School Code allows for ethical and constructive **advocacy for change**.

This statute neither defines “ethical and constructive channels” nor sets forth a list of ways a board member may do so. As such, the phrase “ethical and constructive channels” must be given its plain meaning. The Illinois Supreme Court recently addressed statutory construction of the Illinois School Code. It stated:

In construing the School Code, we are guided by familiar principles. Our primary objective in statutory construction is to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the language of

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<sup>3</sup> Procedural justice is a concept from the legal field which refers to the idea of fairness in the processes that resolve disputes and allocate resources. It is a concept that, when embraced, promotes positive organizational change and bolsters better relationships. See the U.S. Department of Justice for more information:  
<https://cops.usdoj.gov/proceduraljustice#:~:text=Procedural%20justice%20refers%20to%20the.change%20and%20bolsters%20better%20relationships>.

the statute, which must be given its plain and ordinary meaning. Bd. of Educ. v. Moore, 2021 IL 125785, P20

The plain and ordinary meanings of “ethical” and “constructive” are well understood. The Merriam-Webster Dictionary defines “ethical” as “conforming to accepted standards of conduct.” It defines “constructive” as “promoting improvement or development.”

Given that the Illinois School Code does not set forth specific ways for a board member to advocate for change ethically and constructively, it is reasonable to conclude that the board member seeking change may choose which ethical and constructive channels they wish to pursue. This provision is in the Illinois School Code, so it must be there for a reason. “Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous.” Bd. of Educ. v. Moore, 2021 IL 125785, P20. We violate the Illinois School Code if we muzzle individual Board members from ethical and constructive advocacy channels.

## **THE U.S. CONSTITUTION AND THE ILLINOIS CONSTITUTION**

The prevailing position of the CUSD 301 Administration on individual Board member engagement with the community violates the Illinois School Code and the U.S. and Illinois constitutions. No reasonable person would argue that the residents of CUSD 301 do not have the right to express their views and opinions about our schools, their programs, and so forth. Each person has free speech rights.<sup>4</sup>

Let’s review the free speech rights guaranteed in the U.S. and Illinois constitutions:

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 redress of grievances. U.S. Constitution, First Amendment

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense. Illinois Constitution, Article I, Section 4 (Freedom of Speech)

No government, federal, state, or local, may abridge speech. Public school districts are units of local government. CUSD 301 is bound by the free speech guarantees outlined in the U.S. and Illinois constitutions.

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<sup>4</sup> The right of free speech is not absolute, but governmental limits on it must be very narrowly tailored. There is an entire body of law analyzing when a governmental body may put limits on free speech rights.

The United States Supreme Court recently reaffirmed that one does not abdicate their free speech rights when serving in public office or working for a government unit. “While public officials can act on behalf of the State, they are also private citizens with their own constitutional rights.” *Lindke v. Freed*, 601 U.S. 187, 196. When elected to the Board of Education, a school board member does not give up their right to free speech. “On the contrary, ‘the First Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen addressing matters of public concern.’” (citation omitted) *Lindke v. Freed*, 601 U.S. 187, 196-197.

## **CUSD 301 POLICIES**

The Administration appears to base its restrictive view of Board member engagement with the public on several Board policies. Board policies can have the force of law. However, no Board policy can trump the rights protected by the U.S. and Illinois constitutions, nor can these policies trump Illinois statutes such as the Illinois School Code.

I will set forth the policies the Administration erroneously relies upon to maintain its argument that neither I nor any other Board member, except the President, can engage with the public and then explain why this interpretation is unlawful.<sup>5</sup>

***Policy 2:140 Communication To and From the Board.*** This policy states that if a Board member is contacted individually, they will “refer the person to the appropriate level of authority.” Furthermore, “Board members’ questions or communications to staff or about programs will be channeled through the Superintendent’s office.” Lastly, “Board members will not take individual action that might compromise the Board or District.”

***Policy 2:110 Qualifications, Term, and Duties of Board Officers.*** The Board President serves as the Board’s official spokesperson to the media (or designates someone else to do so).

***Policy 8:10 Connection with the Community.*** This policy designates all public relations duties to the Board President. The Board President is “the official spokesperson for the School Board...” and in that role, the Board President may do a number of things enumerated in the policy. The enumerated actions include “[g]athering community attitudes and desires for the District,” “[h]elping the community feel a more direct responsibility for the quality of education provided by their schools,” “[e]arning the community’s goodwill, respect, and confidence,” and “[p]romoting a genuine spirit of cooperation between the school and the community.”

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<sup>5</sup> It is my view that the policies, properly interpreted, are appropriate, but in need of updating to make certain no future Board members are hamstrung from serving the public. That is why I believe it is the interpretation of the existing policies that is unlawful.

These policies, properly interpreted and applied, make good sense. For matters decided by the Board of Education, it is reasonable that one designated individual speaks to the public, including the media, on behalf of the Board. When members of the public contact Board members about issues at the various schools, programs, or events, it is reasonable that these inquiries be forwarded so that the responsible parties within the administration can address them directly and without the pressures of intercession by a Board member.

Let's look particularly closely at policy 8:10. The Administration misread it. This policy does not give the Board President exclusive rights to the various actions intended to connect with the community. Instead, it sets forth what the President **can** do. Nowhere in the policy does it state that the President alone has the **exclusive right** to engage with the community. It sets a high bar for the President by noting the many things a Board President may need to do.

## A NEW WAY FORWARD

Thinking back to my Country Donuts meetup, I had every right to conduct it under the U.S. and Illinois constitutions and the Illinois School Code. Furthermore, I did not violate any CUSD 301 policies outlined in this memo. Nonetheless, even as recently as the December 16, 2024, Board meeting, that effort continues to be vilified by some as somehow "unprofessional" or "unlawful."

This type of bullying and browbeating can have a chilling effect. It serves no one's interests when elected officials are misled into thinking that they can only deliberate in closed sessions, have muted discussions in open sessions, and where unanimity of votes is demanded (rather than earned).

There is a lot at stake. Public education is in the crosshairs of many special interest groups. Our school district is rapidly expanding, evolving, and becoming more diverse (in many ways). Even within the community that supports public education, there are competing interests that we must all contend with.

Here are some suggestions for a new way forward:

1. *"New Business" section in each Board Meeting:* This would allow Board members to raise issues that they feel need attention or to respond to concerns raised by the community (such as concerns raised in the public comments). Matters raised here may not be voted upon, as they were not disclosed in the agenda, but they can be topics for future meetings.
2. *Community Town Halls:* We need a forum (held regularly) where the community can come and talk **with (not at)** the Board members about their concerns. The Administration does not need to attend all such events; in some cases, open discussion may be more fruitful if the Administration is absent.

3. *Community Coffees in Public Spaces*: This would create a social space where families and other stakeholders can come and speak publicly about the school community in a friendly space. Once again, the Administration may not need to be present for all such convenings.
4. *An Independent, Professionally Administered Survey*: a professional third party needs to come into CUSD 301 and conduct a proper study of the concerns, fears, needs, and views of the administrators, teachers, staff, Board, students, parents, and community members with guaranteed anonymity and professionally administered surveys, focus groups, and an analysis of any prior surveys, SWOT analysis, or other information that has been collected.
5. *Ad Hoc, Mixed Committees*: Teams of interested community members, volunteers from the Board of Education, and appropriate staff can collaborate on grants and other issues when stakeholders are interested in collaborating. Long before I was elected to the School Board, I brought a grant opportunity to the district, was connected with a principal of one of the elementary schools, and shared my advice on how the district might be able to submit a successful application.

None of these ideas, or frankly, any other solutions, will solve ***all*** of the community's concerns. Sometimes, strong community interests oppose one another. I'll share an example to illustrate.

Recently, I asked for feedback on the school schedule for the coming year. I received input both on social media and via email. I shared all of it with the Administration, and in turn, that input was incorporated into the re-opened discussion during a recent Board meeting presentation. For example, some community members wanted the fall semester to start after the Labor Day weekend, and others wanted the semester to end before the winter break to ensure that high school students finished their exams before the break. Others wanted fewer days off during the school year. These are only a few suggestions received, but they help illustrate an important point. Ultimately, everyone will not get the best schedule for their particular needs.

This scenario demonstrates the value of ***procedural justice***. When the process gives the community opportunities to share their views in multiple formats, when those inputs are then discussed during a deliberative process that the public can see, and when thoughtful explanation is provided as to why some recommendations may not be feasible (while adopting those that do make sense), people see decisions are not made on a whim. It's not that they are ever made whimsically; instead, a more methodical and open process builds the necessary trust to know there is a process and the community has been heard.

## CONCLUSION

In the past, several arguments have been made against board member engagement. One argument against more Board member engagement was that not every Board member has the time to be as involved in the community at such an enhanced level. Another was the fear of Open Meetings Act violations. These are reasonable concerns that need to be addressed. They require precision-crafted solutions. Banning all engagement is akin to wielding a cudgel when a scalpel might be more effective.

Serving on the Board of Education is not easy. It requires a lot of time, even with the limited engagement we've seen to date. Some of the suggestions would necessitate even more time, and that is not something everyone has the bandwidth to undertake. But for those who serve, it is necessary, and that engagement need not be a competitive undertaking. If some Board members have the willingness and/or the bandwidth to engage with the community actively, the feedback and insights gleaned from those interactions can be shared with the rest of the Board of Education and the Administration during Board meetings (such as the proposed *New Business* section, for example).

The underlying purposes of the Open Meetings Act (and also the Freedom of Information Act) are vitally important to good governance. U.S. Supreme Court Justice Louis Brandeis wrote, "[s]unlight is the best disinfectant."<sup>6</sup> He meant that public affairs conducted in the open can root out corruption. Town hall meetings and public social events with members of the Board of Education can be done in compliance with the Open Meetings Act. When one or two Board members (out of a Board of seven) engage with the community, there is no implication of the Open Meetings Act. Still, it would be best for even those engagements, when Board members meet in their elected official capacity, to be conducted in public spaces, too.

While reasonable minds can disagree, the law is clear on whether elected members of the Board of Education can engage with the community. We can. Best practices dictate there be more, not less, community engagement.<sup>7</sup> I hope to have this discussion in our community and between the members of the Board of Education at the January 2025 Board meeting.

These are my personal views and analyses of the laws and policies. I hope to convince my CUSD 301 Board of Education colleagues of my point of view on this issue. Writing

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<sup>6</sup> Justice Brandeis wrote this in a 1913 Harper's Weekly article titled "What Publicity Can Do." To learn more about Justice Brandeis' views on rooting out corruption in public affairs, see "Brandeis And The History of Transparency" Sunlight Foundation. May 26, 2009.  
<https://sunlightfoundation.com/2009/05/26/brandeis-and-the-history-of-transparency/>

<sup>7</sup> "Connecting with the Community: The Purpose and Process of Community Engagement as Part of Effective School Board Governance" Executive Summary. Illinois Association of School Boards. 2018. [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.iasb.com/IASB/media/Documents/communityengagementexecsummary.pdf](https://www.iasb.com/IASB/media/Documents/communityengagementexecsummary.pdf)

this memo and sharing it with the public certainly conforms to accepted standards of conduct in a free society and is, therefore, ethical. It seeks to improve our school district and is, thus, constructive.

I hope every member of the CUSD 301 community, including our administrators, teachers, staff, Board members, students, parents, and residents, have a safe, joyous, and peaceful holiday season: Merry Christmas, Happy Holidays, and a very Happy New Year to all.

Respectfully,

Junaid Afeef  
December 22, 2024

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