



**State of New York
Department of State
Committee on Open Government**

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OML AO 5670

May 3, 2024

By Electronic Mail Only

The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence.

Dear:

The Committee on Open Government received your request for an advisory opinion regarding your right to attend meetings of a board of education pursuant to the Open Meetings Law (OML). You advised the Committee that you have been notified by the Farmingdale Board of Education (“Board”) that you are prohibited from entering the buildings of and being present on the grounds of the Farmingdale School District through June 30, 2025. You provided our office with a copy of the Board’s notification of exclusion which, upon review, does not include an exception for attending meetings of the Board held on the affected district property.

Section 100 of the OML provides the foundation for public meetings:

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.

Section 103 of the OML requires that all meetings of a public body be open to the public, “except that an executive session of such body may be called and business transacted thereat in accordance with section one hundred five of this article.”

In light of these precepts, under ordinary circumstances, anyone wishing to attend a public meeting, including that of a school district board of education, has a statutory right to do so. Accordingly, while the public is not usually permitted unfettered public access to school property in order to ensure student safety, there are times, such as when a public body hosts an open meeting, when school property (or a portion thereof) is open for public events, meetings, or voting. However, in the context of

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the school property exclusion discussed in the correspondence from the district to you which you shared with us, the statutory right to attend an open meeting may not be absolute. Of note, courts have both upheld and overturned cases in which individuals had been excluded from school district property, heavily dependent upon the facts presented.

The Committee on Open Government is authorized to provide advice, guidance, and opinions regarding the Freedom of Information Law (FOIL) and the OML. Our opinion is therefore limited to the contexts in which the OML governs; in other words, at a meeting of a public body held on school property.

The federal Circuit Court for the Second District, in which New York sits, has held that when a school district restricts the right of an individual to enter school property during public events, the limitations must be crafted to avoid infringing upon individual rights. *See Johnson v. Perry*, 859 F.3d 156, 175 (2d Cir. 2017) (“school may regulate access to its gymnasium when it is being used as a limited public forum only if its restrictions are reasonable and viewpoint-neutral”); *see also Cyr v. Addison Rutland Supervisory Union*, 60 F. Supp. 3d 536, 547 (D. Vt. 2014) (“government may impose content-neutral time, place, and manner restrictions on speech within the designated category for which the forum has been opened so long as those restrictions are ‘narrowly tailored to serve a significant government interest and leave open ample alternative channels of communications’”) (*quoting Make the Rd. by Walking, Inc. v. Turner*, 378 F.3d 133, 142 (2d Cir. 2004)). Courts have distinguished between two types of no trespass letters: those that are categorical and those that are tailored to balance between protecting safety interests with individual rights. Courts tend not to uphold categorical bans but will sustain those tailored to balance safety needs with the individual’s right to free speech or other civic rights. *See Huminski v. Corsones*, 396 F.3d 53, 92-93 (2d Cir. 2004) (speech may be restricted in a “forum which, although not traditionally public, has been designated by the government as a public forum” to the extent that the restriction serves a compelling governmental interest and is narrowly tailored); *Barna v. Bd. of Sch. Directors of the Panther Valley Sch. Dist.*, 143 F. Supp. 3d 205, 216 (M.D. Pa. 2015) (the restriction “was not sufficiently narrowly tailored to serve an important governmental interest and did not leave open ample alternatives for communication”); *Cyr*, 60 F. Supp. 3d at 547 (restrictions on access to limited public forums must be narrowly tailored). When restricting access to a limited public forum, such as board of education meetings, a board’s restrictions must be reasonable and viewpoint-neutral or there must be a “clear and present danger of disruptions such as disorder, riot, obstruction of the event, or immediate threat to public safety.” *Frierson v. Reinisch*, 806 Fed. Appx. 54, 58 (2d Cir. 2020) (*quoting Johnson*, 859 F.3d at 175).

Based on these precedents, our courts have clearly established that an individual’s right to access limited public forums may be restricted without a judicial order depending upon the circumstances and only so long as the restriction is narrowly tailored considering the individual’s other rights. Because this standard is controlled by the specific facts of each circumstance, most appropriately interpreted by the judiciary, and does not directly involve an analysis of the OML, the Committee is not authorized to provide an opinion regarding the whether the Board’s actions are inconsistent with an individual’s statutory rights under the OML.

Thank you for your inquiry.

Sincerely,

s/ Christen L. Smith
Senior Attorney