

Sounding Board

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Public Comment

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Introduction

Now more than ever, issues surrounding public schooling are moving to the forefront of public debate. Politicians and news media commentators have also increasingly voiced concerns about local school governance, putting a spotlight on school board meetings that may have been more sparsely attended in the past. It is important for school boards to understand the laws applicable to school board meetings, and to make decisions on whether and how to allow for members of the public to comment during meetings, before the issue arises.

Legal Considerations

Minnesota school board meetings are governed in part by Minnesota's Open Meeting Law ("OML"), found at Minnesota Statutes, Chapter 13D. The OML requires that meetings of governmental bodies generally be open to the public. School boards and other public bodies, however, are not required to open up their meetings to public comment in Minnesota. School boards have the discretion to decide whether and when an opportunity for public comment will be provided. The OML does not give a citizen the right to speak at a public school board meeting, and the OML does not impose an obligation on school boards to hear all public input in its entirety.

While the OML does not provide for specific requirements on public comments, if a school board does provide the public an opportunity to comment at meetings, the school board opens itself up to free speech violations under the state and federal constitutions. When a school board allows for the public to comment, it creates a "designated public forum." This means the public generally has the right to speak regarding matters within the jurisdiction of the school board.

The board may place reasonable restrictions as to the time, place, and manner of the speech. For example, it can set time limits on speakers and designate when, where, and how speech is allowed. A board may limit the total time permitted for public comment so that the board may accomplish its pre-established meeting agenda, but these time limits should be established ahead of time so as to avoid the appearance of cutting off a particular member of the public before their chance to speak.

Before allowing public comment, a school board should publish rules applicable to all members of the public who wish to provide comment. When setting rules on public comment, the board must balance the board's right to set rules versus the public's right to free speech. Because free speech is a constitutional right, any limits on free speech will be highly scrutinized. Public comments cannot be limited in a manner that is viewpoint-restrictive or discriminatory. Any content-based restrictions must be necessary to achieve a compelling school board interest.

Courts have struck down policies with prohibitions on “personal, rude or slanderous remarks” as excessive, finding that a reasonable person would be unable to anticipate which comments the board might find too personal, rude or slanderous. Other board policies that courts have found unconstitutionally restrictive include prohibitions on “improper conduct or remarks” and “personal attacks.” Turning off the microphone during a public tirade also was found unconstitutional as an act of viewpoint discrimination.

The board may not limit a speaker’s opinion, but it can limit the speaker’s topic to the business before the board. For example, a court held that a person who insisted on using the school board microphone for a speech about U.S. military strategy in Afghanistan could be silenced on the grounds that the speech is unrelated to the purpose of the school board meeting.

Boards should also consider whether to limit the topics of public comment to prevent discussion of topics that would be considered “private data” under the Minnesota Government Data Practices Act. Topics that include private data are educational data concerning students, and certain personnel data regarding school staff. Boards would be required to close an otherwise open meeting if certain private data are discussed, and thus, limiting discussion of certain private data is not a breach of free speech rights.

Policies for Public Comment

Because of the important free speech implications, school boards that want to allow for public comment should create policies that will be applied equally to every member of the public. Policies should focus on simple limitations like the length of individual comments, total time allowed for comments at a given meeting, and how to sign up to participate. It is not required to have members of the public sign in before commenting or to announce their name, but this is a very common requirement among school boards that permit public comment. Boards are not required to accept public comments by email, but may choose to do so. It is not required to record public comments in meeting minutes, but a board may do so for the sake of completeness. The same practices should be followed from meeting to meeting.

School boards can also adopt policies that prohibit someone from repeating the same comments at multiple meetings. The school board also may remove a speaker who causes a disturbance – shouting, refusing to leave after the expiration of a time limit – without violating the person’s right to free speech. Any policies on comments should be “content-neutral” so it doesn’t seem that the board is censoring criticism or disagreement. Any such policies, however, must be consistently enforced on a content-neutral basis. If a policy is not consistently enforced, this could subject the school to a free speech violation.

After a board sets policies regarding public comment, all board members should be trained on the policy. All board members should understand what the board policy allows and what is required to speak.

Policies should also authorize the board president (or other chosen board member) to stop commentators who violate the policy. It is important to remember, however, that the role of a board is not to respond to public comment during a public comment period. The board should speak with one voice, not as individual members, so it must have time to discuss a response, if any, before providing a response. If necessary, the board should take comments under advisement to refer to school leaders or to put on a future meeting agenda if warranted.



Conclusion

Permitting public comment at school board meetings can help foster trust and respect between a school and its community members. Public comment can also cause board meeting disturbances and cause unnecessary time to be devoted to items outside the board meeting agenda. A school must balance these competing interests when deciding whether to allow public comment at school board meetings.

If a school does decide to allow public comment at school board meetings, it should publish policies to govern public comments. To avoid free speech violations, the policy must be content neutral, and it must be applied consistently.