



# **2023 NMSBA Leadership Retreat**

## **Conducting Efficient School Board Meetings Under the Rules of Order and Maintaining Civility and Order All within OMA**

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# RULES OF PROCEDURE FOR BOARD MEETINGS

- Roberts Rules of Order
  - Modified
- Board Policy BEDD (B-1850)

# RULES OF PROCEDURE FOR BOARD MEETINGS

Board President's Role in conducting the meeting – Board Policy BED (B-1600):

- To rule motions in or out of order;
- To assure reasonable standards of courtesy & civility of speaker;
- To address questions as to procedure or parliamentary rules;
- To call a recess at any time;
- To adjourn the meeting in an emergency.

# RULES OF PROCEDURE FOR BOARD MEETINGS

Board President's Role in conducting the meeting – Board Policy BEDBA (B-1750):

- The Superintendent will prepare Board Agendas in consultation with the Board President;
- Board Members may place items on the agenda with at least 3 central office working days and 4 calendar days notice from meeting date;
- Final determination made by Superintendent based on time (ability to provide information, deliberation and decision-making);
- Materials 24-hour before meeting at minimum.

# RULES OF PROCEDURE FOR BOARD MEETINGS

Rules in conducting the meeting – Board Policy BEDD (B-1850):

- The Board President may make Motions or second Motions and may vote on all Motions;
- Motions to adjourn are in order ant anytime (no discussion is in order);
- Motion to table are in order at anytime;
- Rules of order can be suspended by majority vote.

# RULES OF PROCEDURE FOR BOARD MEETINGS

Under Board Policy BEDD a “second” is required for all motions or actions

No discussion in Board Policy BEDD

- Under NMSBA, Members must be excused from voting by the remaining members.
- An “abstention” without majority consent is recorded as an affirmative vote.

# RULES OF PROCEDURE FOR BOARD MEETINGS

- Minutes need not be a “verbatim” record of the discussions at the meeting;  
Minutes need only record:
  - the date, time, place and nature of the meeting (i.e., regular/special/ emergency)
  - members present and absent;
  - Substance of proposals/motions considered;
  - Record of all decisions made/actions taken, which shows how each member voted.

# RULES OF PROCEDURE FOR BOARD MEETINGS

- Votes shall be a voice or roll-call vote
- No secret ballots
- One Person - One Vote
- Majority vote controls official action.
  
- All meetings open to the public
- Invited guests and members of the public may be recognized to assist the Board with information
- Board Policy BEDH (B-2150) – Public Participation at Meetings



# Procedures at a Glance



# First Amendment

- There are two types of public forums the local school board may create to allow for public speech at school board meetings:
- First, a **designated public forum** is public property not traditionally open that the government has “opened for use by the public” as a place for speech and expressive activity. *Perry Educ. Ass’n v. Perry Local Educators Ass’n*, 460 U.S. 37, 45 (1983).

# First Amendment

- The best example of this is when, in accordance with state law or through policy, a local school board grants the public general access to the board to comment on any specific matters or any matter within the subject matter jurisdiction of the board of education.
- A local school board may choose whether or not to designate a forum as public, but once it does so, it is very limited in how it can restrict speech there.

# First Amendment

- Public Comment on any matter within the jurisdiction/authority of the school board.
  - Only necessary time and place restrictions
    - Limiting time for comments
- Comments on Superintendent and other employees of the School District
  - Comments cannot be limited except for fighting words causing disruption
  - Warning about defamation
- Comments on Board members
  - Comments cannot be limited except for fighting words causing disruption
  - Warning about defamation

# First Amendment

- The second forum that can be created is a **limited public forum**.
- A limited public forum is public property that the government allows to be used by certain groups or dedicated solely to the discussion of certain subjects. *Christian Legal Soc'y. v. Martinez*, \_\_\_ U.S. \_\_\_, \_\_\_, 130 S. Ct. 2971, 2984 n.11 (2010).

# First Amendment

- On one side, in “a designated public forum there is no limit on speech when the meeting is open.
- On the other side, in “a limited public forum” a school board may restrict speech to the subject matter of the meeting to which the local school board intended to address in conducting its business.

# First Amendment

- In a limited public forum, a government entity is justified in limiting its meeting to discussion of specified agenda items and imposing reasonable restrictions to preserve the civility and decorum necessary to further the forum's purpose of conducting public business.
- Such restrictions may not, however, discriminate on the basis of the speaker's viewpoint. *Steinberg v. Chesterfield County Planning Comm'n*, 527 F.3d 377, 387 (4<sup>th</sup> Cir. 2008).

# New Law on First Amendment

- *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5<sup>th</sup> Cir. 2010)
- School Board meetings can be limited public forums
  - local school board meetings here “fits the hornbook definition of a limited -- not designated -- public forum, in which “the State is not required to and does not allow persons to engage in every type of speech.” *Fairchild*, 597 F.3d at 759, quoting *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001).



# Designated compared to Limited Public Forums

- The OMA states that meeting notices “shall include an agenda containing a list of ***specific items of business*** to be discussed or transacted at the meeting.” N.M. Stat. Ann. § 10-15-1(F) (1978) (emphasis added).
- If the Board should create a limited public forum, the Board’s agenda shall be the extent that the Board can receive public comment, and as each matter is on the agenda, the Board may also take formal action or engage in further discussion, including on information provided in public comment.

# Designated compared to Limited Public Forums

- If the Board, however, has created a designated public forum, the agenda cannot possibly include the unknown items which may be brought forth in public comments.
- Board should not engage in responses or discussion of issues which have not been made part of the agenda by the public during the public comments section.
- Accordingly, although the public may comment on issues not on the agenda, the Board should simply acknowledge the statements without comment to avoid a violation by discussing items not on the agenda.

# Designated compared to Limited Public Forums

- Under state law, only the local superintendent may make personnel decisions such as hiring, contract renewal, employee evaluation, employee discipline, discharge and termination of school personnel.

# Designated compared to Limited Public Forums

- Thus, there is no action the Board can take in such matters, and allowing for such complaints in a closed session may affect the Board's ability to address the matter in a subsequent termination or discharge proceeding.
- In addition, the Board may become vulnerable to a recall action on the allegation that the Board was simply acting in a personnel matter outside its statutory authority.

# Limiting Speech regardless of forum

- The Board must also be familiar in what sorts of restrictions may be placed on disruptive comments and behavior at board meetings.
- The Fourth Circuit has held that the presiding officer at a board meetings has the discretion to stop speech that the officer “reasonably perceive[s] to be, or imminently to threaten, a disruption of the orderly and fair progress of the discussion.” *Collinson v. Gott*, 895 F.2d 994, 1000 (4<sup>th</sup> Cir. 1994).
- The Fourth Circuit has also concluded that “a personal attack leads almost inevitably to a responsive defense or counterattack . . . that has the real potential to disrupt the orderly conduct of the meeting.” See *Steinberg v. Chesterfield County Planning Comm’n*, 527 F.3d 377, 387 (4<sup>th</sup> Cir. 2008).
- Spectators may also be prevented from boisterously commenting upon the deliberations of the board. *Hansen v. Bennett*, 948 F.2d 397 (7<sup>th</sup> Cir. 1991).

# Limiting Speech for disruption

- In a limited public forum, a speaker may be removed from a public meeting for refusing to limit his comments to the topic at hand and responding to the chair in an antagonist manner as long as the restriction on his speech is not based merely upon disapproval of the speaker's viewpoint. *Jones v. Heyman*, 888 F.2d 1328 (11<sup>th</sup> Cir. 1989).

# Policy Development

- **Create limited public forum by policy**
  - Give notice of limited forum
  - Agenda items only
  - Limitations on time and place
    - Limited time
    - Only during public comment portion of meeting
- **Training of board members on control of meetings to limit speech to agenda items only.**
  - Restricting comment
  - No expanding the forum

# Questions





# Contact Information



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