A Digital Life: FAQs about Trustees and Technology
TASB Legal Services

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Technology can facilitate a board member’s work with the school district, increase transparency, and support community involvement. However, a board member’s role as an elected official can add limitations or legal obligations on technology use. This article provides a brief overview of common legal issues that impact a board member’s technology use to help members take advantage of benefits while minimizing the drawbacks.

Technology Issued to Board Members and Personal Device Security

1. Can a district issue laptops, cell phones, other technological devices, district email accounts, or other district communication accounts to board members?

   Yes. Generally, district funds may be used for purposes deemed necessary in the conduct of school schools. Tex. Educ. Code § 45.105. A district may choose to issue to board members, or otherwise provide them access to, any number of technological resources so that board members can review documents or conduct other district business. If the district chooses to do so, the board should adopt a policy addressing board member use of technology. TASB provides recommended policy language at TASB Model Policy BBI(LOCAL).

   Board members should also sign an acceptable use agreement. The TASB Policy Services’ Regulations Resource Manual provides a model acceptable use agreement at Policy CQ(EXHIBIT). The TASB model addresses several concerns:
• security and safety, such as password protection and appropriate conduct while using technology resources;
• reporting requirements when protected district data may be compromised;
• violation intellectual property rights, such as trademarks and copyrights, as detailed in TASB Policy CY(LEGAL) and Model Policy (LOCAL); and
• nondisclosure of confidential information, including student records protected by the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g.

2. **Can a board member use district-issued technology for personal reasons?**

   Only to the extent authorized by board policy. The Texas Constitution generally prohibits the expenditure of public funds for private purposes. Tex. Const. art. III, § 52(a). However, the Texas Supreme Court provides a three-part test for determining when an expenditure of public funds is permissible. A school board may approve a public expenditure that satisfies this three-part test: (1) an expenditure’s predominant purpose must accomplish a public purpose of the district, not to benefit private parties; (2) the district retains sufficient control over the expenditure to ensure that the public purpose is accomplished; and (3) the district receives a return benefit. See Tex. Att’y Gen. Op. No. KP-0204 (citing three-part test established by *Tex. Mun. League Intergov’tl Risk Pool*, 74 S.W.3d 377, approving district’s use of school funds to participate in school scholarship program).

   TASB Model Policy BBI(LOCAL) permits limited personal use of district resources. Such use must not impose a tangible cost on the district or unduly burden district technology resources.

3. **Can a board member be held responsible for the theft, loss, or damage of a district-issued technology device?**

   In theory, yes. State law prohibits a district from requiring a student or employee to reimburse the district for the theft, loss, or damage of a district-issued device in most circumstances. No similar law addresses reimbursement by a board member. The board may adopt a policy or operating procedures requiring reimbursement from board members. TASB’s model policy BBI concerning technology use is silent and allows boards to create a policy in consultation with its school attorney as desired.

4. **May a board member use personal devices to conduct school business?**

   Yes. There are no legal prohibitions against using personal property to engage in school business. However, for various reasons described in this article, there are some practical disadvantages to conducting official school business and personal business using the same devices and accounts.
5. **Should a board member using a personal device or online account for school business be worried about security of data on that device?**

Yes. Confidential district data stored or transmitted on personal mobile devices and personal online accounts increases legal risks. The more copies of confidential information that exist, and in more locations, the higher the risks for inadvertent or malicious breach and unauthorized disclosure of that data. Electronic data must be protected just as diligently as records stored in physical district offices. Unsecured devices should not be left sitting out around the home, office, or in public. At minimum, robust password protection should be used on all mobile devices that transmit school data. If a breach of sensitive personal data is suspected, officials should immediately make a report to the school district. Breach reporting and notification may be required to avoid costly consequences. See, e.g., Tex. Bus. and Comm. Code ch. 521 (unauthorized use of identifying information); Tex. Educ. Code § 11.175 (school district breach of system security notification).

For more information about school cybersecurity and breach notification requirements, see TASB Legal Services’ eSource page at Technology.

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**Electronic Communications among Board Members**

1. **Could electronic messages among board members outside of board meetings violate the Open Meetings Act?**

Yes. The Texas Open Meetings Act (OMA), Chapter 551 of the Texas Government Code, requires meetings of governmental bodies, including school boards, to be held only after advance notice and to be open to the public except for expressly authorized closed sessions. Tex. Gov’t Code §§ 551.001(3)(E), .002, .041. The term *meeting* is specifically defined by the OMA. See Tex. Gov’t Code §§ 551.001(4) (defining *meeting*), .001(2) (defining *deliberation*). Because a *meeting* of the board can involve either a verbal or a written exchange, electronic communications by board members presents a risk of violating the OMA, even if violation is unintentional.

For more information about the OMA, see TASB Legal Services’ eSource page at Board Meetings (Basic Principles) and Roles and Responsibilities (Individual Board Members).
2. **May a board member send electronic communications to one other member of the board about school business outside of properly posted open meetings?**

Yes. However, board members must not knowingly engage in a communication among a series of communications that each occur outside of a properly posted open meeting, that concern an issue within the jurisdiction of the school district, if the members engaging in the individual communications are fewer than a quorum but the total number of members engaging in the series of communications constitute a quorum. In particular, a board member who knows at the time of a communication that the series of communications would eventually involve a deliberation by a quorum must not proceed, as the communication would likely violate the OMA. Tex. Gov’t Code § 551.143(a).

3. **May a board member send a message to the rest of the board if no one replies?**

No. Both a court and the attorney general have defined *deliberation* to include a one-way communication spoken by one member of a governmental body and heard by the rest of a quorum. See, e.g., Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners’ Ass’n, 2 S.W.3d 459 (Tex. App.—San Antonio 1999, pet. denied) and Tex. Att’y Gen. Op. No. JC-0203 (2000) (both holding that a governmental body failed to comply with the OMA when a quorum of the body was present at a public meeting of another entity and one member of governmental body discussed public business in front of the rest of the quorum). In other words, if a quorum of a school board is together and one member of the quorum talks about school business, a meeting has occurred, even if none of the other trustees respond. A back-and-forth discussion is not required for a *deliberation* under the OMA.

4. **Does the board president have a special exception to communicate with the rest of the board?**

No. Although the board may authorize the board president to handle additional administrative tasks or perform other duties, the board president is subject to the OMA to the same extent as other individual board members. Tex. Educ. Code § 11.051(a-1). Furthermore, the board may not authorize any individual board member to act in violation of law or adopt policies that conflict with applicable law. See BF(LOCAL).

5. **How can board members keep the rest of the board informed between meetings?**

Understandably, board members may get frustrated when the OMA interferes with their good faith efforts to keep each other in the loop. Members should keep in mind that the OMA carries both civil and criminal penalties. Additionally, the attorney general has opined that the commissioner of education may penalize boards for violating the Texas Education Code provision requiring school boards to make open meetings records
available to the public. Tex. Att’y Gen. Op. No. KP-0254 (2019); see also Tex. Educ. Code § 11.0621 (requiring the minutes or tape recording of an open meeting to be accessible to the public in accordance with the OMA). When a board member wants to share information, the best practice is to request an agenda item for an upcoming board meeting or to submit the information to the superintendent, who may then share the information as part of routine administrative updates.

6. **May board members use electronic communications to communicate privately to each other during a board meeting?**

While the law does not address this specifically, using electronic communications to communicate during a board meeting is strongly discouraged. More than one school board has experienced great embarrassment after members’ private messages about other board members or members of the public were revealed through PIA requests. Private exchanges that are totally unrelated to school business would not be subject to the PIA. Tex. Att’y Gen. ORD-635 (1995). However, the public has a right to make a request for the information. Often the only way for a board member to prove the messages were not relevant to school business is to reveal the personal communications. In addition, board members should avoid the perception that they are attempting to conduct official business in secret. Private messages between board members during a meeting on a topic required to be discussed in an open meeting could violate the OMA. Many boards are adopting a board operating procedure to implement “no cell phone” rules during board meetings, with exceptions only for emergencies. Emergency calls and texts can also be directed to a staff member, if one is available.

### Electronic Communications between the Board and Administration

1. **Can the superintendent or designated staff send electronic communications to board members?**

   The superintendent and other district staff are not members of a governmental body and are not technically subject to the OMA. Thus, the superintendent and other district staff may use electronic communications to communicate with the board, even the whole board at one time, about school business. However, superintendents and others who are not on the board should exercise caution not to facilitate an open meetings violation on the part of board members—for example, by sending a group text or email to board members who can then “reply to all” other members. Superintendents and other district staff should also avoid serving as a messenger of opinions between board members or forwarding communications from one member to another.
The attorney general has concluded that even someone who is not on the board can be charged with violating the OMA and, conversely, that a board member could violate the OMA by using third persons as intermediaries to hold an illegal closed meeting or to meet in numbers less than a quorum. Any person can be charged with a criminal violation of the OMA under the Texas Penal Code if the person acts with intent to aid or assist a board member who knowingly acts to violate the OMA. Tex. Penal Code § 7.02; Tex. Att’y Gen. Op. No. JC-0307 (2000).

2. **Can the superintendent talk to or text with individual board members outside of board meetings?**

Yes. The superintendent is not a member of the board, and the superintendent may talk to (or exchange electronic messages) with individual board members outside of meetings. That said, the superintendent should not serve as a go-between, sharing one board member’s views with another. A superintendent who facilitates indirect communications among a quorum of the board outside of a board meeting may commit a criminal violation of the OMA.

**Electronic Records and the Public Information Act**

When board members create information in the transaction of school business in their official capacities, they are creating information that may be subject to preservation and possible public access under the Texas Public Information Act (PIA). For more information about the PIA, see TASB Legal Services’ eSource page at Public Information.

1. **Is every personal notation by a board member about school business, even those stored electronically, subject to public disclosure?**

Yes. Personal notes created in a board member’s official capacity about school business are included in the broad statutory definition of *public information* and are subject to the PIA if in existence at the time of a PIA request. Tex. Gov’t Code § 552.002. See, e.g., Tex. Att’y Gen. ORD-635 (1995) (personal entries on public official’s calendar may be subject to PIA), ORD-626 (1994) (handwritten notes taken during oral interview were subject to PIA), ORD-450 (1986) (handwritten notes taken by appraiser while observing teacher’s classroom performance were subject to PIA).
2. **Are personal exchanges unrelated to the transaction of official district business required to be disclosed to the public under the PIA?**

No. Information of a personal nature not created or received in the transaction of school business is not subject to disclosure under the PIA. This is true even when an email is written on a district account or equipment. For example, one school district received a request for all emails sent or received by a school employee on the employee’s work computer. The attorney general allowed the district to withhold the requested information because its content was personal in nature and had no connection with the transaction of school business. The attorney general looked to the following factors to determine whether the material was personal in nature: (1) who prepared the document, (2) the nature of its contents, (3) its purpose or use, (4) who possessed it, (5) who had access to it, (6) whether the district required its preparation, and (7) whether it was necessary to or in the furtherance of school business. See Tex. Att’y Gen. OR2000-4848 (2000) (citing In re Grand Jury Proceedings, 55 F.3d 1012 (5th Cir. 1995)). Additionally, the attorney general will consider whether personal social media pages and accounts of public officials are solely managed by officials as private citizens, not created in connection with the transaction of official business, and not created by, transmitted to, receive by, or maintained by officials in their official capacities. Board members should keep personal life and school business as separate as possible by consistently using separate email accounts for business, school, and private correspondence.

3. **Does a board member’s intent for personal notes to be private or used for personal purposes protect it from public disclosure?**

No, not if the notes pertain to transactions of school business made in an official capacity. A board member’s intent for notes to be private is not determinative of whether it is subject to the PIA. See Tex. Att’y Gen. ORD-626 (1994) (state agency promotion board member’s notes taken during an interview are subject to the PIA because they were created in transacting the official business of evaluating applicants for employment even though it was within the members discretion whether to keep notes that were not required). However, personal notes do not constitute official district records that must be retained beyond the district’s records retention schedule. Therefore, if there is no pending request under the PIA for the personal notes or other legal reason preventing the destruction of the notes, then personal notes may be destroyed in accordance with law. Board members should consult their school district’s attorney prior to destroying any information created or received in their official capacities that is related to school business.
4. Is social media content subject to public disclosure?

Yes, depending on the content. Content on social media and other electronic websites or platforms is simply a form of information, and the nature of the content will determine whether it is subject to the PIA. The PIA encompasses information that the district does not physical possess, including when information is located on social media accounts or other cloud-based applications. As long as the information or content in or on the electronic accounts meet the definition of public information, then the PIA requirements will apply. Tex. Gov’t Code § 552.002(a), (a-1). For suggested guidelines for members using social media in their role as public officials, see TASB Legal Services’ Social Media Guidelines for School Board Members.

Retaining Electronic Records

When board members create information in connection with school business, they are creating government records that may be subject to a legally required retention time period under the Texas Local Government Records Act (LGRA) before the records may be legally destroyed.

1. What is considered a record that requires retention?

Whether electronic or in other tangible forms, any school district record that meets the definition of a local government record is a record that requires retention by law. Local government record generally means any information recording medium created or received by a local government or any of its officers or employees pursuant to law or in the transaction of public business, regardless of physical form or characteristic and regardless of whether public access to it is legally open or restricted. Tex. Loc. Gov’t Code § 201.003(8).

2. Is it necessary to retain duplicate copies, transmittal communications, or personal notes created for personal convenience?

No, extra identical copies of documents or personal notes created only for convenience by board members or district employees are not records that must be retained. Tex. Loc. Gov’t Code § 201.003(8)(A). Absent any pending legal holds or information requests, duplicates and convenience copies need not be retained as long as an official copy of a record is maintained somewhere within the district.

As a practical matter, board members who receive electronic communications from citizens about school business on their personal devices or accounts should transfer the communication record to the appropriate district administrator for safekeeping. Once
the records are safely in the hands of the district’s custodian of records, the individual member may delete the duplicate copy. Otherwise, board members who do not transfer or surrender district records and information subject to the PIA must then preserve the information and records as required by law. Tex. Gov’t Code § 552.004.

3. **Why is it important to not delete information or non-records once a request has been made for them?**

If a document is retained, even though it was not required or could have been destroyed, or a record is retained past the legally required time period under the district’s records control schedule, the record will be subject to a public information request unless a PIA exception applies. Willful destruction, mutilation, impermissible removal, or alteration of information subject to the PIA is a crime. Tex. Gov’t Code §552.351. Willful destruction of a local government record is also a crime. Tex. Loc. Gov’t Code § 202.008. Records involved in litigation should not be deleted or destroyed without seeking advice from legal counsel.

For more frequently asked questions and answers about school district records management, see TASB Legal Services’ eSource page at [Records Management](#).

### Protection of Confidential Digital Records

1. **What happens if a school board member forwards a confidential district record to a member of the public or posts the record online?**

The PIA provides that once a governmental body releases non-confidential information to one member of the public, then the governmental body must release the information to all members of the public who request it. Tex. Gov’t Code § 552.007. Also, 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). Releasing confidential information protected by other laws may also risk additional penalties.

2. **How will board members know which electronic communications are confidential and which may be disclosed to the public?**

If records are not clearly labeled “confidential,” but have not been released publicly by the district administration, a board member should consult the superintendent or school attorney for specific guidance before making a public disclosure of district records.
Depending on its content, many district records are made expressly confidential by law. Various federal and state laws protect information such as a third party’s proprietary information, medical or mental health data, sensitive security or safety information, personally identifiable information, and more. For example, the Family Educational Rights and Privacy Act (FERPA) creates a legal presumption for confidentiality of a student’s education records unless there is a legal exception. 20 U.S.C. § 1232g; 34 C.F.R. § 99.

3. **What right of access do former board members have to confidential district records?**

None. Former board members have no further authority to retain or access confidential district records. After leaving the board, former members may not review records of closed meetings, even those from the meetings they attended. Tex. Att’y Gen. Op. No. JC-0120 (1999). Board members who resign or otherwise exit from the school board should be reminded, in writing, of the need to: first (1) return any records, written or electronic, to the district if there is reason to believe that the member holds the sole copy of a record subject to records retention requirements; and then (2) to destroy (i.e., delete or shred) any duplicative or convenience copies of confidential records or information remaining in the member’s possession. Requests from former board members should generally be treated like a public information request unless the member has a special right of access under law.

For more information about a current board member’s access to district information, see TASB Policy BBE(LEGAL) and TASB Legal Services’ [Board Member Access to School District Records](#).

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**Cyber-harassment of School Officials and other Prohibited Conduct**

1. **Is it a crime to electronically harass someone or engage in online harassment?**

Yes. Texas law makes it a crime to send repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another. Additionally, Texas law makes it a crime to publish on an Internet website, including a social media platform, repeated electronic communications in a manner reasonably likely to cause emotional distress, abuse, or torment to another person, unless the communications are made in connection with a matter of public concern. Tex. Penal Code § 42.07. If such unlawful acts are in retaliation for or on account of the public official’s services or status, then each act constitutes an additional criminal offense. Tex. Penal Code § 36.06.
2. **When can the individual or entity that maintains a webpage remove an inaccurate or harassing post from the page?**

When it violates the terms of use. Each webpage that permits interactivity by enabling users to make comments, post questions, cast a vote, or other interactions, should have guidelines for its users in what are commonly referred to as Terms of Use. If the district creates its own webpage and permits the public to interact, the district should establish its own terms of use.

Many districts or individual board members rely on third-party platforms, like Facebook or Twitter, to enhance their connection with the community. Many citizens and board members also interact on newspaper websites in the comments section following articles about school business. The terms of use of third-party websites vary from site to site. For example, Facebook specifies that only an authorized individual may administer a page for an entity or public figure and prohibits personal terms of use for individual pages that conflict with Facebook’s terms. Facebook also requires public official pages to display the following disclaimer: “If you have an official website, your Page must contain, in a prominent location: If you are looking for more information about [Government Entity], please visit [website URL].” In addition, terms may prohibit certain content or conduct, such as violence and criminal behavior; illegal harassment, sexual exploitation, self-injury, suicide; privacy and image right violations; spam and misrepresentation; and more.

Since social media platforms regularly update their rules to keep pace with rapidly evolving technology, international laws, and corresponding social norms, TASB Legal Services recommends that school officials who use external, non-district-created social media platforms to regularly review that third-party platform’s terms of use and understand their rights and obligations on such platforms prior to use.

3. **How should a board member who is a victim of online harassment respond?**

As soon as possible, take the following actions:

- Preserve the evidence. The most reliable means of preserving electronic evidence is by printing the screen and recording the date and time. Save the URL address as well by copying and pasting the link of the website where the content is posted.
- Contact the website. Cyber harassment may violate the website’s terms of service. If so, the website will take action to remove the offending content.
• Contact law enforcement if there is reason to believe a crime was committed. Contact local law enforcement first. Complaints may also be filed with the Internet Crime Complaint Center (IC3), a collaboration between the FBI and the National White Collar Crime Center.

• Inform the school district. If school technology or someone in the school community (such as a student or employee) was involved, the district will take appropriate action.

• Consult an attorney. In addition to any legal action authorized by the board as allowed by law, an individual board member may also pursue personal legal action in the member’s personal capacity as applicable.

4. **May an individual privately record a conversation with another individual?**

While it is not a criminal offense in Texas to record a conversation if the recording party is a party to the recorded conversation, engaging in deceptive practices and making secret recordings may violate other laws or the privacy rights of the nonconsensual person. Tex. Penal Code § 16.02; 18 U.S.C. § 2511. See also Long v. Texas, 535 S.W.3d 511 (convicting a parent who instructed daughter to make a secret recording of the basketball team coach’s half-time and post-game speeches in the locker room). Secret recordings have traditionally presented more legal challenges than value. Best practice is to notify and seek consent of all parties before recording a conversation.