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Managing Board Meetings in Today's Political Climate

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Survey of Cases on Public Comment
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School board meetings are limited public forums. "Under Fifth Circuit law, it is unclear what category the public comment portion of a school board meetings falls into. In certain situations the court has held that "events such as school board meetings can rise to the level of designated public forums, such that regulation of public expression at such meetings would be subject to strict scrutiny." *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 348 (5th Cir. 2001). In others, however, the board meeting is construed as a limited public forum. *See e.g., Fairchild v. Liberty Indep. Sch. Dist*., 597 F.3d 747, 759 (5th Cir. 2010) ("The board meeting here—and the comment sessions in particular—is a limited public forum . . . . Plainly, public bodies may confine their meetings to specified subject matter and may hold nonpublic sessions to transact business." (citations and quotation marks omitted))." *Wilson v. N. E. Indep. Sch. Dist.,* No. 5:14-CV-140-RP, 2015 WL 13716013, at *4 (W.D. Tex. Sept. 30, 2015).

Restrictions must be reasonable and viewpoint neutral. School board meetings are properly categorized as limited public forums because the school board may restrict the subject matter of these sessions to issues that involve the school system and its governance. In fact, the school board's policies explicitly contemplate that it will limit public comments to certain subjects or classes of people. See Board Policy BED (Legal) ("The Board may confine its meetings to specified subject matter."). Therefore, under current Fifth Circuit law, time, place, and manner restrictions placed on speakers will stand unless (1) they are not viewpoint-neutral, or (2) they are not reasonable in light of the purposes served by the forum. *Wilson v. N. E. Indep. Sch. Dist.*, No. 5:14-CV-140-RP, 2015 WL 13716013, at *4 (W.D. Tex. Sept. 30, 2015) (citing *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37 (1983) and *Fairchild v. Liberty Indep. Sch. Dist*., 597 F.3d 747 (5th Cir. 2010)).

Rules can be designed to protect the peaceful conduct of government business. "[N]o mandate in our Constitution leaves States and governmental units powerless to pass laws to protect the public from the kind of boisterous and threatening conduct that disturbs the tranquility of spots selected by the people . . . for public and other buildings that require peace and quiet to carry out their functions, such as courts, libraries, schools, and hospitals." *Carey v. Brown*, 447 U.S. 455, 470–71 (1980) (quoting *Gregory v. Chicago*, 394 U.S. 111, 118 (1969) (Black, J., concurring)).

Viewpoint-neutral restrictions aim not at the content of speech but its secondary effects. When a restriction on speech is "aimed not at the content" of the speech but at the "secondary effects" generated by or associated with the speech, the restriction is considered to be content-neutral. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47 (1986); *see also Boos v. Barry*, 485 U.S. 312, 320 (1988). As a long as a restriction "serves purposes unrelated to the content of expression," it is content-neutral, "even if it has an incidental effect upon some speakers or messages but not others." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (citing *City of Renton*, 475 U.S. at 47-49).

Citation	Topics	Facts	Conclusions
Doyle v. Town of Scarborough, No. 2:15-CV-00227-JAW, 2016 WL 11372625 (D. Me. Feb. 23, 2016).	Proper defendant for Section 1983 free speech (FS) claim	Citizen asserted city council members violated his right to FS when they stopped him from speaking about abuse of former employee and allegation of a possible criminal act.	Claim was stated against the two individual council members who stopped speaker, but not the other members, and not the police department.
Ritchie v. Coldwater Cmty. Sch., 947 F. Supp. 2d 791 (W.D. Mich. 2013).	Proper defendant for Section 1983 FS claim Prohibiting complaints against named officials Removal from meeting Exclusion from property Fourth Amendment violation for removal and arrest	Parent was convinced teacher was abusive. Claimed board violated his FS rights by stopping his public comment, banning him from administrative building, and causing police to forcibly remove him from two board meetings, as well as OMA violations.	Bd mems had QI for stopping speaker from playing inaudible recording but not for stopping complaint about teacher; question of fact existed whether due to viewpoint. Board pres's enforcement of procedures constituted official policy. Sup violated FS by banning parent, who had committed no crime, from administrative building. No probable cause exists to arrest speaker solely for speech. Cause arises only if chair rules speech out of order first. Disturbance of removing attendee cannot be "disruption" that justifies exclusion. Officials denied QI for unreasonable seizure.
Bible Believers v. Wayne Cty., *Mich*., 805 F.3d 228 (6th Cir. 2015).	Heckler's veto Removal from meeting	Police removed group of self-described Christian evangelists from city's Arab International Festival after they denigrated crowd of Muslims, some of whom responded with threats of violence.	Evangelicals' speech was offensive but not incitement or fighting words. Police effectuated heckler's veto by not attempting to quell response of listeners who threw bottles at speakers

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