

Electronic Participation Among Board Members

(Background information for Policy Committee)

The Freedom of Information Act was passed by the Connecticut General Assembly in 1975 to provide for more open government. This statute defines all local and regional boards of education as public agencies. Therefore, they must comply with the provisions of the Act.

The Freedom of Information Act requires that the meeting of public bodies such as school boards be open to the public. In addition, public records, with few exceptions, must be made available for public inspection or be given to individuals and organizations who request copies. Further, the statute requires that regular, special and emergency meetings of school boards must be open to the public. Any hearing or other proceedings of the board, any convening of a quorum of a multi-member agency, and any communication to or by a quorum of a multi-member public agency to discuss or act upon a matter over which the public agency has supervisory control, jurisdiction, or advisory power is defined as a “meeting” under the Act.

This statutory definition includes committee as well as telephone and electronic meetings. A voice mail message or an answering machine message can create a ‘record’ subject to the Freedom of Information laws. The Public Records Administrator in a *Management and Retention Guide for Electronic and Voice Mail* indicated that voice mail and answering machine messages are considered “transitory in nature and may be deleted at will.” However, there may be times when certain messages could later be used as evidence and should be retained for the same period that would apply to a written record of the same nature.

In addressing the issue of email retention, the Public Records Administrator found the boards of education are responsible for establishing guidelines for which of the three categories email messages fall into. The federal Rules of Civil Procedure address electronically stored information also. The federal rules do not mean that every last bit of electronic information must be retained. School districts need policies that make clear what documents must be saved and when they can safely be discarded. This has been addressed in CABE’s policy #3543.31, “Electronic Communications Use and Retention,” with an accompanying administrative regulation. This policy is considered a recommended “good practice” policy for inclusion in a district’s policy manual. It is available upon request from CABE’s Policy Department.

As stated, the board is authorized to discuss district business only at a properly noticed board meeting. Other than during a board meeting, a majority or more of a board quorum may not engage in contemporaneous interactive communication, whether in person or electronically, to discuss district business.

Electronic communication among board members and with the administration can be an efficient and convenient way to exchange information. However, it must not be misused to deliberate issues that are appropriately discussed only in a public meeting. Therefore, board members and administrators need to exercise caution when communicating between and among themselves via electronic messaging services including but not limited to email, internet web forums and internet chat rooms. It must be understood that at times these communications may be considered school district records subject to public disclosure.

Electronic Participation Among Board Members

(continued)

Electronic messaging communications should also conform to the same standards of judgment, propriety and ethics as other forms of board-related communication. When communicating electronically, board members and its administrators should adhere to the following guidelines:

1. Board members shall not use email or any other electronic messaging service as a substitute for deliberations at board meetings. (A board member may discuss district business in person or by electronic means with less than a quorum of other board members at a time. However, a board member should not facilitate interactive communication by discussing district business in a series of visits with, or use of emails or telephone calls to, board members individually.)
2. Board members shall be aware that email and email attachments received or prepared for use in board business may be considered public records that may be open to public disclosure, upon request.
3. Board members shall avoid reference to confidential information about employees, students, or to others in email communications because of the risk of improper disclosure.
4. Board members shall adhere to the district's "acceptable use" policy in all email communications and refrain from sending inappropriate, profane, harassing or abusive emails.
5. The Superintendent or designee is permitted to email information to board members. This can include board meeting agendas and supporting information. When responding to a single board member's request, the Superintendent should copy all other board members and include a "do not reply/forward" alert to the group, such as "*BOARD MEMBER ALERT: This email is in response to a request. Do not reply or forward to the group but only to the sender.*"
6. Board members are permitted to provide information to each other, whether in person or by electronic means, that is non-deliberative and non-substantive. Examples of this type of communication include scheduling meetings and confirming receipt of information.
7. A board member should include a "do not reply/forward" alert when emailing a message concerning district business to more than one other Board member. The following is an example of such an alert: "*BOARD MEMBER ALERT: This email is not for interactive discussion purposes. The recipient should not reply to it or forward it to any other individual.*"
8. Board members are permitted to discuss any matter except district business with each other, whether in person or by electronic means, regardless of the number of members participating in the discussion. (For example, they may discuss league sports, work, current events, etc.)

Electronic Participation Among Board Members

(continued)

9. IF BOARD MEMBERS ARE NETWORKED TO THE DISTRICT SYSTEM, THE FOLLOWING MAY BE APPROPRIATE:

Board members shall not reveal their passwords to others in the network or to anyone outside of it, except to the system administrator. If any board member has reason to believe a password has been lost or stolen, or that email is being accessed by someone without authorization, he/she shall notify the Superintendent of Schools immediately.

Many boards are now using paperless board meetings (**CABE BoardBook**) which is a type of electronic communication among its members and the administration that is an efficient and convenient way to exchange information pertaining to the meeting of the board, but it must not be misused to deliberate issues that are appropriately discussed only in a public meeting. Therefore, board members and administrators need to exercise caution when communicating between and among themselves via electronic messaging services including but not limited to surveying, email, internet web forums and internet chat rooms.

The following guidelines should be considered regarding the conducting of a survey on an issue among board members using electronic means:

1. Board members shall not use surveys, email or any other electronic messaging service as a substitute for deliberations at board meetings.
2. Surveying will not be used for topics referring to confidential information about employees, students or others in email communications because of the risk of improper disclosure.
3. The district will avoid the appearance of conducting board discussion or actions, in which opinions are exchanged among a quorum of board members through repeated survey questions and answers, outside an open public meeting.

It is also recommended that the board annually review its electronic communication policy and practices with the board attorney.

Policy Implications: Policy #9327, "Electronic Communications Among Board Members" pertains to this issue. An existing model follows for your consideration. In addition, a new version has been developed and is also presented for your consideration.

Suggested bylaw to consider.

Bylaws of the Board

Meetings

Electronic Communications Among Board Members

The Board of Education believes that Board members electronically connected to other Board members is an efficient and convenient way to communicate. The main goal of electronic mail (email) is to expedite the passage of information. Email gives Board members quick access to one another. Communication among Board members via email should conform to the same standards as other forms of communication. (i.e. committee meetings, etc.) as directed by the Freedom of Information Act. When used properly, email is an effective communications tool and can provide a formal record.

All Board members are encouraged to access email. It will be the responsibility of individual Board members who use email to provide the hardware, hook-up and pay all consumable expenses associated with email usage.

Guidelines for Board Email Usage

The Freedom of Information Act mandates that all meetings of public bodies such as school boards be open to the public. It is the policy of the Board of Education that email shall not be used in such a manner as to deprive the public of the rights given to it under the Freedom of Information Act. For this purpose, this bylaw sets forth guidelines for the uses intended to be made of email by Board members when communicating with other Board members.

1. Email, like other written forms of communication relating to the conduct of the public business is subject to the Freedom of Information Act and subject to disclosure.
2. Board members shall not use email as a substitute for deliberations at public Board meetings, and/or shall not discuss policy matters or vote informally on any issues.
3. Email should be used to pass along factual information.
4. Security of email communication cannot be assured. Board members shall not reveal their passwords to others in the network or to anyone outside of it. If any Board member has reason to believe a password has been lost or stolen, or that email is being accessed by someone without authorization, he/she shall notify the Superintendent, who will notify the district's technology specialist.
5. Personnel issues and other sensitive subjects should never be discussed on-line. The confidentiality of employee data, student data, and other sensitive subjects must always be maintained.

Any usage contrary to the aforementioned shall be reported immediately to the Superintendent and may result in the suspension and/or revocation of system access.

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Electronic Communications Among Board Members (continued)

Accessing Email

In an effort to encourage all Board members to access email, while maintaining public fiscal responsibility, the Board of Education will loan to any Board member needing access, a modem, computer (when surplus is available), and other hardware peripherals to be returned to the Board Office upon leaving office. It will be the individual Board member's responsibility to provide the hook-up and pay all consumable expenses associated with email usage. In the event a Board member elects not to access email, a hard copy of all email directed to "Board" will be placed in the Board packet delivered via courier, and will also be accessible in the Board of Education Office.

Legal Reference: Connecticut General Statutes

 The Freedom of Information Act.

 1-200 Definitions.

 1-210 Access to public records. Exempt records.

 1-211 Disclosure of computer-stored public records.

Bylaw adopted by the Board:

rev 11/10

A new bylaw to consider.

Bylaws of the Board

Meetings

Electronic Communications Among Board Members

The Board of Education believes that electronic communication among its members and the administration is an efficient and convenient way to disseminate information, but must not be misused to deliberate issues that are appropriately discussed only in a public meeting. Therefore, Board members and administrators shall exercise caution when communicating between and among themselves via electronic messaging services including but not limited to email, internet web forums and internet chat rooms. Electronic messaging communication shall conform to the same standards of judgment, propriety and ethics as other forms of board-related communication (committee meetings, telephone calls, etc.). Board members shall adhere to the following guidelines when communicating electronically:

1. Board members shall not use email or any other electronic messaging service as a substitute for deliberations at Board meetings. (A Board member may discuss District business in person or by electronic means with only one other Board member at a time. However, a Board member should not facilitate interactive communication by discussing District business in a series of visits with, or use of emails or telephone calls to, Board members individually.)
2. Board members shall be aware that email and email attachments received or prepared for use in Board business may be considered public records that may be open to public disclosure, upon request.
3. Board members shall avoid reference to confidential information about employees, students, or to others in email communications because of the risk of improper disclosure.
4. Board members shall adhere to the District's "acceptable use" policy in all email communications and refrain from sending inappropriate, profane, harassing or abusive emails.
5. The Superintendent or designee is permitted to email information to Board members. This can include Board meeting agendas and supporting information. When responding to a single Board member's request, the Superintendent should copy all other Board members and include a "do not reply/forward" alert to the group, such as "*BOARD MEMBER ALERT: This email is in response to a request. Do not reply or forward to the group but only to the sender.*"
6. Board members are permitted to provide information to each other, whether in person or by electronic means, that is non-deliberative and non-substantive. Examples of this type of communication include scheduling meetings and confirming receipt of information.

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Electronic Communications Among Board Members (continued)

7. A Board member should include a “do not reply/forward” alert when emailing a message concerning District business to more than one other Board member. The following is an example of such an alert: *“BOARD MEMBER ALERT: This email is not for interactive discussion purposes. The recipient should not reply to it or forward it to any other individual.”*
8. Board members are permitted to discuss any matter except District business with each other, whether in person or by electronic means, regardless of the number of members participating in the discussion. (For example, they may discuss league sports, work, current events, etc.)
9. IF BOARD MEMBERS ARE NETWORKED TO THE DISTRICT SYSTEM, THE FOLLOWING MAY BE APPROPRIATE:

Board members shall not reveal their passwords to others in the network or to anyone outside of it, except to the system administrator. If any Board member has reason to believe a password has been lost or stolen, or that email is being accessed by someone without authorization, he/she shall notify the Superintendent of Schools immediately.
10. In the use of paperless Board meetings (**CABE BoardBook**), a type of electronic communication among its members and the administration that is an efficient and convenient way to exchange information pertaining to the meeting of the Board, care must be exercised to not misuse the process to deliberate issues that are appropriately discussed only in a public meeting.

The following guidelines should be considered regarding the conducting of a survey on an issue among Board members using electronic means:

1. Board members shall not use surveys, email or any other electronic messaging service as a substitute for deliberations at Board meetings.
2. Surveying will not be used for topics referring to confidential information about employees, students or others in email communications because of the risk of improper disclosure.
3. The district will avoid the appearance of conducting Board discussion or actions, in which opinions are exchanged among a quorum of Board members through repeated survey questions and answers, outside an open public meeting.

The Board shall annually review its electronic communication policy and practices with the Board attorney.

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Electronic Communications Among Board Members (continued)

Some additional language to consider included in the policy:

1. If the Board decides to conduct a meeting utilizing some form of instantaneous electronic communication, the meeting shall be posted along with the means by which members of the general public may access the meeting. At a minimum, this access shall include providing access to a computer or computer monitor to view the meeting as it is conducted.
2. The Board shall have no expectation of privacy for any messages sent, stored, or received electronically. Messages that have been deleted may still be accessible on a District storage device. Messages deleted or otherwise, may be subject to disclosure under the Freedom of Information Act, unless an exemption would apply.
3. District email addresses of all Board members who choose to have an account shall be published on the District website. Board members who choose not to forward and reply to messages via the District email system accept personal responsibility for compliance with the Freedom of Information Act.
4. All emails received or sent from a personal email address that pertains to Board business shall be immediately forwarded to a designated District account for archiving purposes.
5. Members of the Board shall not communicate among themselves by the use of any form of communication (*e.g.*, personal intermediaries, email, or other technological device) in order to reach a collective concurrence regarding any item that is within the subject matter jurisdiction of the Board.

Legal Reference: Connecticut General Statutes
 The Freedom of Information Act.
 1-200 Definitions.
 1-210 Access to public records. Exempt records.
 1-211 Disclosure of computer-stored public records.

Bylaw adopted by the Board:

cps 11/10

Two concise versions of this bylaw to consider.

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Electronic Communications Among Board Members

The Board of Education recognizes that electronic communication among Board members and between Board members, District administration, and members of the public is an efficient and convenient way to communicate and expedite the exchange of information and to help keep the community informed about the goals, programs, and achievements of the District and its schools.

Board members shall exercise caution so as to ensure that electronic communications are not used as a means for the Board to deliberate outside of an agendaized Board meeting.

A majority of the Board shall not, outside of an authorized meeting, use a series of electronic communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board.

Examples of permissible electronic communications concerning District business include, but are not limited to, dissemination of Board meeting agendas and agenda packets, reports of activities from the Superintendent, and reminders regarding meeting times, dates, and places.

Board members shall make every effort to ensure that their electronic communications conform to the same standards and protocols established for other forms of communication. A Board member may respond, as appropriate, to an electronic communication received from a member of the community and should make clear that his/her response does not necessarily reflect the views of the Board as a whole. Any complaint or request for information should be forwarded to the Superintendent in accordance with Board bylaws and protocols so that the issue may receive proper consideration and be handled through the appropriate District process. As appropriate, communication received from the press shall be forwarded to the designated District spokesperson.

Another version to consider:

Electronic mail used by a majority of a quorum of the members of the Board or any of its subcommittees for the purpose of discussing public business constitutes a meeting under the *Freedom of Information Act* and is illegal unless held in compliance with the requirements of the Act. Email from a Board member to another member or members of the Board, in his/her capacity as Board members, shall not be used for the purpose of discussing District business in violation of the *Freedom of Information Act* restrictions. Email between or among Board members shall be limited to: 1) disseminating information, 2) messages not involving deliberation, debate, or decision-making; and 3) discussion of District business by less than a majority of a quorum of the Board or any of its subcommittees.

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Electronic Communications Among Board Members

Legal Reference: Connecticut General Statutes

The Freedom of Information Act.

1-200 Definitions.

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Bylaw adopted by the Board:

cps 11/10