



Texas Association of School Boards

Legal Services

P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • legal.tasb.org • legal@tasb.org

Serving Texas Schools Since 1949

Social Media Guidelines for School Board Members

Published online in [TASB School Law eSource](#)

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.**

Like all citizens, individual board members may voice their opinions about matters of public concern, whether that occurs in a formal letter to the editor or an informal social media post. The federal Fifth Circuit Court of Appeals with jurisdiction over Texas emphasizes that “[t]he role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance.” *Wilson v. Houston Comm. Coll. System*, No. 19-20237, 2020 WL 1682780 (5th Cir. Apr. 7, 2020) (quoting *Rangra v. Brown*, 566 F.3d 515, 524 (5th Cir.), *dismissed en banc*, 584 F.3d 206 (5th Cir. 2009)).

In fact, “The First Amendment’s protection of elected officials’ speech is full, robust, and analogous to that afforded citizens in general.” *Rangra v. Brown*, 566 F.3d at 518. However, 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). A *deliberation* includes both verbal and written exchanges, and a public official may not engage in a series of communications outside of a meeting with the knowledge that a deliberation involving a quorum would occur. Tex. Gov’t Code §§ 551.001(2), .143. Thus, 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. Outside of a properly called meeting, the only legal method for board members to communicate with each other as a quorum about school business is to create an official online message board in accordance with Texas Government Code section 551.006. The message board must be an official message board owned or controlled by the board, where only the board and designated staff may post, and no voting or formal actions are taken. Tex. Gov’t Code § 551.006. This OMA exception for an online message board, however, does not extend to social media platforms, such as Twitter or Facebook.

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 should direct the community member to an appropriate administrator. As previously noted, no single board member may act alone to commit the entire board. Tex. Educ. Code § 11.051(a-1). In most situations, a community member’s concern should be handled by an appropriate administrator, not the board or an individual board member. This preserves the chain of command in the school district and keeps the board from having to hear every complaint. See TASB Policy BBE(LOCAL). Furthermore, reviewing evidence in support of a complaint in detail outside of a board proceeding, such as a grievance or personnel hearing, may require a board member to seek recusal when the issue reaches the board due to an inability to serve as a neutral decision maker.

4. Avoid posting content indicating you have already formed an opinion before a due process hearing.

As stated, public officials have a free speech right to share opinions about matters of concern. When the school board is acting as a policymaking body, much of what the board considers are matters of public concern. In some instances, however, board members act in the role of a judge or tribunal by hearing appeals of contested cases. Examples include grievances, employee contract appeals, and other contested matters, many of which require due process of law. The concept of *due process* calls for the board to serve as an impartial decision maker, which means board members should come to the hearing with an open mind.

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. *See, e.g., Valley v. Rapides Par. 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 by polling or surveying "friends" or "connections" may be an enticing 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. Moreover, such written exchanges likely also create public records that require retention and are subject to disclosure under the Texas Public Information Act (PIA), adding additional administrative burden on the district.

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. *See also* Tex. Att'y Gen. ORD-495 (1988) (certified agendas and recordings of closed sessions are confidential by law); Office of the Tex. Att'y Gen., [Public Information Handbook 2020](#), 69. 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). Furthermore, 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 Tex. Gov't Code § 551.021(a)-(b) (requiring meeting minutes and minutes content). See TASB Policy BE(LOCAL). See also, 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). As a practical matter, posting personal meeting notes or summaries online about open meeting discussions may create additional documentation that can lead to unforeseeable or unintended consequences, such as contradictory, inconsistent, or confusing information. A better practice is to point readers to the district's official website or officially posted minutes and recordings online, if they are posted online, or refer readers to contact the district's administration to request official minutes and recordings.

The OMA also does not provide for criminal sanctions if a person present in a closed meeting reveals the substance of closed meeting deliberations. Tex. Att'y Gen. Op. No. JM-1071 (1989). However, a board member who reveals closed meeting deliberations is breaching his or her obligation to the rest of the board. Revealing deliberations undermines the purpose of conducting closed sessions and may violate the board's own code of ethics. See TASB Policy BBF(LOCAL). In addition, a board member may owe a common law fiduciary duty to act primarily in the interest of the district, including protecting its confidential information and competitive advantages. Perhaps worse, if a board member intentionally uses confidential information obtained by means of his or her official office for personal gain, the member may be subject to allegations of misuse of official information, which is a crime. Tex. Penal Code § 39.06. 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.

Except for a private consultation with its attorney as permitted under Texas Government Code section 551.071, a board must keep either a certified agenda or an official audio recording (official record) of each closed meeting. 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; Tex. Att'y Gen. Op. No. JM-0840 (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); Tex. Att'y Gen. Op. No. JM-0995 (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.

Members are well-advised to consult an attorney before revealing any closed session information that has not already been made public.

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 or repeat rumors.

Even a well-meaning board member who stumbles across and repeats false information about another person can be subject to a defamation claim. Depending on the matter at hand, conducting school board matters on social media may breach confidentiality, violate individuals' privacy rights, or expose the board member to personal liability for defamation. Some statutes or duties may limit what a member of the governmental body may say publicly. School board members do not have immunity or free speech protection for words that breach a duty of confidentiality or defame another person. 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* is defined by the common law as a false statement about another person that is shared with a third party without a legal excuse and that damages the other person's reputation or exposes the person to public hatred, contempt, ridicule, or financial injury. *Fiber Sys. Int'l., Inc. v. Roehrs*, 470 F.3d 1150 (5th Cir. 2006); *Einhorn v. LaChance*, 823 S.W.2d 405 (Tex. App.—Houston [1st Dist.] 1992). 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. In addition, someone harmed by a disclosure could sue a board member for invasion of privacy if the member publicizes information about the complainant's private life in a way that is highly offensive without a legitimate public concern.

9. Immediately report suspected illegal activities and harassing or defamatory communications that involve school officials, staff, students, or district business to the superintendent.

If a person posts something that is potentially offensive, harassing, or defamatory on a board member's official district (rather than personal) 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 and districts from claims like defamation by third parties. 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.

More nefarious activities online, such as spoofing, pharming, and catfishing, should be reported to the district and, as necessary, to law enforcement. *Spoofing* describes impersonating another person online without consent, including making an email appear to come from someone who is not the actual sender. *Phishing or spear-phishing* generally refers to the use of deceptive communications by bad actors attempting to gain personal or confidential information from the recipient. Redirecting a website’s traffic to another fake website in order to collect personal information is called *pharming*. And *catfishing* is used to describe the act of luring someone into a false relationship by using a fake online persona. All such activities can be used for the purpose of online harassment and online impersonation, which are activities considered illegal in Texas if they are done for the purpose of harming, defrauding, or intimidating another person. Tex. Penal Code §§ 33.07(a)-(c), 42.07.

10. Realize that by using a personal account to conduct official school district business, your account may become a public forum under the First Amendment.

Board members have long used personalized websites, online blogs, and social media platforms to promote their positions on policy, inform their electorate, and communicate accomplishments while in office. Even though online tools are viable communication channels, legal risks remain high when allowing interactive features that invite public discourse. Active litigation is just beginning to unravel complex legal issues involving the First Amendment’s application to interactions amongst governmental bodies and individual officials with members of the public.

For instance, the Fourth Circuit court found that an individual county board member’s Facebook page qualified as a public forum because the member intended to open the public comment portion of the page for public discourse, invited the public to interact on the interactive component of the page, and the public did in fact exchange their views on that page. As a result, when the official deleted comments believed to be slanderous and banned the user from further engagement, the court found the board member violated the First Amendment, which protects private speech in a public forum.

In deciding whether the board member was acting as a private citizen or a government official, the court looked at how closely connected the individual member's actions were with government action and whether the member's status as a public official allowed opportunities for communication that private citizens did not have. In this case, the facts led the court to conclude the individual member's actions constituted official government action and refused to provide qualified immunity. *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019). See also *Garnier v. Poway Unified Sch. Dist.*, No. 17-CV-2215-W(JLB), 2019 WL 4736208 (S.D. Cal., Sept. 26, 2019) (finding that two school board members acted under the color of law when blocking users from their Facebook pages because the pages were swathed in the trappings of their office, used as tools of governance, linked to events arising out of their official status as school board members, went beyond policy preferences or information about their campaigns for reelection, and could not have been used the way they were used but for the members' positions on the school board); *Faison v. Jones*, No. No. 2:19-cv-00182-TLN-KJN, 2020 WL 869122 (E.D. Cal., Feb. 19, 2020) (approving preliminary injunction against a sheriff's deletion of negative comments and banning users from his Facebook page).

In another case, the Second Circuit court examined the U.S. President's use of a once-private Twitter account after taking office. Like the Fourth Circuit, the Second Circuit found that temporary control by the government of a personal account can still be government control for First Amendment purposes. In deciding that the President was a government actor in blocking users from interacting with the account, the court considered the official uses by the President (announcing official decisions in the performance of official duties), public presentations (bearing all the trappings of an official, state-run account), and control (managed almost exclusively by the President). Because the once-private account is now used in all manners for official purposes as a public tool of governance and executive outreach, on which public reactions were solicited by the President and creating a public forum, the court concluded the President may not censor selected users because of disagreeable views. Notably, the court pointed out that the President is only one of thousands of recipients of the message that the blocked user may reach, and while the President is not required to listen to speech that is disagreeable, the President as a government actor may not inhibit the ability of the speaker to converse on a public forum with others who may be speaking to or about the President. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226 (2nd Cir. 2019), reh'g denied (Mar. 23, 2020).

A bit closer to home, in the Fifth Circuit, the court considered a case in which a governmental body deleted certain comments and blocked certain users on its Facebook page. The Hunt County Sheriff's Office (HCSO) created a page it represented as the HCSO's official page, welcomed input and "positive" comments and, while claiming the page was not a public forum, nonetheless invited submission of comments about matters of public interest. One post included, among other statements, the following: "ANY post filled with foul language, hate speech of all types and comments that are considered

inappropriate will be removed and user banned.” The HCSO enforced this statement by deleting certain comments of users and blocking certain users from making comments. The court found that the HCSO’s statement constituted an explicit policy that discriminated against users based on viewpoint. The court found that the HCSO willingly and knowingly created and configured a page to be open to the public and allowed page visitors to interact openly with the page, its content, and fellow page visitors. More importantly, the court rejected an argument that the HCSO’s removal of content was to comply with Facebook’s policies, warning that private policies like Facebook policies could not authorize a state actor to engage in conduct that violates the Constitution. *Robinson v. Hunt County, Tex.*, 921 F.3d 440 (5th Cir. 2019), reh’g denied (May 16, 2019). In fact, the *Davison* court suggested that government officials finding content that may violate Facebook’s or Twitter’s terms of service should report the content to Facebook and Twitter rather than removing the content themselves.

Considering the flurry of litigation in this area, individual board members should work with school attorneys to determine reasonable, viewpoint-neutral guidelines for creating official social media pages and communicating school business online.

Typical school district policies regarding distribution of non-school literature contain restrictions on content that may be instructive in the online context. Local policies often prohibit the distribution of materials that:

- Are obscene or vulgar;
- Endorse actions endangering the health or safety of others;
- Promote illegal use of drugs, alcohol, or other controlled substances;
- Violate the intellectual property rights, privacy rights, or other rights of another person;
- Contain defamatory statements;
- Advocate imminent lawless or disruptive action and are likely to incite or produce such action;
- Contain hate speech or scurrilously attack ethnic, religious, or racial groups or contain content aimed at creating hostility and violence; or
- Would result in material and substantial interference with school activities or the rights of others. See TASB Policies FNA and GKDA.

School officials should not delete others’ comments or block users from an interactive online forum without advice from a school attorney. Posts that simply criticize the district or district officials should generally be allowed to stand. Posts should not be removed just because the opinions expressed are unfavorable to the district. 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 may want to print the screen to preserve documentation of the matter, then work with the district and school attorneys to remove the content in compliance with applicable law.

11. 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 schedule.

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(LOCAL). 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.

Based on the definitions of *local government record* and *public information* respectively under the Local Government Records Act (LGRA) and the PIA, which govern preservation of district information for public access and for archival purposes, content generated by a board member on social media may: (1) not create a school record; (2) create a school record that is not required to be retained; or (3) create a school record that requires retention.

According to the Texas State Library and Archives Commission (TSLAC), the state agency charged with assisting local governmental entities with records management, key issues to consider when determining whether an online posting is a school district *record* required to be retained include:

- Whether or not the post was made using school district equipment or cellular or Internet service;
- Whether or not the post was used in the transaction of official business or provided evidence of important official action;
- Whether or not the online post is a unique record that does not exist elsewhere in a different record or format; and
- Whether or not it fits into the school district’s definition of a social media record, if such a record title has been locally created by the school district.

Megan Carey, Texas State Library and Archives Commission, [FAQ: When is Social Media a Record?](#) (Mar. 17, 2016).

If the content of the online post creates a school district record as characterized above, then it must be retained according to the records retention schedule. In other words, online posts are not a separate category of records for retention; instead, posts must be archived according to their content. Generally speaking, thus, 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 repeating information that originates from the district (such as a reminder of the date, time, and location of the next board meeting).

12. Comply with the district’s acceptable use policy when using district-issued devices or technology resources and immediately report to the district any potential security breach if you lose control or possession of confidential district records.

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 and may include district-required security controls. See TASB Policies BBI(LOCAL), CQ(LOCAL), and CQB(LOCAL).

Board members must also safeguard school district records, including confidential records they receive or access online or on personal electronic devices. If a school district discovers or receives notification of a breach of a system security, mandatory reporting and notifications will be required. For more information about cybersecurity and about breach notification requirements, see TASB Legal Services’ eSource for [Technology](#).

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. To avoid allegations about misuse of confidential information, current and former board members should comply with district procedures for returning, deleting, or destroying duplicate copies of confidential information and for transferring original records sent or received by the member. For more information about handling records related to school business, see TASB Legal Services’ eSource at [Records Management](#).

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-essource/governance/documents/social_media_guidelines_bd_mem.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations. Updated November 2020