

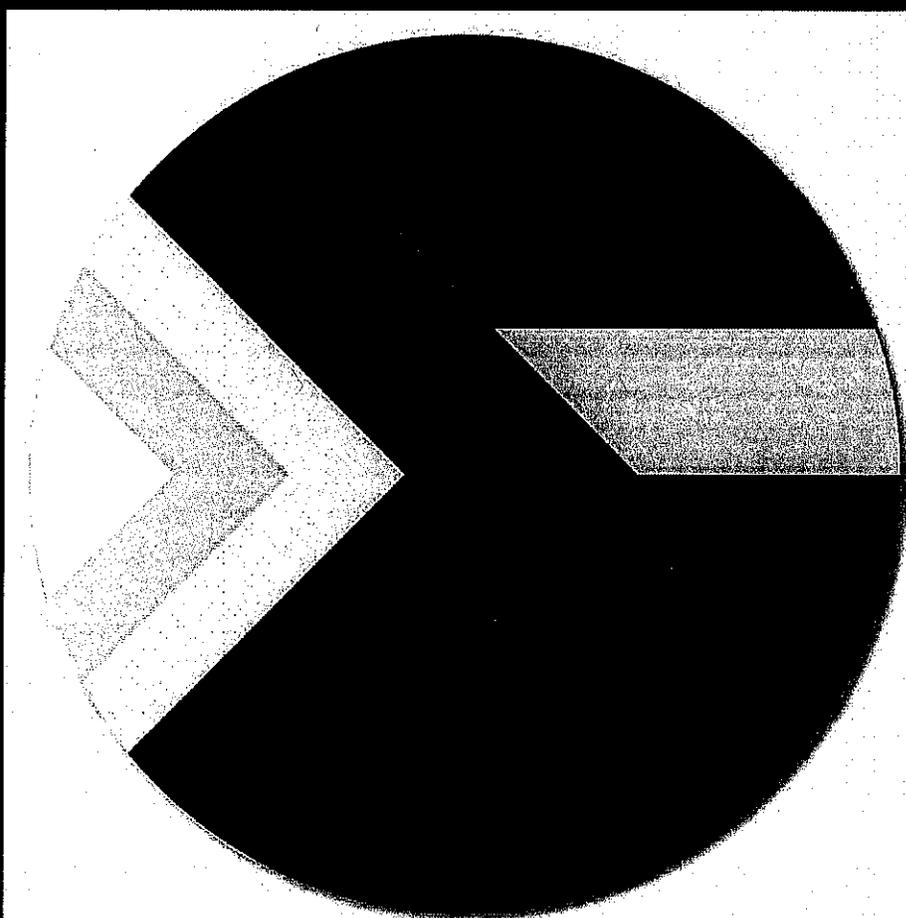
# LGBTQ+ and Other Politically Contentious Issues for Board Members

Wednesday, October 12, 2022

4:00 - 5:30 PM | Zoom

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1

### Our Focus Today

- The Rights of transgender and gender expansive students –  
When are you obligated to do certain things and when can you use your discretion to make policy decisions?
- Book challenges and challenges to instructional materials –  
What are the issues and how do you navigate them?
- Balancing the rights of the public with the rights of employees –  
What are your obligations to each side?

*Disclaimer - These materials should not be considered as, or a substitute for, legal advice. The principles here may not apply to your individual and legal circumstances.*

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2

## Terminology (cont.)

- **Gender expression:** The manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.
- **Gender expansive:** An umbrella term used to describe a person who expands notions of gender expression and identity beyond perceived or expected societal gender norms.
- **Transgender:** An adjective describing a person whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.
- **Transition:** The process by which a person goes from living and identifying as one gender to living and identifying as another gender. For most elementary and secondary students, this involves no or minimal medical interventions. Transgender students under the age of 18 are often in a process of social transition from one gender to another.

## What Maine Law Requires

1. The Maine Human Rights Act prohibits discrimination on the basis of sexual orientation (which includes gender identity and expression).
2. Transgender students must generally be permitted to participate in school programs / activities in accordance with their gender identity.
3. Your school policies make clear that the mission of the schools in the district is to create a safe, nurturing educational environment.

## Open Issues

If the student and parent disagree, what should the school do?

Must schools notify parents? When?

## Having a Policy is Important

### Policy ACAA

- Provides guidance to staff, students and parents/guardians as to how issues will be handled
- Provides one defense in the event of a claim of unlawful discrimination

## The First Amendment and Book Challenges (cont.)

Schools have a right to control school library content, but not in a manner that is discriminatory, narrowly partisan or political.

Motivation is key: the motivation behind removal may only be based on "established, regular, and facially unbiased procedures for the review of controversial materials."

Courts will closely scrutinize whether you are removing material:

- a) because you disagree with the ideas in the material
- or
- b) because you have a legitimate concern with disturbance, pedagogical value (the material is factually inaccurate), or emotional maturity/intellectual maturity

## The First Amendment and Public Comment

There are limits on the power of public schools to restrict speech under the First Amendment, including at public board meetings

But the right to express oneself is not absolute –

- No right to threaten violence, defame others, or use obscenities
- No right to ignore time, place and manner restrictions

A speaker's rights hinge on the type of forum:

- Traditional Public Forum (least restrictive forum)
- Limited or Designated Public Forum
- Nonpublic Forum (most restrictive forum)

## Curriculum Challenges

- Is it curriculum?
- Policy IMB
- Exemptions and Accommodations

## The Legal Rights of Families

Families have a right:

- ▶ to inspect curriculum upon request
- ▶ to maintain their own values and their own religious beliefs
- ▶ to request an exemption or an accommodation from a portion of the curriculum

But they do not have a right:

- ▶ to control the values in other families
- ▶ to dictate the school's curriculum, which must align with state standards

## Policy IMB

- Founded on the notion that decisions about learning materials should be decided by experts in learning
- Schools hire certified educational experts and curriculum coordinators to ensure that the curriculum aligns fully with state standards

## Board Decisions in this Area

- Important to follow your policy
- Permit the challenge, and allow it to be heard
- Allow the contrary points to be considered
- Read the challenged material carefully (and in full)
- Have a reason, ensure it is a GOOD reason, and ensure that it is the REAL reason!

## Public Comment Periods under Maine Law

A public comment period is required under Maine law (20-A.M.R.S. § 1001(20)) on school matters:

*A school board shall provide the opportunity for the public to comment on school and education matters at a school board meeting.*

Limitations are expressly allowed:

*Nothing in this subsection restricts the school board from establishing reasonable standards for the public comment period, including time limits and conduct standards. For purposes of this subsection "school board meeting" means a full meeting of the school board and does not include meetings of subcommittees.*

## Practical Tips for Managing Public Comment Periods

Remember that Board meetings are meetings of the Board in public, not meetings of the public

The Board must be allowed to conduct its business in a timely manner. Kids and staff depend on the Board being able to make decisions

Keep your ear to the ground: Anticipate what may be coming

Have a policy (and follow it)

## Practical Tips for Managing Public Comment Periods (cont.)

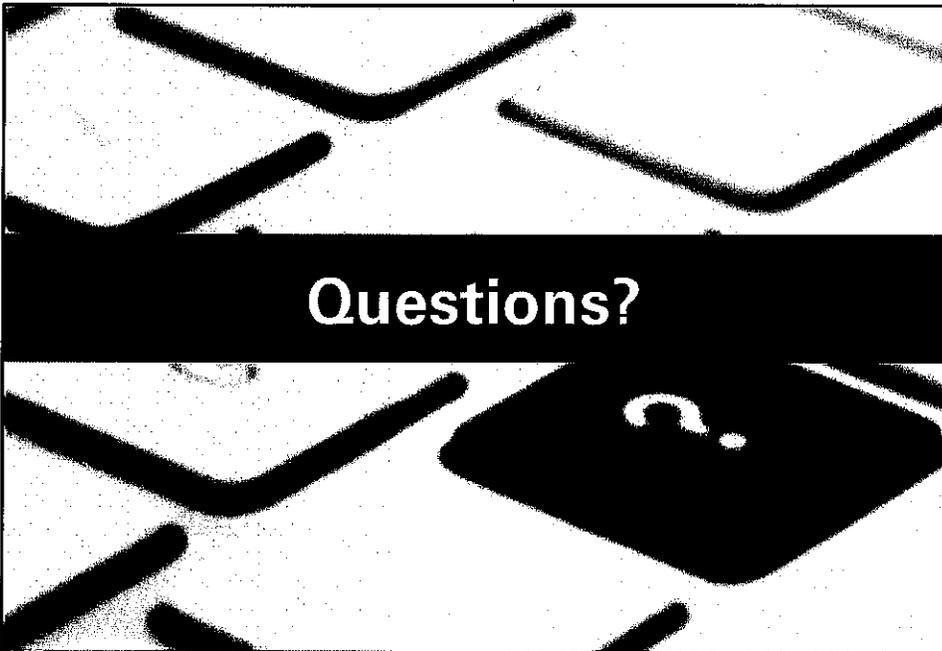
When members of the public are disruptive or overstep:

- Don't get caught flat footed - Fall back on your plan!
- Remind folks of your time, place and manner rules (and why rules designed to minimize disruption actually matter)
- Recess to allow some time to let things settle
- If the violation continues, enforce your rules – inform the speaker that their violation of your rules has resulted in their loss of the opportunity to continue
- If necessary, consider asking for law enforcement assistance with the removal of the disruptive individual

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29



# Questions?

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30