



## Social Media Guidelines for School Board Members

Many school board members are active users of social media, including online platforms such as Facebook and Twitter, as well as other media such as blogs and personal websites. Social media can be a positive tool for fostering community engagement with the school district. Board members, however, need to operate within appropriate guidelines when they are communicating online about school district business. The following are suggested guidelines for board members using social media in their role as public officials.

***In using social media to communicate about school district business, a school board member should:***

- 1. Clarify that you are communicating as an individual member of the board, and not an official district spokesperson.***

Because the board acts only as “a body corporate,” many school boards have a board operating procedure that appoints the board president as a spokesperson. Other board members are free to speak publicly about school matters, but should clarify that their statements reflect their own views, not necessarily the official position of the board.

- 2. Avoid deliberating school district business with a quorum of the board.***

The requirements of the Texas Open Meetings Act (OMA) are triggered when a board conducts a *meeting*. A *meeting* includes “a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action.” Tex. Gov’t Code § 551.001(4)(A). *See also* Op. Tex. Att’y Gen. No. GA-896 (2011) (concluding that, in some circumstances, a message sent by a board member to an internet-based group whose membership was unknown to the district could constitute a deliberation and a meeting under the OMA). Board members should not use online communications as a vehicle for communicating with each other outside of meetings; in addition to the risk of violating the OMA, such communications undermine good working relationships and the purpose of open meetings.

- 3. Direct complaints or concerns presented online to the appropriate administrator.***

When a community member with a concern approaches a board member, even online, the board member is generally expected to direct the community member to an appropriate administrator. The school board operates as a body corporate, which means no single board member may act alone. Tex. Educ. Code § 11.051. In most situations, a community member’s concern should be handled by an appropriate administrator, not the board. This preserves the chain of command in the school district and keeps the board from having to hear every

community complaint. See TASB Policy BBE(LOCAL). Reviewing evidence in support of a complaint in detail outside of a board proceeding, such as a grievance or personnel hearing, may cause a board member to have to recuse himself when the issue reaches the board because he has lost his capacity to act as a neutral decision maker.

**4. *Avoid posting content that indicates that you have already formed an opinion on pending matters.***

When a grievance, contract appeal, or other dispute is presented to a school board, the dispute is presented with the understanding that the school board will sit as a neutral tribunal to hear and resolve the matter. The concept of *due process* calls for the board to serve as an impartial decision maker. Social media posts by a board member expressing an opinion on pending matters may be considered evidence of bias or prejudgment on the issue. This evidence of bias may be used to exclude the individual board member or call into question the validity of board action. *See, e.g., Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047 (5th Cir. 1997) (overturning a superintendent's termination when the record showed that four members of a nine-member school board had made public statements indicating bias against the superintendent).

**5. *Ask for community input to be provided through appropriate channels, but do not allow your social network to direct your decisions as a trustee.***

Soliciting input from the community may be a valuable function of social media; however, yielding decision making authority on matters of public business to social networks violates local policy, board ethics and, in some instances, the law. The Texas board members' code of ethics states:

- I will base my decisions on fact rather than supposition, opinion, or public favor.
- I will refuse to surrender judgment to any individual or group at the expense of the district as a whole.

TASB Policy BBF(LOCAL). Allowing members of a social network to cast a vote rather than merely provide input to a board member who will make an independent judgment in the best interest of the district is a clear violation of this policy. Such actions also violate the purpose of the OMA, which requires board deliberation to take place in public meetings and any final action, decision, or vote to be made in an open meeting. Tex. Gov't Code § 551.102.

**6. *Post only content that the district has already released to the public.***

A person commits an offense if the person distributes information considered confidential by law. Tex. Gov't Code § 552.352. Tex. Att'y Gen. ORD-490 (1988). Office of the Texas Attorney General, *2016 Public Information Handbook* 58 (2016). In addition, a board member owes a common law fiduciary duty to act primarily in the interest of the district, including protecting its confidential information. Someone harmed by a disclosure could sue a board member for invasion of privacy if the member publicizes information about the person's private life in a way that is highly offensive without a legitimate public concern. In light of the

sensitivity of many school district matters and the risk of inadvertent disclosure of confidential material, a trustee should limit the use of social media to sharing content already released to the public by the school district.

**7. *When attempting to restate what happened at a previous board meeting, clarify that the posting is not an official record of the board meeting and share information only from the open portions of the meeting.***

Nothing in law or policy prohibits a board member from publicly describing the discussion or action that took place during the open portions of a previous board meeting. Remember, however, that the board member code of ethics provides that each board member will respect the majority decision as the decision of the board. See TASB Policy BBF(LOCAL). An individual member's board meeting notes do not carry the weight of an official summary of board discussion or action. Only final board-adopted minutes are the official record of a school board meeting. *See, e.g., Gallien v. Goose Creek Consol. Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 036-R1-0308 (May 2, 2008) (refusing to consider informal summary of board meeting as evidence that board voted to nonrenew an employment contract when official minutes indicated the vote was merely to propose nonrenewal).*

On the other hand, considering how carefully closed meeting records are guarded, board members should avoid creating or sharing separate records of closed meeting proceedings, such as handwritten or electronic notes. To be safe, a board should either prohibit note taking in closed session or seal the notes along with the official certified agenda or audio recording.

A board must keep either a certified agenda or an official audio recording (official record) of each closed meeting, except for a governmental body's private consultation with its attorney as permitted under Texas Government Code section 551.071. Tex. Gov't Code § 551.103(a). The official record provides a method of verifying in court proceedings that the board complied with the requirements of the OMA. Tex. Gov't Code §§ 551.103-.104; Op. Tex. Att'y Gen. No. JM-840 (1988). An official record of a closed meeting is available for public inspection and copying only under a court order. Tex. Gov't Code § 551.104(c); Op. Tex. Att'y Gen. No. JM-995 (1988); Tex. Att'y Gen. ORD-330 (1982). A person who knowingly discloses an official record of a closed meeting to a member of the public, without lawful authority, commits a Class B misdemeanor. Tex. Gov't Code § 551.146. The penalty is a fine not to exceed \$2,000, jail confinement not to exceed 180 days, or both. Tex. Penal Code § 12.22.

**8. *Conduct yourself online in a manner that reflects well on the district; avoid posting information that has not been verified and made public by the district; and never post anonymously about school business.***

If a board member repeats a false rumor, or even a "half-truth" online, the board member's repetition of the unverified information can constitute defamation if the statement tends to harm another person, for instance, by damaging the person's reputation. Defamation in written form, including online posts, is referred to as *libel*. *Robertson v. Southwestern Bell Yellow Pages, Inc.*, 190 S.W.3d 899 (Tex. App.—Dallas 2006). A person may bring a cause of action for libel under Texas Civil Practice and Remedies Code chapter 73.

**9. *Immediately report harassing or defamatory communications to the superintendent if they involve school officials, staff, students, or district business.***

If a community member posts something that is potentially offensive, harassing, or defamatory on a board member's account, the board member will not be held responsible for the inappropriate post unless the board member personally publishes or repeats the content (by "sharing" or "retweeting," for example). Federal law provides districts and district officials some protection from liability for such behavior by third party users. *See, e.g.*, 17 U.S.C. § 512 (Digital Millennium Copyright Act, protecting service providers from liability for copyright infringement by users); 47 U.S.C. § 230 (Communications Decency Act of 1996, protecting service providers or users from being treated as a speaker or publisher of information provided by another information content provider). These federal protections are in addition to state law immunities that protect school officials from claims like defamation. Tex. Civ. Prac. & Rem. Code § 101.051. As long as school officials act in good faith and in accordance with appropriate policies, they will have immunity from claims that third-party content posted on their site was harmful. A board member who has offensive, harassing, or defamatory content about the school district, school personnel, or a district student posted to his or her account should first print the screen to document the matter, then work with the district and/or the online platform to remove the content promptly.

**10. *Retain electronic records—including your own posts and content others post to your account—when required to do so by the district's records retention policy.***

School district records must be retained according to the district's records retention schedule. See TASB Policy CPC. Board members are required to retain electronic records, whether created or maintained using the district's technology resources or using personal technology resources, in accordance with the district's record management program. See TASB Policy BBI. No attorney general opinion or court case gives board members clear guidance in determining whether their individual online social media posts are school district records subject to retention. Key considerations include: (1) whether the posts were made using school district equipment or cellular or Internet service; and/or (2) whether the posts were used in the transaction of official business. If so, then social media posts should be preserved as school district records. Online posts are not a separate category of records for retention; instead, posts must be archived according to their content. Generally speaking, posts about school district business need to be retained if the content goes beyond simply sharing existing district content (like a link to the district website) or routine correspondence (such as a reminder of the date, time, and location of the next board meeting). Perhaps the easiest way to preserve social media posts is to print the screen and send the posts to the administration for retention.

**11. *Immediately report to the district any potential security breach if you lose control or possession of a district-issued or personal electronic device on which confidential district records could be accessed.***

Board members need to safeguard school district records, including the records they access online or on personal electronic devices. If a school district discovers or receives notification of a breach of a system security, the Texas Business and Commerce Code requires the district to

notify anyone whose sensitive personal information was, or is reasonably suspected to have been, accessed. A district that follows its own notification procedures included as part of an information security policy that complies with the timing requirements in state law will be considered to have complied with the statutory requirements. Tex. Bus. & Com. Code § 521.053(g). See TASB Policy CQ.

In addition, after a board member's time on the school board concludes, so does the former board member's right of access to confidential records. Such records should be deleted, destroyed, or returned to the district, as appropriate.

**12. *Comply with the district's acceptable use policy when using district-issued devices or technology resources, including district Internet access on a personal device.***

To the extent a school board member is using school district technology, including school district electronic communications systems or equipment, the board member's use of technology will be subject to the district's acceptable use policies. These restrictions will include monitoring and filtering as required by federal law. See TASB Policy BBI(LOCAL).

*A version of this article was first published in the February/March 2014 edition of the Texas Lone Star magazine.*

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.*

*Updated January 2017*