

Keeping Your Cool in a Contentious Climate

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NMSBA Board Institute 2017
Santa Fe, NM



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Agenda

- ▶ Managing Board Meetings – the Role of the Board President
- ▶ Handling Public Comment at Board Meetings
- ▶ Handling Disruptions at Board Meetings
- ▶ Managing “In Your face” parents and constituents
- ▶ Conflicts arising on Social Media
- ▶ Dealing with our Contentious Political Climate



- ▶ When I look back on all these worries, I remember the story of the old man who said on his deathbed that he had had a lot of trouble in his life, most of which had never happened.” Winston Churchill
 - ▶ The harder the conflict, the greater the triumph. George Washington
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Disruptions at Board Meetings

- ▶ The Role of the School Board President
 - Response to Disruptions at Meetings:
 - Providing Security;
 - Recess or Adjournment of Meeting;
 - Disputes between Board factions;
 - Verbal attacks on Board members, Superintendent;
 - Airing the District's interpersonal disputes in a public setting reduces the public's confidence in both the Board and Administration.

Building Consensus within the Board

- ▶ Where disputes between majority and minority Board factions (or between Board and Superintendent) begin to divert the attention of the Board from the important business of the School District, the Board President's role is to seek consensus and attempt to resolve conflict, by:
 - One on one meetings with Board members and Superintendent (avoid rolling quorum);
 - Board work sessions;
 - Obtaining additional training;
 - Retaining a team-building consultant.

- ▶ NOTE! Meetings of a quorum of the Board to seek resolution of disputes among Board members or factions of the Board are open meetings!

Media Relations

Why are Public and Media Relations so Important to School Boards?

- ▶ The public forms opinions, good or bad, about the schools, School Administration and School Board based on information made available publicly (and sometimes by the failure to make information public.);
- ▶ School Boards generally do a less-than-adequate job communicating with the public and media;
- ▶ News media can play a vital role in communicating your message to the public;
- ▶ Print and broadcast media are powerful & influential;
- ▶ Dealing effectively with the media can help.

Media Relations

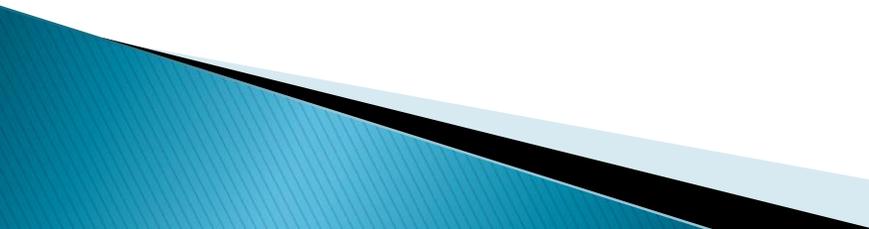
What Do We Know About the Media?

- ▶ They are not the Schools' Public Relations Agent /Promotional Mouthpiece;
 - ▶ You Can't Control Journalists;
 - ▶ You Can't Control What They Publish/Broadcast;
 - ▶ BUT, You Can Take Steps to Enhance the Working Relationship with the Media.
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Board Member Relations

All Board members should share the same information as to and authority to discuss Board business, including:

1. Notification of Board meetings and receipt of meeting agendas at the same time that other Board members receive theirs and consistent with Board policy
2. An opportunity to propose the addition of pertinent items to the agenda
3. The timely receipt of information before each meeting that will enable the Board member to make informed decisions

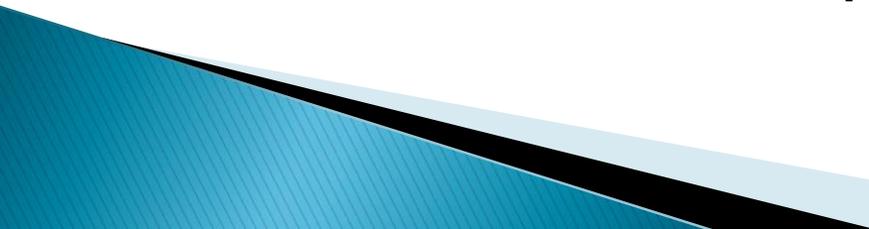
4. Unless restricted by Board policy, the opportunity to question the appropriateness of any item on the agenda, to request the removal of an item from a consent agenda for independent consideration and to propose changes before the agenda is approved, consistent with legal constraints
 5. The opportunity to propose motions for action regarding agenda items, to move to defer any agenda item, or to enter into closed session as allowed by law
 6. An opportunity to request the justification, alternatives and consequences for items presented for a decision and to participate in full and free discussion before voting
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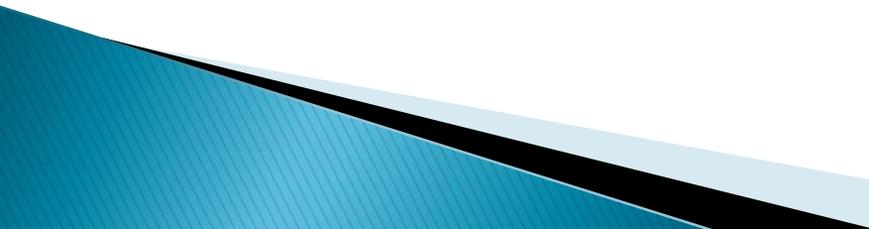
7. The opportunity to express opinions during a Board meeting without interruption and ridicule, as well as civil and respectful treatment by all other School Board members and staff members
 8. The opportunity to speak candidly during a legally called closed session without concern for being quoted or having confidentiality breached after the meeting
 9. The opportunity to remind other Board members of policy and legal responsibilities, including those imposed by the Open Meetings Act, without fear of reprisal. This includes the ability to suggest that the Board or an officer, whichever is appropriate according to Board policy, consult with the Board attorney about the legality of current or planned action or procedure
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10. The opportunity to suggest the correction of any inaccuracies in the minutes before their approval and, if the changes are not made, the opportunity to enter a minority view to the minutes
 11. The opportunity to participate in the process of selecting officers when the Board reorganizes at an open meeting
 12. The opportunity to participate in all policy-making functions including suggesting changes to the Board policy development process
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Relationship with the Superintendent:

1. A professional relationship with the Superintendent characterized by mutual respect
 2. The receipt of timely, accurate responses from the Superintendent to reasonable inquiries
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- ▶ Relationship with the Superintendent, continued ...
 - ▶ 3. The opportunity to convey opinions and viewpoints to the Superintendent (provided no attempt is made to undermine official Board action)
 - ▶ 4. The opportunity to participate in regular Board self-evaluation
 - ▶ 5. Access to relevant data pertaining to district and Board performance
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- ▶ Open Meetings Act does not require local boards of education to allow for public comments at any of its board meetings.
 - ▶ The OMA merely requires:
 1. school boards are to be conduct their meetings in public;
 2. except for the ten specific statutory reasons for which local boards of education may meet in closed executive session.
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- ▶ The OMA expressly states that “all persons desiring shall be permitted to attend and listen to the deliberations and proceedings.” N.M. Stat. Ann. § 10-15-1(A) (1978).
 - ▶ Many school boards have decided to allow for public comments during board meetings by specifying a place on the board meeting agenda for receiving such comments.
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- ▶ *City of Madison Joint Sch. Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167 (1976)
 - school board meeting was an open forum for direct citizen involvement.
 - school board meeting cannot be categorized as a traditional public forum for First Amendment purposes. “Plainly, public bodies may confine their meetings to the specified subject matter and may hold nonpublic sessions to transact business.”
 - The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy.” *Minn. State Bd. of Community Colleges v. Knight*, 465 U.S. 280, 283 (1984).

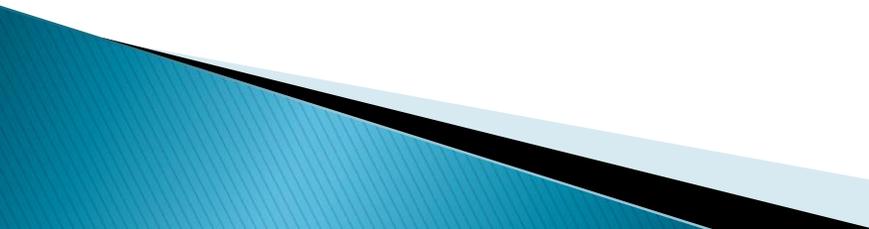
- ▶ There are two types of public forums the local school board may create to allow for public speech at school board meetings:
- ▶ First, a **designated public forum** is public property not traditionally open that the government has “opened for use by the public” as a place for speech and expressive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

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- ▶ 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.
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- ▶ **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
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- ▶ 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).

- ▶ 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.
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- ▶ 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 (4th Cir. 2008).

- ▶ For example, city council meetings are regarded as public forums, albeit limited ones. A city council does not violate the First Amendment when it restricts public speakers to the subject at hand. *White v. City of Norwalk*, 900 F.2d 1421 (9th Cir. 1990); *see also Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995)

- ▶ *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5th 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).

- ▶ 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).
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- ▶ 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

- ▶ 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.
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- ▶ 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 (4th 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 (4th Cir. 2008).
- ▶ Spectators may also be prevented from boisterously commenting upon the deliberations of the board. *Hansen v. Bennett*, 948 F.2d 397 (7th Cir. 1971).

- ▶ 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 (11th Cir. 1989).

- ▶ In another case, the evidence showed that the speaker was repetitive and truculent and that he repeatedly interrupted the chair during the meeting. The court upheld his ejection from the meeting as based upon the content-neutral desire to prevent his badgering and disregard for decorum. *Eichenlaub v. Township*, 385 F.3d 274 (3rd Cir. 2004).

- ▶ Thus, the President of the Board must be clear in dealing with such individuals as to ensure that the reasons for terminating the speech and/or removing an individual from a meeting is not based on the content of the individual's speech but on the orderly completion of the Board's business, including ensuring the viewpoint neutral reasons are placed in the minutes of the meeting.
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- ▶ **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
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Political Climate

