



# Limiting public speech at board meetings

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Generally speaking, community members often don't publicly participate at school board meetings to tell board members what a spectacular job they're doing. More commonly, community members participate in board meetings when there's an issue in the district and they're dissatisfied with the board.

Public participation can be a valuable part of board meetings, especially to gain insight from your community on issues you, as a governing body, may not otherwise identify. There are some important things to consider when determining appropriate limits on public speech during board meetings.

Public participation is a privilege, not a right. The community isn't entitled to speak during a board meeting because it's just that, a meeting of and for the board, not a community forum. In short, the public has a right to hear, but not to be heard.

Most boards, however, do allow public participation during meetings. While this participation can be valuable, it's very important that boards set reasonable and legally compliant restrictions upon such participation to maintain control of meetings and protect the district from liability.

Because school boards are governmental entities, when a forum for public speech has been created by allowing public participation at board meetings, First Amendment case law provides that the only allowable restrictions upon that speech may be as to the time, place and manner of it. Before delving into how this impacts meetings, the concept of

forum first must be reviewed. There are three types of forums: traditional or open public forums, limited public forums and closed public forums. Each type carries limitations set forth by case law regarding how far-reaching the government's restriction of speech within the forum may be.

An example of a closed public forum is a jail or similar venue not traditionally open to public speech. Restrictions in a closed public forum generally are allowable as long as they are reasonable and not meant to suppress a particular viewpoint.

An example of a familiar limited public forum is a school. This setting isn't as restrictive as a closed public forum, but it's a setting where historically there have been reasonable limitations placed upon public speech. In a limited public forum, more prescriptive guidelines can be set, but any restrictions must serve a compelling governmental interest.

Finally, an example of a traditional or open public forum is a public park or sidewalk. In this setting, only content-neutral time, place and manner restrictions on speech are legally permissible. This traditional or open public forum is where school board meetings are categorized because they are open to the public and the board has created an open forum by allowing public participation. Remember, the board can determine whether to allow public participation at all, but once the board opens meetings to public participation, they become open public forums.

So, what are appropriate time, place and manner restrictions? Time, place and manner restrictions are not restrictions

on the content of speech or viewpoint expressed. Boards cannot prevent public participation on the basis of ideas, opinions or statements that will be included in proposed speech.

The following are time, place and manner restrictions commonly found in board policies and procedures. Requiring that comments be limited to three or five minutes is a common time restriction. Another example of an acceptable time restriction is requiring public participation to occur at a specified time indicated on the agenda and when recognized by the board president. A common restriction on manner of speech is requiring individuals seeking to speak before the board to sign in or complete a request for public comment card.

Some restrictions have the potential to be problematic. As noted, most public participation is geared toward addressing complaints or concerns. Complaints about employees are a frequent topic. Any time a complaint is posed, the board should direct the speaker to the appropriate board policy or procedure about addressing complaints. Speakers should follow board policies and procedures, which usually require filtering the complaint through the chain of command before ending with the board's consideration as a matter of appeal.

When restricting a speaker's ability to make negative comments about district business or specific employees, impermissible viewpoint and content restrictions come into play. In considering the appropriateness of restricting negative comments, boards must weigh the interest of the general public in hearing the

complaints against the individual employee's right to privacy. To further complicate the situation, the courts do not agree as to whether a board can prohibit comments directed at specific employees. Because courts are split on whether comments directed at specific employees are permissible, any board choosing to restrict public participation in this manner must be willing to accept some degree of litigation risk. For this reason, boards should consult with board counsel prior to adopting policy language restricting such speech.

If board counsel advises against prohibiting speakers from naming specific employees during public comment at board meetings but questions remain as to how to address the situation in an appropriate manner, boards have alternative options. As previously mentioned, board policies and procedures need to be in place relating to complaints about district employees.

A good first step is to direct the individual to address his or her complaints through the appropriate board-adopted policy or procedure. Another option is to hear the complaint in executive session. Ohio Revised Code (RC) 121.22(G)(1) allows the board to enter executive session to investigate complaints against public employees. Remember, the individual making the complaint does not have the authority to force the board to enter executive session to engage in such discussion, but the board has this option if it chooses.

Another frequent and potentially problematic restriction is limiting public participation to only district residents by prohibiting individuals from neighboring communities or other communities in the state from speaking. A board could probably restrict a nonresident from participating, but it's important to consider that the application of that restriction must be applied consistently to everyone in order to be legally compliant.

The board also may not restrict speech content in its careful application of such a restriction. Prior to adoption,

boards should consider the practical aspects of enforcing such a restriction. What documentation would be required to prove residency? Has this type of restriction been enforced in the past? The difficulty in appropriately enforcing such a restriction may outweigh any perceived benefits. Again, boards considering applying this type of public speech restriction at board meetings should work with board counsel to consider all potential legal ramifications.

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Most importantly, to run a successful meeting, a board must maintain order. The public has a right to be present and hear what is going on at a public meeting but does not have the right to be disruptive.

The board has options for how to handle disruptive situations. First, it should attempt to address any disruption using parliamentary process. This is an obvious inconvenience for the board and may only postpone the resolution of a serious problem, but adjourning the meeting or recessing may help address a disturbance and get the meeting back on track.

Secondly, the board might consider enforcing rules and regulations through direct action, like a verbal request for compliance, or even in serious situations, physically ejecting someone from a board meeting. Courts have upheld a public body's authority to physically eject a disruptive individual, finding the right to conduct an orderly meeting to be an

inherent power of any legislative body.

When there's a pattern of disruption or offensive activity paired with a repeated refusal to comply with the board's request to cease such activity, the board may seek an injunction against that activity. While not an immediate fix, since the board would need to seek court action for an injunction, in certain situations this may be necessary.

Ultimately, and only in extreme cases, a board may seek criminal sanctions against an individual. In these situations, local law enforcement is involved, and the board does not have a role in enforcing the sanctions. Rather, the board asks local law enforcement to be present at the meeting and take any necessary action. Potentially applicable criminal provisions include disturbing a lawful meeting (RC 2917.12), obstructing official business (RC 2921.31) and criminal trespass (RC 2911.21).

There are a number of drawbacks associated with having to pursue this option, including adverse publicity and polarization between the school and community. In extreme situations, boards should weigh the risks associated with the damage these actions might cause between the board and its community against the potential benefits of addressing the disruption.

Public participation can bring great value to your board meetings and decision-making processes, but it is important to maintain reasonable and legally compliant controls over that participation. When a board maintains control of its meetings and reasonably restricts public participation, it provides a valuable forum for the community to share its concerns while allowing the board to make decisions and perform its public function. ■

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