



The social media puzzle

Social media, schools and the law

Candice L. Christon, staff attorney

School districts, students, teachers and board members are using social media in different capacities. The *Merriam-Webster Dictionary* defines social media as an “electronic communication that allows users to create online communities to share information, ideas, personal messages and other content.”

Social media is forever changing and adding new websites. I am sure that as you are reading this article a new social media website is being created. Examples of social media include: Facebook, Instagram, Twitter, LinkedIn, YouTube and blogs, just to name a few. Let's look at a few of the legal implications that arise from school districts and individual board members having social media pages.

Social media and public records

Ohio Revised Code Section (RC) 149.43 (A)(1) and 149.011(G)(1) define a public record as a record kept by a public office that contains information stored on a fixed medium, regardless of its physical form. The

record must be created, received, stored or sent under the jurisdiction of a public office. It must document the organization, functions, policies, decisions, procedures, operations or other activities of the public office. A record that satisfies these things will be considered a “public record” under the law, unless the record is determined to be exempt.

So how does a public record come into play when we are dealing with social media? To answer that, let's take a look at how social media is being used by school districts and individual board members. A school district's social media page is created for the district and represents it. It is used to communicate with the district's community, staff, students and parents. Alternatively, an individual board member's personal social media page is generally created only for personal use. It is a way for the board member to communicate with family and friends. In addition, a personal social media page contains personal information and represents that individual.

Both the district's social media page and an individual board member's social media page may be considered a public record if they meet the definition of a “public record.” For example, a school district's announcement on its Facebook page that several schools are closed due to a gas leak likely meets the definition of a public record. This is because it contains information that was created by the district, and it is documenting a decision of the district. There are no exemptions that would apply in this case.

Let's consider a board member receiving a question on her personal Facebook page from a neighbor who has a student attending the district high school. The parent's post asks what the qualifications and requirements are for students to be accepted into the Advanced Placement math program. The board member responds to the parent and answers all of her questions about how the program functions, how students are selected and how the program operates. This post also likely would meet the definition of a public record because it is documenting the procedures and operations of the district's math program.

When a district receives a public records request for something posted on social media, it must analyze the content to determine if it is a public record. The district must look beyond the format of the post, because what matters is what is being discussed and whether it meets the definition of a public record. If it does, the comments must be maintained in accordance with the district's record retention schedule.

Other questions to ask are whether

Your bus solutions provider.

SERVICE | PARTS | BUS SALES | LEASING | FINANCING | INSURANCE

With 10 locations in Ohio, Rush Bus Centers offers exceptional service, parts, leasing, financing and more. We have a wide selection of buses in many specifications, including propane and diesel engines. And with our Lease Purchase program, districts have potential to save thousands of dollars per replacement bus.

Find a location near you at
rushbuscenters.com.



rushbuscenters.com

the comment is the district's official copy or secondary copy. That also will help a district determine if the social media comment needs to be maintained. Preserving comments on social media pages may be problematic, but many tools and platforms have been established to capture the content. For more information on managing social media records, please refer to the Ohio Electronic Records Committee's guidelines on "Social Media: The Records Management Challenge" at <http://links.ohioschoolboards.org/80899>.



Conversations, comments and posts on social media pages can be problematic for school board members.

Comments on a district's social media page

Most social media websites allow those viewing and following the page to post comments. However, some websites allow the owner of the page to turn off the comments section. If a district decides to allow comments on its social media page, it has created a limited public forum, which limits the district's ability to regulate social media comments based on the content.

Under the First Amendment, the board may not restrict access to a public forum once it has been created, except for reasonable regulations related to the time, place and manner. The regulations must be content-neutral, which means the district cannot delete a comment because it dislikes an individual or his or her views.

Districts should consider adding a disclaimer so the public is aware of the purpose of the page and which comments will be deleted. For example, comments that are promoting illegal activity or using vulgar language may be removed in accordance with the disclaimer. The district should ensure that it informs viewers that the comments, which may include unsolicited advertisements and hyperlinks, do not represent the thoughts and opinions of the district or its employees. Comments, removed or not, may still be considered a public record.

Open meetings and social media

Another area of law that may be affected by a school district's social media page is Ohio's Open Meetings Law. Under RC 121.22, school boards are required to conduct business and take official action in meetings that are open to the public, unless a topic is permitted to be discussed in executive session. This also applies to board committees and subcommittees. Under the Open Meetings Law, a meeting is "any prearranged discussion by a majority of the board members about public business." If a board member makes a comment about board business on the district's social media page — or even on his or her individual page — and a majority of the board's members comment, a court may find a violation of the Open Meetings Law.

In addition, board members must be present in person to be considered part of a quorum and to vote. Board members should not use the district's social media page or an individual page as a way to have board discussions or make board decisions. Social media is a great way for boards to make announcements or post questions to the public to receive public opinion on certain matters, but no decisions or collaborative discussions between and among board members should be made there.

Individual social media pages

It is important to remember that

lines may become blurred between a district's social media page and a board member's social media page, because the public may not be able to perceive the difference. When it comes to individual social media pages, board members should set their privacy settings so their page is not public and they know who is able to view their information. Without setting the page to private, the information on a board member's page is not secure.

Additionally, board members should be aware of those they are "friending." Board members should analyze their image on their personal social media profile is saying about them. How a board member conducts himself or herself on a personal social media page may impact his or her school district, regardless of intent or if the district is expressly identified.

A valuable tool if used properly

Having a district social media page is a great way to interact with members of the public and keep them informed on district activities and news. However, it is important to remember that with social media there is a possibility that legal implications may arise.

If the district decides to have any type of social media page, it should have a social media policy in place. Always review any legal terms and conditions that are associated with the specific social media website that is being used. Train your staff and board members on how to effectively use social media. Have an individual monitor the district's social media page so it is aware of what is being posted.

And finally, always use good judgment, whether on the district's page or an individual's page. ■

"According to Law" is designed to provide authoritative general information, sometimes with commentary. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.