



CUDDY & MCCARTHY, L.L.P.  
Attorneys at Law

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### Limiting Public Comment at School Board Meetings and the First Amendment

C. Emery Cuddy  
Andrew M. Sanchez

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## New Mexico Open Meetings Act

### Public Comment

- 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.

## New Mexico Open Meetings Act

- 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.

## First Amendment

### Fundamental Right of all Americans

- The First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST. amend. I.
- Local school boards may not abridge citizens' freedom of speech when the board adopts rules governing speech during the public comment period of school board meetings.

## First Amendment

- *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).

## 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).

### First Amendment

- 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 (9<sup>th</sup> Cir. 1990); see also *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9<sup>th</sup> Cir. 1995)

