

School Board

Public Participation at School Board Meetings and Petitions to the Board ¹

For an overall minimum of 30 minutes² during³ each regular and special open meeting, any person members of the public and District employees may comment to or ask questions of the School Board (public participation), subject to the reasonable constraints established and recorded in this policy's guidelines below.³ During public participation, there will be a 20-minute⁴ minimum total length of time for any one subject. When public participation takes less time than these minimums, it shall end.

To preserve sufficient time for the Board to conduct its business, any person~~he individuals~~ appearing before the Board is/are expected to follow these guidelines: ⁵

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ The Open Meetings Act (OMA) and the School Code grant any person the right to address a school board during any open meeting (5 ILCS 120/2.06; 105 ILCS 5/10-6 (board of directors) and 5/10-16 (board of education)). OMA requires public bodies to have rules (a policy) on public participation. Public comment is synonymous with public participation. They are used interchangeably in the footnotes below. 5 ILCS 120/(fd-).

² The Open Meetings Act (OMA) and the School Code grant any person the right to address a school board during any open meeting. See (5 ILCS 120/2.06; and 105 ILCS 5/10-6 (board of directors), and 5/10-16 (board of education), and PAO 19-2. See f/ns 4, 5, and 6 below for more detailed discussions.

The length of this sample policy's minimum overall public participation time is at the local board's discretion. Ensure the length of time here and in #3.b. match. Customize this policy to ensure it is responsive to the community's public participation needs.

³ This sentence combines 105 ILCS 5/10-16 and 5 ILCS 120/2.06(g). Prohibiting public comment and/or restricting public comment to written filings violates the mandates and overarching purpose of the OMA. (Roxana CUSD No. 1 v. EPA, 998 N.E.2d 961 (Ill.App.4th, 2013).

While some courts have upheld public bodies limiting public comment to certain subjects, such as only subjects on the agenda or only related to the business of the public body, this sample policy does not provide default sample text for limiting public comment to certain subjects. This is because 105 ILCS 5/10-16 requires school boards to allow members of the public "to comment to or ask questions of the board." The cases in which courts upheld limiting public comment to certain subjects involved public bodies with no governing statutes that required the public body to allow the public "to comment to or ask questions of the board."

⁴ See 5 ILCS 120/2.06, 105 ILCS 5/10-16, and PAO 19-2. Like the length of time for overall public participation discussed in f/n 2 above, the length of this sample policy's 20-minute minimum total length of time for any one subject is also at the local board's discretion. Customize this policy to ensure it is responsive to the community's public participation needs. Ensure the length of time here and in #3.b. match. Because the time limit for public participation in this sample policy is set at five minutes, a multiple of five minutes is chosen for ease of tracking. See also the discussion in f/ns 5 and 6 below.

⁵ OMA state law does not but PAO 19-2 does provide specific rules, and these guidelines may be amended. The guidelines for public comment and the time minimums and limits should be reviewed with the board attorney. Restrictions on public comment during board meetings must respect free speech rights guaranteed by the First Amendment. Do not use viewpoint-based restrictions on public comment time unless approved by the board attorney. Many decisions address the tension between free speech and rules for public comment during meetings. See, for example:

Mnyofu v. Rich Tp. High School Dist., 2007 WL 1308523 (N.D.Ill.; 2007)(school boards may impose guidelines for running meetings to maintain effectiveness).

PAO 19-2 (the Ill. Public Access Counselor (PAC) ordered a board to refrain from applying unestablished and unrecorded rules to restrict public comment at future meetings stating, "Though a public body has inherent authority to conduct its meetings in an efficient manner and need not allow public comment to continue indefinitely, there was no evidence that capping public comment to 15 minutes was necessary to maintain decorum or that extending the comment period would have unduly interfered with the orderly transaction of public business.").

Lowery v. Jefferson Co. Bd of Educ., 586 F.3d 427 (6th Cir., 2009)(upheld a rule prohibiting speakers from being frivolous, repetitive, or harassing).

1. Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President.
2. Identify oneself and be brief. Ordinarily, the time for any one person to address the Board during public participation comments shall be limited to five minutes.⁶ In unusual circumstances, and when an individual has made a request in advance to speak for a longer period of time, the person/individual may be allowed to speak for more than 5-five minutes.
3. Observe ~~the Board President's decision, when necessary and appropriate, to the:~~
 - a. Shortening of the time for each person to address the Board during public participation comment to conserve time and give the maximum number of people/individuals an opportunity to speak;
 - b. Expansion of the overall minimum of 30 minutes for public participation and/or the 20-minute minimum total length of time for any one subject; and/or
 - c. ~~4. Observe the Board President's decision to determine~~ Determination of procedural matters regarding public participation not otherwise covered in Board policy.
4. 5-Conduct oneself with respect and civility toward others and otherwise abide by Board policy; 8:30, *Visitors to and Conduct on School Property.* ⁷

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Steinburg v. Chesterfield County Planning Commission, 527 F.3d 377 (4th Cir., 2008), *cert. denied* (upheld removal of a man from a public meeting for behaving in a hostile manner).

Norse v. City of Santa Cruz, 629 F.3d 966 ~~586 F.3d 697~~ (9th Cir. 2010)(~~remanded a decision upholding~~ community member's removal from city council meeting after community member gave a Nazi salute in presiding officer's direction, which is considered as classic viewpoint discrimination for which city council members were not entitled to qualified immunity).

Fairchild v. Liberty Indep. School Dist., 597 F.3d 747 (5th Cir., 2010)(upheld a policy banning discussion of personnel matters during public comment; the rationale turned, at least in part, on the Texas open meetings law).

Bach v. School Board of the City of Virginia Beach, 139 F.Supp.2d 738 (E.D.Va., 2001)(struck down a rule that prohibited personal attacks during public comments at meetings).

⁶ Time limits for any one person to address the Board during public participation may be adjusted up or down. This sample uses five minutes because it is a frequently-used time limit. See I.A. Rana Enterprises, Inc. v. City of Aurora, 630 F.Supp.2d 912 (N.D. Ill. 2009) (finding a three-minute time limit reasonable citing Wright v. Anthony, 733 F.2d 575, 577 (8th Cir. 1984) which upheld a five-minute time limit for individual public comments and holding time limits serve "a significant governmental interest in conserving time and in ensuring that others ha[ve] an opportunity to speak"). Note that the Ill. Municipal Code, which applied to the City of Aurora in I.A. Rana Enterprises, Inc., did not have the same requirements as the School Code to allow members of the public to "comment to or ask questions of the board." I.A. Rana Enterprises, Inc. also predated the 2011 amendments to OMA allowing "[a]ny person an opportunity to address public officials under the rules established and recorded by the public body."

Based upon I.A. Rana Enterprises, Inc., many attorneys agree that time limits should be a minimum of three minutes per person, but some public bodies have successfully implemented two minutes per person. Consult the board attorney before setting time limits below three minutes.

⁷ See Nuding v. Cerro Gordo Community Unit School Dist., 730 N.E.2d 96 (Ill.App. 4, 2000) 313 Ill. App.3d 344 (4th Dist. 2000)(board was authorized to ban parent from attending all school events and extracurricular activities by 105 ILCS 5/24-24; the ban was based on the parent's exposing a toy gun and a pocketknife at a board meeting).

Initiating lawsuits against citizens over their uncivil public comments is tricky. Always consult the board attorney, and in some instances, a board member may need to consult his or her own private attorney. The Ill. Citizen Participation Act (CPA) (735 ILCS 110/15) provides citizens a mechanism to stop lawsuits brought against them for their public comments. The law, referred to as "anti-SLAPP legislation," prohibits public officials from suing citizens for "any act or acts in furtherance of [their] rights of petition, speech, association, or to otherwise participate in government." SLAPP means "Strategic Lawsuits Against Public Participation."

The CPA does not bar public officials from seeking relief when they can allege that (a) the citizen's comments were "not genuinely aimed at procuring favorable government action, result, or outcome," and/or (b) the citizen engaged in defamation or another intentional tort causing the public official damage. See (Sandholm v. Kuecker, 962 N.E.2d 418 (Ill., 2012).

Petitions or written correspondence to the Board shall be presented to the Board in the next regular Board packet. ⁸

LEGAL REF.: 5 ILCS 120/2.06, [Open Meetings Act](#).
105 ILCS 5/10-6 and 5/10-16.

CROSS REF.: 2:220 (School Board Meeting Procedure), 8:10 (Connection with the Community), 8:30 (Visitors to and Conduct on School Property)

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⁸ A board of directors must reply to a written request for consideration of a matter within 60 days from the board's receipt of the request. (105 ILCS 5/10-6). Boards of education may treat petitions or correspondence according to a uniform, locally developed process.

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