

## BOARD MEMBER ELECTRONIC COMMUNICATIONS

Each School Board member, as a public official, is a records authority for purposes of the Wisconsin Public Records Law. In addition, a Board member's electronic communications related to their office or to District matters are generally records that are subject to retention requirements and possible public disclosure. Accordingly, Board members have legal obligations to ensure that electronic communications that they send or receive related to their individual office or to District business are appropriately retained such that the communications can be retrieved, evaluated, and, where appropriate, disclosed pursuant to a lawful request.

Unless otherwise provided by Board policy or rule, when a Board member is communicating electronically as an individual Board member (e.g., when he/she writes a blog post that addresses school district matters or when he/she addresses school district matters through a non-District social media platform), the Board member is individually responsible for the retention of his/her individual electronic communications and for responding to any lawful requests for access to such records. Further, regardless of any otherwise applicable policy or rule, in no case will a District employee serve as the custodian of an individual Board member's electronic communications (or copies of such records) where either of the following are true: (1) the Board member has not, in the manner prescribed by the custodian of records, provided the records to the District for purposes of records management; or (2) the Board member has attempted to provide the records to the District in a format that the District's systems cannot reliably store or retrieve.

Each Board member also has an obligation to ensure that he/she does not violate the Wisconsin Open Meetings Law through his/her participation in electronic communications (or other technology-facilitated activities) that involve multiple members of the Board, a Board committee, or any other District-created governmental body on which the Board member serves. As an example of actions regulated under the Open Meetings Law, Board members must avoid creating a "walking quorum" through any series of communications among members of the Board who agree, tacitly or explicitly, to act uniformly in sufficient number to determine the Board's course of action on any matter.

As to any form of electronic communication that pertains to his/her office or to District business, a Board member should ask himself/herself the following questions:

1. Should I be using this method of electronic communication at all? (e.g., Will the content of my communication remain under my control or under the control of an appropriate custodian of records; and is the communication being retained in a manner, and for a duration of time, such that it can be retrieved and produced if needed?); and
2. Should I be using this specific method of communication for this specific subject matter?

Electronic communications are generally an effective and efficient medium for activities such as addressing scheduling/availability for meetings, bringing potential agenda items to the attention of the District Administrator and Board President, and the one-way distribution of information (e.g., from the District Administrator to all Board members). However, the Board strongly discourages (and, in some circumstances, applicable laws will directly prohibit) individual Board members from using email or other forms of electronic communication for any of the following:

1. Interactive discussion of substantive Board business among multiple Board members, due to Open Meetings Law concerns (e.g., potential walking quorums or illegal meetings) and due to the potential appearance of impropriety surrounding communications that are perceived to be inappropriately "secretive" even if not unlawful;

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2. Communications regarding matters that involve individually identifiable students, due to potential violation of the laws surrounding student privacy and the confidentiality of student record information; or
3. Communications regarding District matters that are considered confidential or highly sensitive (e.g., closed session content, personnel matters, etc.), due to issues surrounding the security and possible improper disclosure of the information.

Unless the Board member is performing a legally-designated duty or responsibility, or unless he/she has been expressly authorized by the Board, an individual Board member shall not, in his/her electronic or other communications, either (1) purport to speak on behalf of the entire Board or for the District, or (2) speak in a manner that purports to obligate the Board or District to a particular course of action.

**LEGAL REFERENCES:**

**Wisconsin Statutes**

Chapter 19, Subchapter II	[Wisconsin public records law]
Chapter 19, Subchapter V	[Wisconsin open meetings law]
Section 120.13(28)	[authorization to designate a records custodian on behalf of any school district authority]
Section 943.70	[computer crimes]
Section 947.0125	[unlawful use of computerized communication systems]

**CROSS REFERENCES:**

166Rule Board Member Electronic Communications

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