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# Playing by the Rules: School Board Control of Divisive Public Meetings

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Schools appear to be the new battleground for public debates. Whether it is displays in support of or in protest against vaccinations and masking protocols in schools or objections to the alleged teaching of critical race theory or other controversial topics, school boards are finding themselves under attack. Although input from constituents is important for a board to consider, today's political minefields make it difficult for board members to accomplish their everyday duties in running the operations of the school. So the question is, how do administrators and school board members find a balance between listening to the concerns of community members and controlling individuals who insist on taking over board meetings to express their opinions on such topics? This is a hard question to answer as it involves an analysis of complex legal issues that require

a practical application to very specific situations.

A starting point for this discussion, however, lies with the statutory rights granted to school boards. A school board controls its own meetings, agendas, parliamentary procedure, and all other aspects of its own business and functions.<sup>1</sup> This element of control applies to a school board's decision as to what rights it wishes to grant to the public under the First Amendment, within certain limits. The Minnesota Open Meeting Law<sup>2</sup> permits, but does not require, a public comment period at a school board meeting. When a school board affords the public an opportunity to address the board at its meeting, at a minimum, the school board creates a "limited public forum."<sup>3</sup> When a limited or "designated" public forum is created, schools may restrict speech



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to certain topics or groups as long as the limitation is implemented to maintain the parameters set for the forum. A school may not, however, exclude expression on a certain topic that is within the parameters of the established limited public forum simply because that speech is coming from a particular viewpoint.<sup>4</sup>

Restrictions that are permissible for a school board to implement are those that relate to a reasonable time, place, and manner, if those restrictions are content neutral and are narrowly drawn to achieve a compelling state purpose.<sup>5</sup> For example, access to a particular forum can be limited based on availability of space and competing requests for access.<sup>6</sup> Specific to schools, a decision to limit student exposure to violence, nudity, and foul language will be viewed as a viewpoint neutral restriction based on legitimate pedagogical concerns.<sup>7</sup> A school board also may restrict speech if there is a legitimate risk of disruption.<sup>8</sup> To establish a “legitimate fear of disruption,” a school must have specific facts from which it can reasonably forecast a “substantial/material disruption.” The fact that speech might cause discomfort and uneasiness is insufficient as substantial disruption is a demanding standard.<sup>9</sup>

With these parameters at hand, the power of school boards to manage a school or district has been determined to include the power to establish reasonable policies and procedures.<sup>10</sup> Unless a policy or rule raises issues of constitutionally protected rights, it will be sustained upon review by a court so long as there is a rational relationship between the policy or rule and a legitimate educational interest of the school board.<sup>11</sup> Keep in mind, however, that

there are limits to a board’s authority to prohibit all protests or expressive conduct. At least one court has concluded that a blanket policy prohibiting any protests at school violates the First Amendment.<sup>12</sup>

Thus, a powerful tool that school boards have in their arsenal is the ability to adopt policies and procedures that impose and provide notice of these limitations. These limitations may range from restricting the number of individuals allowed to speak and the amount of the speaker’s time to restricting complaints if the concern has not first been brought to the attention of an administrator. A good resource for such a policy can be found in MSBA Model Policy 206 - Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations.

What happens, however, if a school’s policies/procedures are not being followed? In those situations, school boards may have to take action to further limit public comment. Board members should take note that the right to public comment generally does not allow a member of the public the opportunity to engage in a discussion with board members or require comment or a response from the board. If a school district has a designated public comment period limiting speakers to a certain amount of time and a member of the public wishes to speak more broadly on the topic, the speaker can be required to follow board policy to request permission to add an item to the agenda for public comment and consideration by the school board.

Still, there are times when the public is not so polite in

*continued on page 14*

abiding by such directives or seeking advance permission to add an agenda item to the meeting. How does a school board address the situation when an individual simply will not comply with the rules that have been set? If the public comment period becomes too disruptive, a school district may discontinue it, at least for a period of time, to allow the board an opportunity to get to the business of running the school or district. In those situations, however, it is wise to allow alternatives for public comment and communication with the school board. If, on the other hand, it is one or more particular individual(s) creating a disturbance and not following the time, place, and manner restrictions, a board chair always has the power to rule the conduct out of order. If the conduct continues, the board can recess the meeting while the individual is ejected.

In some communities, law enforcement will assist schools in keeping such order based on laws that allow police to keep the peace when they witness a disturbance.<sup>13</sup> If the local police or sheriff's department is not present or unable to assist the school board in this manner, schools

have the power to restrict individuals from entering onto school property by providing a "trespass" notice informing the individual that he or she cannot enter school property for up to one year unless specific permission is given to return.<sup>14</sup> In those situations, a police officer need not witness the incident. A principal or designee may detain the trespasser. A police officer may then arrest an individual without a warrant if the officer has probable cause to believe the individual violated the school trespass law within the preceding four hours.

The key takeaway and what often is difficult to remember when one feels under attack in these situations is that calm and respect can go a long way in keeping the peace. Advising the public in advance that the right to speak will be honored if mutual respect is returned and procedures are followed may defuse many situations.

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<sup>1</sup> See Minn. Stat. § 123B.09, subd. 7.

<sup>2</sup> Minn. Stat. Ch. 13.

<sup>3</sup> See *Brown v. Smythe*, 780 F. Supp. 274 (E.D. Pa. 1991); *Zapach v. Dismuke*, 134 F. Supp. 2d 682 (E.D. Pa. 2001).

<sup>4</sup> See *Rosenberger v. Rector and Visitors of Univ. Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510 (1995).

<sup>5</sup> See *Child Evangelism Fellowship of Maryland v. Montgomery Pub. Sch.*, 457 F.3d 376 (4th Cir. 2006).

<sup>6</sup> *Victory Through Jesus Sports Ministry Found. v. Lee's Summit R-7 Sch. Dist.*, 640 F.3d 329 (8th Cir. 2011).

<sup>7</sup> See e.g., *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273, 108 S. Ct. 562, 571 (1988).

<sup>8</sup> *Raker v. Frederick Cty. Pub. Schs.*, 470 F.Supp.2d 634 (W.D. Va. 2007).

<sup>9</sup> See e.g., *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 89 S.Ct. 733 (1969); *Mahoney Area Sch. Dist. v. B.L. by and through Levy*, 141 S.Ct. 2038, 2048 (2021).

<sup>10</sup> Minn. Op. Att'y Gen. 169q (Apr. 26, 1962).

<sup>11</sup> *Bush By & Through Bush v. Dassel-Cokato Bd. of Educ.*, 745 F. Supp. 562, 571 (D. Minn. 1990).

<sup>12</sup> *Hatcher ex rel. Hatcher v. DeSoto Cty. Sch. Dist. Bd. of Educ.*, 939 F.Supp.2d 1232, 1239 (M.D. Fla. 2013) (holding blanket prohibition of expressive buttons as overbroad and in violation of the First Amendment).

<sup>13</sup> Minn. Stat. § 609.72. Note, however, that invocation of the disorderly conduct statute requires careful application as violations on the basis of simply disturbing an assembly have been ruled as overly broad and unconstitutional. See *State v. Hensel*, 901 N.W.2d 166 (Minn. 2017); see also Minn. Stat. § 624.72, subd. 3; see also Minn. Stat. § 624.72, subd. 3 (providing that a political subdivision, including school districts, have the authority to promulgate reasonable rules and regulations "[f]or the purpose of protecting the free, proper and lawful access to, egress from and proper use of public property" and to protect the conduct of the public entity's business "from interference, or disruption..." and that the violation of such a rule or regulation that has been published, posted or announced in a reasonable manner is prima facie evidence of a violation of the law.

<sup>14</sup> Minn. Stat. § 609.605, subd. 4.