



EFFECTIVELY AND LEGALLY HANDLING CHAOTIC BOARD MEETINGS

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1

Introduction

- ❑ Whether watching the news, Saturday Night Live, or the boardroom, we have seen some audience members make Board meetings disruptive, interfering with the Board's ability to effectively govern. What can a Board do to get these meetings under control? Experienced Walsh Gallegos school attorneys, Elena M. Gallegos and Karla Schultz, will offer solutions for legally managing school board meetings.



2

Recently.....

“School boards are under siege. It’s going to get worse.”

“These aren’t your parents’ school board meetings.”

“School board meetings have become increasingly combative.”



3

Even SNL is Talking About it



4

NSBA Asks for Federal Assistance

- ❑ On September 29, 2021, NSBA President and CEO wrote a letter to the President seeking help in addressing the threats and violence being directed at some Board members.
 - After some member state school boards associations objected, NSBA sent an apology to its members on October 22, 2021, for some of the language used in the letter and for not working with members when preparing it.
- ❑ On October 4, 2021, DOJ said it would hold meetings with “federal, state, local, Tribal, and territorial leaders in each federal judicial district within 30 days ” and discuss “strategies for addressing threats against school administrators, board members, teachers, and staff..”
- ❑ Those actions resulted in claims in the media and from politicians that NSBA and the DOJ were threatening and attempting to silence parents.

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5

Overview

- ❑ Applicable Law
- ❑ Court Guidance
- ❑ Practical, and Lawful, Options

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6

Rules of Order for Maintaining Decorum

- ❑ Most board policies establish board meeting rules of conduct.
- ❑ Under NMSBA Policy BDB, it is the role of the Board President to:
 - "Encourage and maintain orderly and democratic participation."
 - "Keep all discussions factual and on the subject at hand."
 - "Allow for full and complete exploration of each item of business."
- ❑ Some boards' policies provide for use of Robert's Rules of Order, to the extent consistent with State law and Board policy. Robert's Rules:
 - "...any person who attempts to disrupt the proceedings in a manner obviously hostile to the announced purpose of the meeting" may be ordered to leave or be removed by "those who are assigned that task..."

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7

Rules of Order for Maintaining Decorum

- ❑ For the most part, however, Robert's Rules of Order generally only address how the body conducts its business.
- ❑ The Open Meetings Act (OMA) more directly addresses the rights and role of the public.

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8

Notice and Agenda

- ❑ Under OMA:
 - Open or closed meetings “shall be held only after reasonable notice to the public.” NMSA 1978 § 10 -15-1 (D).
 - “Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda.” NMSA 1978 § 10 -15-1 (F).
 - “[A]t least seventy-two (72) hours prior to the meeting, the agenda shall be available to the public and posted on the public body’s web site, if one is maintained.” NMSA 1978 § 10 -15-1 (F).



9

Specificity of Agenda

- ❑ NM Attorney General’s OMA Compliance Guide:
 - “A public body should avoid describing agenda items in general, broad or vague terms, which might be interpreted as an attempt to mislead the public about the business the public body intends to transact. This is an especially important consideration when a public body intends to act on an agenda item.”
 - “The requirement for a list of specific items of business ensures that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting.” (p. 17.)



10

The Public's Right to Attend and Listen

- ❑ OMA provides:
 - "All meetings of a quorum of members of any board...held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority [of the board] ... are declared to be public meetings open to the public at all times."
 - "[A]ll persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." NMSA 1978 § 10-15-1(A) (1999).
- ❑ Except for those portions of a meeting that are closed under OMA, a Board meeting is a limited public forum for the *receipt* of information. *Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999).

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11

What About During a Pandemic?

- ❑ On March 15, 2020, the New Mexico Attorney General issued an Open Government Division Advisory During COVID-19 State of Public Health Emergency.
- ❑ Permits a virtual meeting under the following conditions:
 - Chair announces names of board members participating remotely.
 - Board members participating remotely identify themselves whenever they speak and must be clearly audible to the other members of the board and to the public.
 - A recording is made of the meeting.
 - Members of the public can attend remotely, "via live stream or other similar technology, if possible, or call-in number for listening by phone."
- ❑ The Advisory remains in effect as long as the state public health emergency does.

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12

Caveat

- Attorney General Covid-19 Advisory:
 - “[W]e are assuming the public body's staff also would be working remotely; otherwise, the staff at least theoretically would have the ability to set up a physical location for the public to listen in.”



13

Impermissible Hybrid

- NM Attorney General's OMA Compliance Guide:
 - “Although not addressed by the Act, one issue that sometimes comes up is whether it is proper for a public body to permit persons other than its members to be present during a closed meeting.”
 - Example 73: *“During its regular meeting, a county commission goes into executive session to discuss the purchase of land. It permits members of the public attending the meeting to remain during the closed session except those people the commission knows are vehemently opposed to the purchase. This is not proper since the commission is using the executive session to unreasonably exclude only certain members of the public from what would otherwise be a public meeting.”* (p. 33.)



14

Public Comment at Board Meeting

- ❑ First Amendment of the U.S. Constitution says that government (e.g., a school district) shall take no action abridging the freedom of speech or the right of the people to petition the board for redress of grievances. U.S. Const. Amend. I, XIV.
- ❑ However, OMA does not require public comment at meetings.
- ❑ Nevertheless, Board policies generally provide for public comment, at least at “most regular meetings.”
- ❑ If a Board by policy or practice permits public comment during a Board meeting, that portion of the meeting is considered a “limited public forum” for speech by members of the public. *MacQuigg v. APS*, Civ. No. 12-1137 (D.N.M. 2015).
- ❑ In a limited public forum, a Board may restrict speech if the restrictions are:
 - Viewpoint neutral, and
 - Reasonable in light of the purpose served by meetings of the Board.

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15

Time, Place, Manner Restrictions

- ❑ Content-Neutral Time, Place, Manner Restrictions are legally permissible as long as they:
 - Serve a significant government interest;
 - Are narrowly tailored to advance that interest; and
 - Leave open ample alternative channels of communication.

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16

Time, Place, Manner Restrictions - Courts

- ❑ *See Shero v. City of Grove, Okl.*, 510 F.3d 1196 (10th Cir. 2007) regarding time limits:
 - “The three-minute time limitation imposed on Mr. Shero’s speech was a restriction appropriately designed to promote orderly and efficient meetings.”
 - “Mr. Shero had ample alternative channels of communication available to him and utilized them by, among other things, appearing in a local newspaper and circulating flyers.”

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17

Board Policy & Public Comment

- ❑ Board policy defines the viewpoint neutral and reasonable “time, place, and manner” rules for taking public comment at board meetings.
- ❑ Though not identical, most policies:
 - Identify which meetings will allow public comment;
 - How the public can speak (sign up, etc.);
 - How much time is set aside for public comment, *enforce it*;
 - How much time is given to each speaker, *enforce it*;
 - Warning that civil and appropriate conduct is expected of speakers.

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18

Permissible Limitations on Public Comment

- ❑ By policy, the Board could limit comments to either matters within the Board's authority or only to matters posted on the agenda.
 - For example, policy can prohibit discussion of topics like personnel issues that are outside the Board's authority (except for the superintendent).
 - BUT if positive comments about staff are allowed, criticism must be permitted.
- ❑ No profanity or threats during public comment.
 - Criticism or "threat"? - A "true threat" is not protected speech IF it is a statement that a reasonable recipient would have interpreted as a serious expression of an intent to harm or cause injury to another, and the recipient's reaction must be a reasonable one.
- ❑ Removal of members of the public who refuse to follow the rules or disrupt the meeting.

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19

Chair's Introduction of Public Comment

- ❑ The Board Chair may want to:
 - Make a disclaimer at the beginning of the public comment, such as "Statements made during public comment time are the opinions of the speakers and not necessarily that of the Board."
 - Inform the audience of the time limits and how time will be kept.
 - Inform the audience of any other time, place and manner limits under Board policy.
 - Inform the audience the Board generally does not respond directly to public comment.

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20

Ways the Board May Respond to Public Comment?

- ❑ While the OMA does not permit the Board to act on or discuss questions or issues raised in public comment, some permissible responses could be (as appropriate):
 - Refer the issue raised to the Superintendent.
 - Suggest that the issue be noticed and addressed at a future Board meeting.
 - If the topic is on the agenda, listen and reserve discussion until the agenda item is reached.
 - Simply thank the speaker.



21

Other Public Comment Best Practices

- ❑ Deadline to sign up to speak at public comment.
 - Sign-up form at meetings, or available on the website to sign up in advance.
- ❑ Written public comment/public participation rules available at Board meetings.
 - Either the policy or a summary of the policy in an accessible area.
- ❑ A script for the presiding officer to read before starting public comments, summarizing the policy, reminding speakers of the rule, noting the consequences for not following the rules, and reminding the audience that the speaker's opinions are their own, not the district's.
- ❑ A visible time clock for the speaker.



22

The Audience Makes the Meeting Unmanageable?

- ❑ NM Attorney General's OMA Compliance Guide Example 2: *"The city council is contemplating an ordinance adopting an 11:00 p.m. curfew for all persons under 18 years of age. Hundreds of residents attend the first meeting on the ordinance, carrying placards for and against it. The audience becomes loud and agitated and the local police remove several people for making threats against the council. The meeting lasts until 2:15 a.m. At the next meeting on the ordinance, the council limits presentations to those persons whose remarks are submitted to the council five days in advance of the meeting and places a five minute limit on such remarks."*
- ❑ Per the Attorney General: "Such restrictions are permitted. ... so long as the Act is complied with, public bodies may limit or not allow public debate and may take steps necessary to maintain public order." (pp. 6-7.)



23

The Audience Makes the Meeting Unmanageable?

- ❑ Public is entitled to attend and speak at Board meetings, but the Board is entitled to expect orderly and non-disruptive conduct from that public.
- ❑ Be sure the Board is modeling professionalism and civility.
- ❑ Some other strategies can include:
 - Take a recess to attempt to calm the meeting.
 - Fairly enforce the rules, and after a warning, remove a non-compliant speaker or audience member.
 - Move public participation to written form only, with same time limits.



24

Recess Procedures

- ❑ Under OMA:
 - ❑ "A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies
 - the date, time and place for continuation of the meeting, and,
 - immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting
 - ❑ on or near the door of the place where the original meeting was held
 - ❑ and in at least one other location appropriate to provide public notice of the continuation of the meeting."
 - ❑ "Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting." NMSA 1978 § 10 -15-1 (E).

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25



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26

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27

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28