



Social Media Guidelines for Community College Board Members¹

Many community college board members are active users of social media, including Facebook, Twitter, and other online platforms, as well as blogs, personal websites, and other media. Social media can be a positive tool for fostering community engagement with the community college. Board members, however, need to operate within appropriate guidelines when they are communicating online about college 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 college business, a college board member should:

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

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

- 2. Avoid deliberating college 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 the board, or between a quorum of the board and another person, during which the board discusses or considers public business or policy under its supervision or control, or during which the board takes formal action. Tex. Gov't Code § 551.001(4)(A). *See also* Tex. Att'y Gen. Op. 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 a district could constitute a deliberation and a meeting under the OMA). Unless the board has created an online message board in accordance with Texas Government Code section 551.006, 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.

¹ An electronic version of this document is available on [TASB College eLaw](http://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-social-media-guidelines-for-community-college-bd-mems.pdf) at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-social-media-guidelines-for-community-college-bd-mems.pdf.

3. Direct college 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 board operates as a body corporate, which means no single board member may act alone. Tex. Educ. Code §§ 130.082(d), .084. In most situations, a community member's concern should be handled by an appropriate administrator, not the board. This preserves the chain of command at the community college and maintains the board member's neutrality on matters that may come before the board. 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 or herself when the issue reaches the board because the member has lost the 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 community college board, the dispute is presented with the understanding that the 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 prejudice 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.

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 board members' statement of ethics states:

I shall base my personal decisions upon all available facts in each situation; vote my honest conviction in every case, unswayed by partisan bias of any kind; and abide by and uphold the final majority decisions of the Board.

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 college 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 community college 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); Tex. Att'y General, *2020 Public Information Handbook* (2020). In addition, a board member owes a common law fiduciary duty to act primarily in the interest of the college, 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 college 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 college.

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. An individual member's board meeting notes do not carry the weight of an official summary of board discussion or action. Final board-adopted minutes are the official record of a board meeting.

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. The official record provides a method of verifying in court proceedings that the board complied with the OMA requirements. An official

record of a closed meeting is available for public inspection and copying only under a court order. 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. The penalty is a fine not to exceed \$2,000, jail confinement not to exceed 180 days, or both. Tex. Gov't Code §§ 551.103, .104, .146; Tex. Att'y Gen. Op. Nos. JM-840 (1988), JM-995 (1988); Tex. Att'y Gen. ORD-330 (1982); Tex. Penal Code § 12.22.

8. Conduct yourself online in a manner that reflects well on the community college.

Board members should exercise caution in their online conduct not only to ensure a positive representation of the community college, but also to avoid potential claims of defamation. 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). 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. 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 community college president or chancellor if they involve college officials, staff, students, or college 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 (e.g., by “sharing” or “retweeting.”). Federal law provides colleges and college 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 college officials from claims like defamation. Tex. Civ. Prac. & Rem. Code § 101.051 (excluding community colleges from liability under the Texas Tort Claims Act except as to motor vehicles). As long as college 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 college, college personnel, or a college student posted to his or her account should first print the screen to document the matter, then work with the college 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 community college's records retention policy.

Community college records must be retained according to the college's records retention schedule. Board members are required to retain electronic records, whether created or maintained using the college's technology resources or using personal technology resources, in accordance with the college's record management program. See TASB Policy CIA. No attorney general opinion or court case gives board members clear guidance in determining whether their individual online social media posts are college records subject to retention.

Local government records are communications created or received by a local government pursuant to law or in the transaction of public business. Communications include, documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic mediums, or other information recording mediums, regardless of physical form or characteristic or whether the public has access to it. Tex. Loc. Gov't Code 201.003(8).

Communications that are local government records must be preserved in accordance with the Local Government Records Act and the community college's records retention schedule.

Local government records must be retained for the appropriate retention period, which is determined based on the content of the records. Extra identical copies of documents created only for convenience by officers or employees of the local government are not records that must be maintained. Tex. Loc. Gov't Code 201.003(8)(A). Duplicates need not be retained as long as an official copy of the record is maintained at the community college.

Key considerations when determining whether online communications are local government records include: (1) whether the posts were made using college 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 college 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 college business need to be retained if the

content goes beyond simply sharing existing college content (e.g., a link to the college 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 community college administration any potential security breach if you lose control or possession of a college-issued or personal electronic device on which confidential college records could be accessed.

Board members need to safeguard community college records, including the records they access online or on personal electronic devices. If a college discovers or receives notification of a breach of a system security, the Texas Business and Commerce Code requires the college to notify anyone whose sensitive personal information was, or is reasonably suspected to have been, accessed. A college 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 CS.

In addition, after a board member's time on the 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 college, in accordance with college procedures.

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

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

Where can I get more information about board member social media use?

If you have questions about these or other legal issues, college representatives may contact TASB Community College Services at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics,
visit TASB Community College eLaw online at colleges.tasb.org/elaw.

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 college's own attorney in order to apply these legal principles to specific fact situations.

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