School Board Meetings Guidance (Updated Oct. 11, 2021)

In light of the disruptions and other inappropriate conduct occurring at too many school board meetings, MSBA offers this guidance in addition to the other supports available to school boards.

School Board Meeting Management

Public Comment Opportunity and Rules

It is important to note that Minnesota's Open Meeting Law (OML) does not require a public comment opportunity during a school board meeting. The Minnesota Department of Administration's Data Practices Office confirms this point:

> Generally, the OML gives the public the right to attend meetings of public bodies in order to watch and listen to the proceedings. It does not guarantee the right to speak at an open meeting. If a public body chooses to allow public comments, the body can set the rules for commenters.

Most Minnesota public bodies, including school boards, choose to allow public comments. MSBA Model Policy 206—*Public Participation in School Board Meetings*—provides a starting point for school boards that allow public comment at board meetings. Policy 206 includes examples of rules for public comment.

Public comment rules enable the public and the board to have common expectations regarding comments. MSBA encourages school boards to review their policy and procedures and adjust them to fit local circumstances.

School boards should confirm that public speakers know the rules. In some school districts, the board chair reads the rules before public comment begins. In other districts, a copy of the rules accompanies a sign-up page and/or is posted on the podium or desk from which members of the public speak.

School boards should follow the rules consistently. This approach avoids the appearance of preferential treatment of some speakers and maintains the understanding that the board has established rules that require compliance.

[UPDATED 10/11/2021]: *It may be useful for the board chair to note that board members and staff will not engage in dialogue with speakers during the public comment period. Notes may be taken to allow districts to respond to speakers after the meeting.*

Some school boards live-stream or record their regular board meetings. If it is an in-person board meeting and no board member is participating remotely, school boards have discretion on whether to omit live-streaming or recording any portions of the meeting, including the public comment period.

The Chair's Role

The school board chair plays a pivotal meeting management role. Calm, clear, and consistent interaction with public speakers, even those who may be hostile, can maintain order and allow the meeting to proceed.

A gavel can be an indispensable tool in meeting management. Through consistent use of a gavel to open and close meetings, to announce a vote, and to restore order, a board chair enacts the role of meeting facilitator. A quick tap of the gavel can return focus to the chair, especially in circumstances in which order must be regained. A chair should not strike the gavel repeatedly as a means of silencing a disruptive speaker, for this approach tends to inflame tension and to achieve counterproductive results.

A Break to Restore Order

If the school board chair cannot restore order, two options are available: a recess and a meeting continuation.

Motion to Recess

If disruption occurs during a meeting, a recess may be implemented either through a motion or through a chair decision (the chair may call in exigent circumstances that require immediate action).

Motion to Recess Procedure

1. Motion and second required
2. Not debatable
3. Can be amended regarding the length of time
4. Majority vote

The motion to recess can be for a specific amount of time. Alternatively, it can be "to the call of the chair." This option allows the board chair to determine when the meeting can be resumed.

If the disruption is at the start of the school board meeting, the board chair can call the meeting to order and then call an immediate recess "to the call of the chair without objection." The phrase "without objection" invites other board members to object if they so choose. This approach can also be used if the disruption or other factor requires an immediate break in the meeting.

During a recess, the board goes to multiple rooms (so that there is not a quorum in any one room). The chair, superintendent, or other school employee monitors to see whether people are prepared to listen quietly.

If the disruption ends and the meeting can be resumed, the board returns to the meeting room and the board chair calls the meeting to order.

Motion to Continue

If a disruption continues and order cannot be restored, the board has choices:

1. The board can return to the board table and adjourn the meeting.
2. The board can return to the meeting room and move to continue the meeting until the next day (this is a motion to continue and must state the date, time, and place for the continued meeting---it is best to know the new time, date, and place before re-entering the board room: the superintendent can check board member availability before returning to the board room).

Motion to Continue Procedure

1. Motion and second required
2. Not debatable
3. Cannot be amended
4. Majority vote required
5. "I move to continue the meeting tomorrow at 8:00 a.m. in this room"

Legal Options and Law Enforcement

In some circumstances, the presence of law enforcement can help a school board run a positive, engaged meeting without undue disruption. In some school districts and other local governmental bodies, law enforcement attends every meeting. In other situations, law enforcement is asked to attend a particular meeting. In either case, it is essential that expectations and process are clearly understood by the board and law enforcement before the meeting begins. This includes discussion about who will determine whether conduct is disruptive and the actions to be taken.

The school board and law enforcement must follow the law, including the First Amendment, and school district policy. For example, a school board may not challenge a public comment speaker on the basis of the viewpoint that the speaker is expressing. On the other hand, a speaker who violates school district policy and/or the law may be subject to action, including action involving trespass or disorderly conduct laws.

Trespass

MSBA Model Policy 903—*Visitors to School District Buildings and Sites*—states in part:

> An individual, post-secondary enrollment options student, or group who enters school property without complying with the procedures and requirements may be guilty of criminal trespass and thus subject to criminal penalty. Such persons may be detained by the school principal or a person designated by the school principal in a reasonable manner for a reasonable period of time pending the arrival of a police officer.

This policy is based in part upon Minnesota Statutes 609.605, Subd. 4, which states in part:

Subd. 4.**Trespasses on school property.**

(d) It is a misdemeanor for a person to enter or be found on school property within one year after being told by the school principal or the principal's designee to leave the property and not to return, unless the principal or the principal's designee has given the person permission to return to the property. As used in this paragraph, "school property" has the meaning given in section 152.01, subdivision 14a, clauses (1) and (3).

(e) A school principal or a school employee designated by the school principal to maintain order on school property, who has reasonable cause to believe that a person is violating this subdivision may detain the person in a reasonable manner for a reasonable period of time pending the arrival of a peace officer. A school principal or designated school employee is not civilly or criminally liable for any action authorized under this paragraph if the person's action is based on reasonable cause.

(f) A peace officer may arrest a person without a warrant if the officer has probable cause to believe the person violated this subdivision within the preceding four hours. The arrest may be made even though the violation did not occur in the peace officer's presence.

Disorderly Conduct

Minnesota law on disorderly conduct illustrates the balance that school boards must take. Minnesota Statutes 609.72—Disorderly Conduct—states:

> Whoever does any of the following in a public or private place, including on a school bus, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:
>
> (1) engages in brawling or fighting; or
> (2) [disturbs an assembly or meeting, not unlawful in its character]; or
> (3) engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.

In *State v. Hensel* (2017), the Minnesota Supreme Court invalidated the highlighted language as it was applied in a Minnesota city council meeting. As the *Star-Tribune* reported in April 2017, the Minnesota Supreme Court wrote:

> The statute is broad and ambiguous, prohibiting any conduct or speech that "disturbs an assembly or meeting," whether expressive or not. An individual could violate the statute by, for example, wearing an offensive t-shirt, using harsh words in addressing another person, or even raising one's voice in a speech.

The *Hensel* decision does not bar a school board or law enforcement from taking action, which may include removal of a disruptive individual. For example, an individual who engages in the type of conduct or language described under (3) above could be removed and potentially cited under this statute. Before removal, the board chair and law enforcement should attempt other means to restore order.

Public Comment Participation

The public comment period that Minnesota public bodies, including school boards, have created are a *limited public forum* under First Amendment law. This means that the school board may place reasonable time, place, and manner and other limitations upon the public's participation in public comment. It is important to consider that individuals have multiple means of communicating with the school board and the school district. These alternative means, together with the limited public forum of the public comment period, foster open communication.

The following options are available to school boards as they develop a local process for public comment.

Who can participate?

A school board may choose to provide public comment opportunities to individuals who have a direct relationship with the school district. Perhaps the most efficient method of setting this rule is to announce it as an expectation (rather than attempt to enforce it through requesting a speaker's address or other forms of 'proving' residency).

In keeping with this recommendation, the school board chair may open the public comment period by stating that the board expects that only individuals who meet one or more of these categories will seek to address the board:

1. District resident
2. District taxpayer
3. District Student
4. District Parent/Guardian
5. District Staff

What can be discussed?

A school board may choose to ensure that public comments are related directly to the school board's business. To achieve this, some school boards implement one or more of the following requirements:

1. Public comment must focus upon an item on the board agenda
2. Individual may speak on a subject at one meeting (not at multiple meetings)

How can a person participate?

Some school districts require that individuals contact the district before the meeting in order to sign up to speak during the public comment period. The sign-up period could be the day or week before the meeting. Options include:

1. Individuals must contact the district to request an opportunity to speak
2. Individuals must sign-up at the board meeting

School districts considering a sign-up list that includes information in addition to the speaker's name are encouraged to contact MSBA.

Many Minnesota public bodies establish time limitations upon public comment. Time limitation options include:

1. ___ minutes maximum per speaker
2. ___ minutes per public comment period

When should public comment occur?

The common practice is to allow public comment early in the school board's meeting. This approach may enable individuals to share their thoughts and depart rather than remain for the entire meeting. At the same time, the school board's priority must be to take the board actions necessary to govern and manage the district. For this reason, boards may consider holding the public comment opportunity at a different time. Options include:

1. Before the board meeting (Listening Session)
2. Late in the agenda

MSBA is proud to support Minnesota's school boards as they serve their students and their communities. Please contact MSBA for additional guidance and support.