



**San Diego and  
Imperial Counties**

February 25, 2021

Via Email

San Dieguito Union High School District  
Board of Trustees  
Maureen Muir  
Melisse Mossy  
Kristin Gibson  
Michael Allman  
Katrina Young  
Robert Haley

Re: Brown Act and First Amendment Violations at School Board Meetings

Dear Members of the Board:

I am writing to express concern about reports that the San Dieguito Union High School District Board of Trustees (“Board”) may have unlawfully suppressed comments by the public at a recent board meeting. We have recently heard from concerned stakeholders that during public testimony at a board meeting earlier this month, Board President Muir cut off multiple people without warning as soon as they raised concern over the recent board decision to stop accepting written public comment. Other speakers who did not express this view were given their full allotted time to complete their testimony. We write to remind you that a school board may not silence community members engaged in lawful public comment simply because the board dislikes their message. If the Board is limiting access to public meetings and restricting comments based on the viewpoint expressed, it is violating its own by laws, the Brown Act, and the First Amendment, and must immediately stop.

According to Board Bylaw 9320:

To encourage community involvement in the schools, Board meetings shall provide opportunities for questions and comments by members of the public. All meetings shall be conducted in accordance with law and the Board’s bylaws, policies, and administrative regulations.

According to Board Bylaw 9323:

Members of the public are encouraged to attend Board meetings and to address the Board concerning any item on the agenda or within the Board’s jurisdiction...Individual speakers shall be allowed three minutes to address the Board on each agenda or non-agenda item... The Board shall limit the total time for public input on each item to 20 minutes. With Board consent, the president may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The president may take a poll of speakers

for or against a particular issue and may ask that additional persons speak only if they have something new to add.

The bylaws provide for time to address a given topic, but they do not allow the Board or its president to cut off comment within the time provided based on the content or viewpoint of that comment.

Under the Brown Act, “Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body.” Govt. Code § 54954.3(a). While a local agency may adopt reasonable regulations for public comment periods, including regulations limiting the total amount of time allocated for public testimony on particular issues and for each speaker, it may not “prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.” Govt. Code § 54954.3(b)(c).

The First Amendment requires regulations on public comment to be reasonable and viewpoint neutral. *Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010). Restrictions on speech in a public forum must be justified without reference to the protected speech’s content. *ACLU v. City of Las Vegas*, 466 F. 3d 784, 792 (9th Cir. 2006). With respect to viewpoint neutrality, the First Amendment prohibits policies and practices that discriminate based on viewpoint or create an unacceptable risk of viewpoint discrimination by failing to constrain agency discretion with definite and objective standards. *Kaabumantu v. Hawaii*, 682 F.3d 789, 807 (9th Cir. 2012); *see also Chaker v. Crogan*, 428 F.3d 1215, 1228 (9th Cir. 2005) (by targeting only “speech *critical* of peace officer conduct ... statute impermissibly regulates speech on the basis of a speaker’s viewpoint”).

Additionally, courts have repeatedly recognized “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

These rules apply specifically to comments at school board meetings. *Leventhal v. Vista Unified School Dist.*, 973 F. Supp. 951, 960 (S.D. Cal. 1997) (rule prohibiting criticism of district employees was “classic form of viewpoint discrimination”); *Baca v. Moreno Valley Unified School Dist.*, 936 F. Supp. 719, 730 (C.D. Cal. 1996) (policy invalid because it allowed “laudatory and neutral” statements while prohibiting “negatively critical” statements on “District employees’ conduct or performance”).

The facts here, as I understand them, are straightforward. Board President Muir interrupted speakers when they started to express disappointment about the recent board decision and cut them off without warning. The interruptions were so abrupt that a subsequent caller expressed deep concern that they were witnessing suppression by the board. President Muir offered no reason for terminating the speakers’ comments before their time was up.

Moreover, we are also concerned that there may be a larger pattern of discouraging comment perceived as dissent. At the December 15, 2020 board meeting, after student members of the board

expressed concerns about reopening schools, Trustee Michael Allman appeared to become agitated and angry, responding, “I think the value that they [students] provide in what we have to decide is very near zero...to think that this board should place very much weight at all on what a couple of individual high schoolers think is a dereliction.” As with President Muir, we are concerned that Trustee Allman’s comments may be intended to intimidate both students and the at-large community from providing public comment that may express dissent.

These recent events call into question the Board’s commitment to its own policies and principles. Under Board Policy 0100, “It is the philosophy of the district that...The community and district are inextricably connected partners, wherein the community’s engagement in issues that impact the schools enhances the district’s programs and student learning...Two-way communication with all stakeholders is essential for establishing continuity, support, and shared goals both within the district and with the surrounding community.” BP 0100 also states that the Board shall incorporate these principles into all operations. We understand from discussions with community members that in addition to respecting their legal rights, it is critical to stakeholders that the Board live up to its purported values.

Accordingly, we ask that you ensure that there are no unlawful restrictions to public comment going forward; welcome and consider all feedback from the public; actively encourage public participation in all board meetings; and ensure compliance with Board bylaws and policies, including the commitment to equity and collaboration. We look forward to following future Board meetings and operations to ensure compliance. Please let me know if you have any questions.

Sincerely,



Melissa Deleon

Equity Staff Attorney

mdeleon@aclusandiego.org