



MARIN COUNTY
OFFICE OF EDUCATION
Supporting Learning for ALL Students

as presented to the
Marin County Board
of Education

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on

November 14, 2023



SCHOOL & COLLEGE LEGAL SERVICES
OF CALIFORNIA

Managing Public Comment at County Office of Education Meetings in the Post-COVID Era

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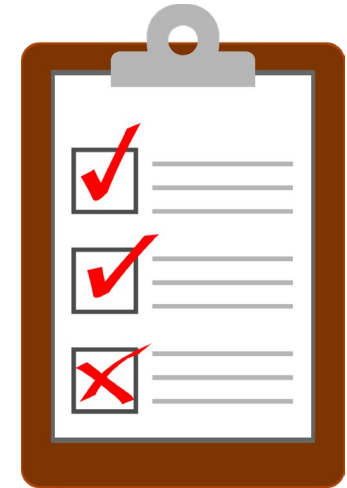
Presented by:

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“[N]othing in recent memory could have prepared trustees for the onslaught they face today as citizens lash out on a variety of topics, most notably opposition to state mandates and local COVID-19 mitigation measures. I’ve watched in horror as school board members have been accosted, verbally abused, physically assaulted, and subjected to death threats against themselves and their family members.”

- September 29, 2021, Letter from Vernon Billy, CEO and Executive Director of California School Boards Association to Governor Newsom

Agenda



- I. The public's right to comment at board meetings
- II. Balancing the public's right to comment with the Board's obligation to conduct the business of the COE
- III. Managing disruptive behavior at board meetings



I. The Public's Right to Comment

2 Types of Public Comment

General Public Comment

- ☐ Only required at regular public meetings.
- ☐ Public must be given an opportunity to address the board on any item that is within the *subject matter jurisdiction* of the board.
(Gov. Code § 54954.3.)

Comment on Agenda Items

- ☐ Public must be allowed to comment *before* the Board takes action on an item.
(Gov. Code § 54954.3.)
- ☐ May be combined with general public comment.
- ☐ Exception for items heard at committee AND remain substantially similar

Case Study



A member of the public is very concerned about the selection of a new principal for a Hall Middle School. They submit a comment card and wish to address the County Board of Education at its regular meeting.

Must the County Board of Education allow the member of the public to address the Board?

Should the County Board allow the member of the public to address the Board?

Mooney v. Garcia (2012) 207 Cal.App.4th 229 (affirming board's discretion to determine whether item is related to school district matters under Education Code section 35145.5.)

Responding to Public Comment

- ❖ Remember the Brown Act does not allow board members to respond or engage in a discussion with members of the public on items that are not on the agenda.
- ❖ This includes topics raised by members of the public during public comment
- ❖ The Superintendent may ask staff to follow up with the member of the public *if appropriate*

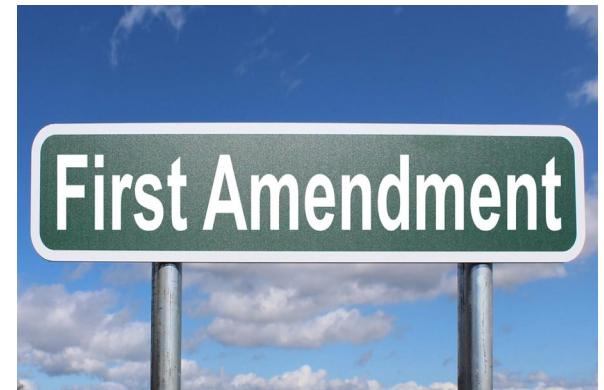




II. Balancing the Public's Right to Comment with the Board's Obligation to Conduct the Business of the County Office of Education

Limitations on Public Comment Must be Content Neutral

- Public comment is a “designated public forum”
- Reasonable restrictions as to the time, place, and manner of the speech are permitted as long as they are *content neutral*



Four **Narrow** Exceptions to First Amendment Protections:

- ❖ Obscenity
- ❖ “Fighting words”
- ❖ Incitement to violence
- ❖ Defamation

Defamation Exception & Criticism of Public Employees

“The legislative body of a local agency **shall not prohibit public criticism** of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”
(Gov. Code 54954.3(c))

“First Amendment includes the right to be passionate and even uniformed in the expression of one’s views.”
(*Baca v. Moreno Valley*, 936 F.Supp.719.)

Defamation Exception & Criticism of Public Employees

Defamation requires:

- Speaker knew the statement was maliciously false or made with reckless disregard for the truth.
- Statement must be a statement of fact and not a statement of opinion.

Without legal determination that the statement was false at the time the speaker made it, very little boards can do to curtail potentially defamatory comments. May attempt to correct a false statement.

Consider Reasonable Limitations

- ✓ Limit the total amount of time for public comment per meeting and/or per item
- ✓ Combine both general public comments and comments on agenda items at the beginning of the meeting
- ✓ For controversial issues, consider allocating time to each “side” if there are clearly recognizable sides on the issue
- ✓ Allow for multiple avenues of communication - encourage constituents to voice their opinions in email for example
- ✓ Codify your regulations in your Bylaws (i.e. 9323)
(*See Gov. Code § 54954.3*)

Case Study



Rev. McNeil is a passionate advocate for the City's underserved youth populations. He is a frequent commenter at board meetings and often exceeds his allotted speaker time. At a recent board meeting, Rev. McNeil exceeded his time by a full two minutes.

Later in the meeting, another member of the public attempted to exceed their time and the Board President immediately shut off the speaker's microphone.

May the Board President shut off the second speaker's microphone?

Remember Accessibility Issues

- ❖ Non-English speakers must receive the same opportunity to directly address the Board
- ❖ Any member of the public who uses a translator shall be provided at least twice the allotted time to address the Board, unless simultaneous translation equipment is used to allow the Board to hear the translated public testimony.
(Gov. Code §54954.3.)



III. Managing Disruptive Behavior at Board Meetings

Options to Manage Disruption

1. Short recess of the meeting with or without clearing the room.
2. Remove disorderly members of the public.
3. If removing disorderly individuals is not successful, clear the room and continue the meeting without members of the public, except that members of the press must be allowed to stay.
4. Recess the meeting until a future date.

Removing a Member of the Public

SB 1100 amended the Brown Act and gave presiding members of school district boards, county boards of education and other legislative bodies the statutory right to remove a disruptive individual from public meetings.

(Gov. Code § 54957.95.)

Removing a Member of the Public (SB 1100)

Warning Required: Presiding officer shall **warn the individual** that their behavior is disrupting the meeting and that failure to cease the behavior may result in removal. Presiding officer may then remove the individual if they continue disruptive behavior. (Except no need for warning if it is a true threat of force.)

Removing a Member of the Public (SB 1100)

Actual Disruption is Required: “disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting.

★ Disruption is more than offensive conduct.

Removing a Member of the Public (SB 1100)

Disruptive Behavior Includes:

- ❖ A failure to comply with reasonable and lawful regulations adopted by a legislative body, or any other law
- ❖ Behavior that constitutes use of force or a true threat of force
- ❖ “True threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

(Note: no need for prior warning in cases of true threat of force.)

Case Study



Robert Norse attends a county board of education meeting to discuss an agenda item. Due to the number of speakers, Norse is not permitted to speak because the time allotted for public comment expired before his name was called.

When the Superintendent announces that no further speakers will be allowed on the agenda item, Robert gave a silent Nazi salute to protest this announcement.

May the Superintendent / Board remove Norse from the meeting?

(Norse v. City of Santa Cruz, 629 F.3d 966.)

Questions?



Information in this presentation, including but not limited to PowerPoint handouts and presenters' comments, is summary only and not legal advice. We advise you consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

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