

Public Advocacy



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Public Comments

Community input at meetings presents challenges and opportunities

ENGAGING THE PUBLIC AROUND

key issues involving local school districts is, at best, a complex task. As school board members, you often are forced to straddle a tough line between community concerns and what's best for your district's students and staff.

The straddle becomes even tougher when certain topics—moving attendance boundaries, closing facilities, terminating an employee, changing a school's name or mascot—are on the board's meeting agenda. On one hand, you want to be transparent in your

work; on the other, all nuance is easily lost in a world driven by sound bites and social media.

I'm sure you've seen, and perhaps been part of, situations where the public comment portion of your meeting turns into a communications debacle for your board and your district. And perhaps your district has taken steps to restrict what can be addressed during the comment section.

Over time, however, courts have ruled consistently that the public has a right to raise and air complaints during an open meeting, even when

individual employees are named. In three states—Georgia, Illinois, and Virginia—school districts lost legal challenges in 2016 over regulations that placed restrictions on public comments during board meetings. Three large Florida school districts—Miami-Dade, Broward County, and Palm Beach County—have come under criticism for placing limits on their public comment processes.

So what can you do to resolve—or at least mitigate—these problems when controversy arises, especially if staff are involved? As with any issue you deal with, there's no one-size-fits-all answer.

TRUST AND DISSATISFACTION

Building trust in how your school district operates and functions is one of the most critical roles you have as a board member. And today's negative, monosyllabic climate, where the race to be first seems more important than accuracy, does nothing to help matters.

No one wants to see a school employee defamed by a member of the public. But that doesn't mean employees can be shielded from criticism, and "accurately describing wrongdoing by a school employee is a nondefamatory act of constitutionally protected speech," according to Frank LoMonte, former executive director of the Student Press Law Center (SPLC).

LoMonte, who has written extensively on this issue and now is director of the University of Florida's Brechner Center for Freedom of Information, noted in a SPLC op-ed that the public should be able to "feel confident they can safely express dissatisfaction with government services."

"When a member of the public takes to the microphone to complain

about a school's performance, it's almost always because lower-volume options have been tried and failed," LoMonte notes. "That a citizen feels compelled to resort to the podium to air a grievance should be recognized as suggesting a weakness in the school's dispute-resolution process."

In Walker County, Georgia, a social studies teacher sued the school board over its public comment policy, which required prospective speakers to receive pre-approval from the superintendent. The teacher, Jim Barrett, was critical of changes the district had made to its grading policy and alleged the superintendent had prevented him from gaining access to the board in a timely manner.

U.S. District Court Judge Harold Murphy said Barrett's First Amendment rights were violated because the superintendent was not required to address his complaint within a certain time period. The judge also ruled that the board's policy, which prevented the public from complaining about an employee's performance, was too broad as it was written.

"The policy, on its face, prohibits all complaints about employees, not just those complaints that would qualify as sensitive personnel matters," Murphy wrote.

In another case, Virginia Attorney General Mark Herring ruled that the Franklin City Schools board could not ban public comments that "identify specific individuals" because it was too broad and vague. The board regulation, which was designed to prohibit "personal attacks against employees," went too far because it prohibited any mention of staff in a public forum.

"Allowing discussion of individual school employees only during closed session does not meet the constitu-

tional standard of 'leaving open ample channels of communication,'" Herring wrote in his ruling.

OPEN DISCUSSIONS

As you can see by these examples, it's possible that the policy you have for public comment, while well intentioned, may not stand up to legal challenges. If you have not had the chance to review your public comment process recently, take the time to do so in consultation with your school attorney. You might want to check with your state association as well to make sure your policies jibe with others in the state. Once that's done, be sure you are open in discussing the whys and hows of the policy with your constituents.

"Problems come when there is a lack of communication to citizens by school districts in explaining the process of how things work," says Rich Bagin, executive director of the National School Public Relations Association. "Helping people understand that the opportunity for the board to listen may not be at the board meeting when they make a decision about a controversial issue flies in the face of common sense from the customer side."

In Florida's Broward County, for example, speakers who want to appear in front of the board must sign up a week in advance to speak. Public comment is limited to 30 minutes or 10 speakers. If you don't follow the process, you must wait to address the board at the end of the meeting.

From an operations standpoint, it makes sense. Broward is the sixth largest school district in the U.S. Board meetings start in the morning and often run until late in the day. Knowing the speaker's topic in advance

gives the district a chance to address grievances or concerns.

The board was forced to change its process, however, after coming under fire from the teacher's union and community members who felt it was too restrictive. Comments are now allowed at board workshops that are held twice a month. Once a month, public comments are held at 5 p.m. instead of at the start of the morning meeting. The board chair also can allow more than 10 speakers if the need arises.

Will that end all the criticism? No, but it's a start. As Bagin notes, board members should take advantage of every opportunity they have to hear from their constituents.

"It doesn't play well in the public's mind when people think that going to a board meeting won't make a difference," he says. "If you have a process that you can defend, and you make a concerted effort to listen, that's much more palatable and will help you in the long run."



Glenn Cook

Glenn Cook, a contributing editor to American School Board Journal, is a freelance writer and photographer in Northern Virginia. The former executive editor of ASBJ, he also spent five years as a communications director for a North Carolina school district.