

School Board

Exhibit - Guidance for Board Member Communications, Including Email Use

The Board of Education is authorized to discuss District business only at a properly noticed Board meeting (Open Meetings Act, 5 ILCS 120/). 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. This *Guidance* assumes a Board has seven members and covers issues arising from Board policy 2:140, *Communications To and From the Board*.

Communications Outside of a Properly Noticed Board Meeting

1. The Superintendent or designee is permitted to email information to Board members. For example, the Superintendent may email Board meeting agendas and supporting information to Board members. 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."**
2. Board members are permitted to discuss any matter except District business with each other, whether in person or by telephone or email, regardless of the number of members participating in the discussion. For example, they may discuss league sports, work, or current events.
3. Board members are permitted to provide information to each other, whether in person or by telephone or email, that is non-deliberative and non-substantive. Examples of this type of communication include scheduling meetings and confirming receipt of information.
4. A Board member is not permitted to discuss District business with more than one other Board member at a time, whether in person or by telephone or email, other than at a duly called and noticed Board meeting. Stated another way, a Board member may discuss District business in person or by telephone or email 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 telephone calls or emails to, Board members individually.
5. 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."**
6. Board members should not forward email received from another Board member.

When Must Email Be Retained or Disclosed?

According to the Local Records Act, a public record that must be retained is any recorded information, regardless of physical form, "made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein." (50 ILCS 205/3.) An example is any email from a Board officer concerning a decision made in his or her capacity as an officer. ▼

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Email sent or received by Board members about District business likely qualifies as a *public record* and therefore must be retained under the Local Records Act and may be, depending on the content, subject to disclosure as a *public record* under the Freedom of Information Act. ▼

Electronic communications concerning the transaction of public business are public records subject to possible disclosure under FOIA, even if they were sent from or received via a Board member's private electronic device or account. However, electronic communications sent to or received by a Board member on his or her private device or account and received by less than a majority of a quorum of the Board or a Board committee do not constitute public records, except during a Board meeting. [If a Board member uses his or her personal email account, he or she must copy the Superintendent on any public record emails so they can be stored on the Board member's behalf.] However, Board members should use their email accounts provided by the District primarily, and the District will automatically store them as public records. The District will delete these public records as provided in an applicable, approved retention schedule.

Messages that are Not Public Records

Email messages are *not public records* when individual Board members are acting in their individual or personal capacities and the messages do not pertain to the transaction of public business. These messages are not *public records* and do not need to be stored under the Local Records Act or disclosed under the Freedom of Information Act. However, to the extent possible, Board members should not communicate such personal messages through their District-sponsored email accounts.

Litigation Holds

Important: Do not destroy any email concerning a topic that is being litigated or might lead to reasonably foreseeable litigation without obtaining the Board attorney's direction. In federal lawsuits there is an automatic discovery of virtually all types of electronically created or stored data that might be relevant. Attorneys will generally notify their clients at the beginning of a legal proceeding not to destroy any electronic records that might be relevant. For more discussion of a litigation hold, see 2:250-AP2, *Protocols for Record Preservation and Development of Retention Schedules*.

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Official Record Messages ... [1]

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