

TESTIMONY IN OPPOSITION TO

L.D. 1571

AN ACT TO PROVIDE MEANINGFUL PUBLIC PARTICIPATION AT LOCAL SCHOOL BOARD MEETINGS

Senator Rafferty, Representative Brennan and members of the Education and Cultural Affairs Committee. I am Steven Bailey, executive director of Maine School Management Association, testifying on behalf of the legislative committees of the Maine School Superintendents Association and Maine School Boards Association in strong opposition to L.D. 1571.

Title 20-A, §1001, sub-§20 was adopted in 2019 and provides the opportunity for the public to comment on school and education matters at a school board meeting. This statute does not require public to be defined as taxpayers or residents of the community(ies) that make up the school district.

As a result, during 2022-2023 school boards have seen traveling groups of the public attending school board meetings throughout the state. Based on the content provided by some members of the public, school boards have needed to place structures and protocols in place that help retain the intent and the meaning of the scheduled school board meetings to allow for them to conduct their business. These can be seen in Policy BEDH, which has been updated two times since sub-§20 was added to statute in 2019.

School boards craft specific and meaningful agendas in order to conduct the important work of the district. School board meetings are meetings in the public, for the public (in accordance with the FOAA), but they are not meetings of the public. School board meetings are scheduled to allow the members of the board to do their business, which is the only time they have authority to do their work.

Additionally, public comment is both allowed and invited for members of the public to share information, ask questions, or make statements for members of the board to hear in public session.

It generally is the nature and protocol of the board to receive questions or comments and get back to the person making the comment either through a phone call, an email or at the next school board meeting. Often a question or a comment may take time or other resources to research or explore before an informed response can be provided.

School board members and superintendents operate with a “no surprise” rule and part of the reason for this “rule” is so that information needed for a response can be made ready when it is time to share that information in public session.

There are times, typically during an agenda item, when members of the public may be invited to share information or ask questions when responses may be offered or provided.

I have shared with the sponsor that I have both seen times and opportunities when a special/workshop school board meeting might be scheduled to provide a public forum, either on a specific topic or to do a check in with the public on certain issues that have been of interest in the community. I have seen these work around the topic of redistricting or school closures or transportation and especially during the budget development process.

Striking the language “nothing in this subsection restricts the school board from establishing reasonable standards for the public comment period, including time” is a bad idea. Given what has been the experience of school boards across the state within the past 18 months, this could only continue to invite and incite controversy and out of control behaviors. We see the proposed legislation as potentially resulting in individuals seeking to disrupt and to hijack a meeting to prolong meetings and derail the board’s agenda. An issue could be meaningful to one person, even though it is irrelevant to the issues being decided.

Including the language “time limits and conduct standards established by the school board may not limit meaningful public comment or participation at the meeting” reduces the right of the school board to implement controls so as to avoid disruption, to minimize the risk that they will be sued for defamation for providing a platform for speakers to attack employees, and to minimize the risk that they could be sued for defamation for providing a platform for permitting complaints to be heard in a manner that blindsides employees.

L.D. 1571 appears to be at odds with the goal of keeping educators in the field – the teachers, educational technicians, the administrators we have been trying to recruit and retain. Who would want to work in education when they are accused of grooming children because one person of the public wants to film themselves trying to score political points by raising issues they consider to be “meaningful.”

MSSA and MSBA strongly urge the Joint Committee on Education and Cultural Affairs to vote ONTP on L.D. 1571.

[NOTE: School Boards are required by current law to provide an opportunity for public comment, limited to school and education matters, at full meetings of the Board (20-A MRSA § 1001(20). Boards may impose reasonable time, place and manner restrictions on expressive activity during the public comment period to ensure that the Board's business meeting is not disrupted and to ensure compliance with confidentiality and privacy laws.

Boards should check other related policies (such as those pertaining to agenda preparation, Board meetings, agenda format, etc.) to ensure that there are no inconsistencies with revisions to this policy, and update those policies and all cross references as necessary.]

PUBLIC PARTICIPATION AT SCHOOL BOARD MEETINGS

The primary purpose of School Board meetings is to conduct the business of the Board related to Board policies, programs, and operations. The Board encourages residents to attend Board meetings so that they may become acquainted with the operations and programs of the schools.

The Board also recognizes the value of public comments on school and educational matters. To permit fair and orderly expression of public comments at Board business meetings while still allowing the Board to conduct its business efficiently, the Board has established the procedure below for regular business meetings.

At special, emergency, or workshop meetings, public comments will be limited to the topic(s) of the particular meeting.

[NOTE: The public comment law simply refers to "full meetings of the board," without making a distinction between the various kinds of meetings that are typically held. MSMA/DWM believe that it is acceptable to limit public comment at special, emergency, and workshop meetings to the topic(s) for which the meeting is held. Boards may delete the above sentence if they wish to allow general comments. The law makes it clear that public comment is not required at subcommittee meetings.]

In addition to speaking during the designated public comment portion of the agenda at Board meetings, members of the public are welcome to submit written comments on school and educational matters to the Board and Superintendent, or to submit requests to have items placed on a Board agenda, in accordance with applicable Board policies.

[NOTE: The law does not specify where the public comment period should be placed on the agenda or how much public comment should be allowed. For efficiency, it may make sense to place the public comment early in the agenda.

1. The Board will include a public comment period, not to exceed 30 minutes [**Or: ____ minutes**] on the agenda of its regular business meetings. Comments by individuals are limited to a maximum of three (3) minutes [**OR: ____ minutes**] at a meeting. Individuals may not relinquish a portion of their allotted time to another speaker. The time limits in this paragraph may be modified at a particular meeting at the discretion of the Board.

[NOTE: Boards have the option of prioritizing comments from residents of the school unit. There are two options below that Boards may wish to consider. MSMA/DW suggest having a sign-in form for individuals to speak, which includes the individual's name and town/city of residence. Boards may also choose not to have a sign-in form, or only to use one in circumstances where there are many individuals wishing to speak at a regular meeting.]

2.**[OPTION 1]** Individuals who wish to speak during the public comment period are required to fill out the sign-in form available at each Board meeting, prior to the beginning of the public comment period, and to review a copy of this policy. Each individual will be required to state their name and town/city of residence before beginning their remarks.

[OPTION 2] The Board will hear public comments from residents of the school unit first. If there is time remaining in the public comment period once all residents have had the opportunity to speak, the Board will permit comments from non-residents. Individuals who wish to speak are required to fill out the sign-in form available at each Board meeting, prior to the beginning of the public comment period, and review a copy of this policy. Each individual will be required to state their name and town/city of residence before beginning their remarks.

3. The Board Chair is responsible for ensuring the orderly conduct of Board meetings and for ensuring compliance with this policy, including the following rules of order:

- a. Speakers will be recognized by the Board Chair, and comments should be addressed to the Board Chair. Requests for information or concerns that require further research may be referred to the superintendent for further action, if necessary;
- b. Speakers are expected to follow rules of common etiquette and decorum, including refraining from using vulgar and/or obscene language, yelling, threatening others using words or by other actions, making defamatory comments, or otherwise engaging in any activity that disrupts orderly meeting progress. Examples of disruptive conduct include, but are not limited to, exceeding the allotted time limits, talking over or interrupting others, offering repetitive comments, and offering comment on matters unrelated to the school unit's programs, policies, or operations.

- c. Discussion of personnel matters is not permitted during the public comment period due to the privacy, confidentiality and due process rights of school unit employees. For purposes of this policy, “discussion of a personnel matter” means any discussion of job performance or conduct of a school unit employee, including complaints about them.
- d. Discussion of matters involving individual students are also not permitted during the public comment period due to the privacy, confidentiality, and due process rights of the school unit’s students.
- e. Any concerns about personnel matters and/or student matters should be directed to the Superintendent or another appropriate administrator outside of Board meetings so that they can be addressed through an alternative channel and in a manner consistent with privacy, confidentiality, and due process rights of the individuals involved.
- f. The Board Chair will stop any public comment that is contrary to these rules.
- g. Individuals who disrupt a Board meeting may be asked to leave in order to allow the Board to conduct its business in an orderly manner. The Board Chair may request the assistance of law enforcement if necessary to address disruptions or safety concerns.

Legal Reference: 20-A MRSA § 1001(20)
20-A MRSA § 6101
1 MRSA § 405

Cross Reference: BE – School Board Meetings
BEDB – Agenda
BEDB-R – Agenda Format
BEC – Executive Sessions
KE – Public Concerns and Complaints

PLEASE NOTE MSMA sample policies and other resource materials do not necessarily reflect official Association policy. They are not intended for verbatim replication. Sample policies should be used as a starting point for a board's policy development on specific topics. Rarely does one board's policy serve exactly to address the concerns and needs of all other school units. MSMA recommends a careful analysis of the need and purpose of any policy and a thorough consideration of the application and suitability to the individual school system.

MSMA sample policies and other resource materials may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.