

CONFIDENTIAL
INVESTIGATION REPORT

This Investigation Report is prepared in response to a request for an investigation from the Oshkosh Area School District (the “District”) regarding a complaint filed on January 8, 2025 (the “Complaint”). The Complaint alleged certain potential policy violations by two elected school board members regarding social media sites. The matter was referred to the undersigned, as legal counsel to the District. Pursuant to District Policy po0144.5, complaints involving school board members are referred to the Board President, who will review the matter with support from legal counsel for investigation. A copy of that Policy is included with this report.

The nature of the Complaint alleges that Board Member Tim Hess (“Dr. Hess”) and Board Member Kelly DeWitt (“Ms. DeWitt”) (collectively, the “Board Members”) each created two separate Facebook pages under aliases using the names Mike Melter and Missy Green, respectively. The Complaint alleges the Board Members are using the accounts, while hiding their identity, to undermine the Board of Education and the District. The Complainant believes the actions of the Board Members violates the Expectations and Code of Conduct required of board members under Board Policy po0144.5.

This investigation consisted of phone interviews, review of relevant policies, review of the applicable Facebook pages and review of other relevant documents. The Complainant responded to a request for information and participated by phone. Both Board Members were contacted by phone and email and elected not to participate, though their legal counsel responded on their behalf. Legal counsel for the Board Members provided a written response on behalf of their clients.

FACTUAL DETERMINATIONS

All communication provided on behalf of the Board Members was given through their legal counsel. Speaking on behalf of the Board Members, their legal counsel noted that neither Board Member had anything to hide and acknowledged that the Facebook page with the alias “Mike Melter” belonged to Dr. Hess and the Facebook page with the alias “Missy Green” belonged to Ms. DeWitt. Neither page identified Dr. Hess or Ms. DeWitt, nor indicated their representations as Board Members. It was counsel’s position that neither site placed limitations on access or limited content. The two Facebook pages have subsequently been taken down from the platform.¹

In an independent review of the information on the Facebook pages, neither of the pages indicated that the respective owners, Mike Melter or Missy Green, held an elected office. Information was

¹ It was noted that Governor Evers has used a governmental email address under the alias of the late Milwaukee Braves pitcher Warren Spahn to conduct State business.

provided about District issues and opinions were given on those issues. The information did not appear to post any confidential information privy to only the Board of Education members.

Neither of the Facebook pages indicated that only certain content was accepted and information was insufficient to determine if contradicting points of view were deleted or otherwise forbidden. Comments did exist aside from those of Mike Melter and Missy Green. As indicated, the pages have been taken down, limiting a further analysis of content regulation on the pages.

Using aliases to create social media pages, or in fact simply creating social media pages as elected officials can create liabilities for elected officials depending upon how the site is developed, what is created and what is allowed for posting on the site by other individuals. Once a public forum, or limited public forum is created by an elected official, certain liabilities could occur if certain First Amendment rights are violated in the prohibition of certain participation and/or content. Creating aliases does not cure the potential liability for elected officials.

Yet as noted in this case, the sites did not appear to limit access or content. In fact, a response from the Board Member's counsel indicates such sites did not do so. As also indicated, counsel confirmed the sites have been taken down and will not be used moving forward.

ANALYSIS AND CONCLUSION

In this case, insufficient evidence exists to indicate that rights of others were violated by limited content. Finally, evidence does not exist to indicate otherwise confidential evidence was posted. The Board Members use of the sites as outside activities would appear to be beyond the reach of the applicable Board Policy.

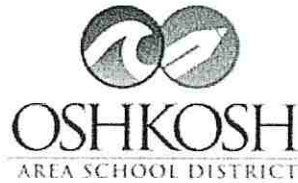
In total, insufficient evidence exists to find a violation of Board Policy.

Respectfully Submitted,



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Book	Policy Manual
Section	0000 Bylaws
Title	BOARD MEMBER BEHAVIOR, COMMUNICATIONS AND CODE OF CONDUCT
Code	po0144.5
Status	Active
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0144.5 - BOARD MEMBER BEHAVIOR, COMMUNICATIONS, AND CODE OF CONDUCT

The board functions most effectively when individual board members act ethically, professionally, and responsibly. School board members serve as a member of the school district's governing body and do not have individual authority to represent a policy or enforce positions that are not supported by a majority of the board as evidenced by official action of the board (See Policy 0143 - Authority of Individual Board Members).

Board members accept responsibility for the well-being and positive leadership of the school district, for protecting the interests of the school district as a legal entity, and for facilitating governance for the purpose of delivering the highest quality educational and related services to all of the district's students. Conduct by board members that compromises the legal position of the district should be avoided.

Any authority delegated to the board president in this policy is automatically vested in the board vice president in the event that either the board president is unavailable or the board president is the board member accused of violating this policy.

General Expectations of All Board Members

- A. Attend all scheduled board meetings and assigned committee meetings insofar as possible, and become informed concerning the issues to be considered at those meetings.
- B. Be familiar with and follow applicable local, state, and federal laws and regulations.
- C. Be familiar with and comply with board policies, including policies governing board member conduct and board member ethics, rules of incompatibility of office, and conflicts of interest (see Policy 0144.3 - Conflict of Interest).
- D. Conduct themselves with integrity, honesty, and in a manner that reflects positively on the board and on the district.
- E. Be accountable for guiding and supporting the policy decision-making process that impacts students, staff, and the community. The operation of the district is the responsibility of the administration.
- F. Establish and maintain a high level of honesty, credibility, and truthfulness in all matters dealt with by the board.
- G. Treat others with respect and dignity at all times, and maintain decorum, and always communicate in a way that does not violate or illustrate disregard for board policy concerning harassment or discrimination. This decency expectation applies in all communications, including while discussing sensitive, controversial, or matters involving disagreement.
- H. At all times conduct themselves in the best interest of the school district, including avoiding implicating the district in unlawful activity or supporting or encouraging efforts to harm the reputation, legal standing, or to bring other material harm to the interests of the district or the board.
- I. Recognize that they should endeavor to make policy decisions only after full discussion at publicly held board meetings.

- J. Render all decisions based on the available facts and independent judgment.
- K. Encourage the free expression of opinion by all board members, and seek systematic communications between the board and students, staff, and all elements of the community.
- L. Work with the other board members to establish effective board policies and to delegate authority for the administration of the district to the superintendent.
- M. Communicate to other board members and the superintendent expressions of public reaction to board policies and school programs.
- N. Inform themselves about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by the Wisconsin Association of School Boards, the Consortium of State School Board Associations, and an appropriate national association.
- O. Support the employment of those persons best qualified to serve as school staff, and insist on a regular and impartial evaluation of all staff.
- P. Refrain from using their board positions for personal partisan gain.
- Q. Take no private action that will compromise the board or administration, and respect the confidentiality of information that is privileged under applicable law.
- R. Remember always that their first and greatest concern must be for the educational welfare of the students attending the public schools.
- S. No board member shall act or fail to act as a member of the board in violation of 946.12, Wis. Stats., regarding misconduct in public office.

Board Member Communication

Board members are expected to refrain from engaging in communication on behalf of the board or on behalf of the district unless authorized to do so by majority vote of the board (See Policy 0143.1 - Public Expression of Board Members). This policy is not intended to diminish an individual board member's right to speak as an individual elected official.

Any board member who chooses to engage in individual communication on matters related to board and/or district business is expected to clearly identify whether the board member is communicating in the following capacity:

- A. On behalf of the board: normally, this is the function of the board president or in the president's absence, the vice president. The board may by majority vote delegate this responsibility to another board member in a specific circumstance. In every case, the board member communicating the board's position shall do so as determined by the board and avoiding individual interpretation or editorializing.
- B. As an individual board member, but not on behalf of the board: a board member who speaks, including online, in social media forums, or in any other public forum, on matters related to board and/or district business, but not as an officially designated spokesperson of the board. The board member must specify that any statement is not sponsored by the district and is a personal viewpoint.

Board members who fail to adhere to this expectation, or who publicly communicate false or intentionally misleading information pertaining to board action or district policy, will be asked to correct such communication in a way that is likely to reach the same audience as the false or misleading information. The board president is authorized to communicate such requests to the pertinent board member.

The board president is authorized to issue public statements on behalf of the board in the event a board member expresses false or misleading information, or makes statements without properly identifying whether the member of the board is speaking as an individual board member. The president's communication should be limited to correcting the false or misleading statement, clarifying that the board member was not speaking on behalf of the board, and providing information relative to board action if any on the subject matter.

Board Member Use of Electronic Communication Devices Prohibited

An individual board member's use of electronic communication devices, such as cell phones or smartphones, during a board meeting, both during open session and during closed session, may lead to the public's and/or other board members' perception that a board member is not paying attention to the subject matter at hand or that a board member is receiving information relative to the subject matter at hand that other board members and members of the public are not receiving, or is communicating with persons not at the meeting regarding the subject matter of the meeting, any of which is inimical to good government and transparency, and, in the case of a closed session, may also be contrary to the legal interests of the board. Therefore, the board's use of electronic communication devices (including cell phones and smartphones), other than for the purpose of accessing agenda materials that are on a board member's tablet or lap top computer, is prohibited during board meetings.

Exceptions may be made by the board in case an emergency or other special circumstance warrants an exception.

Board Member Interaction with Staff

The general expectations of board member decorum and civility apply to interactions with employees; however, because the board is the employer of all district staff, this responsibility is appropriate for special reference. Each board member is an individual with authority to bring matters to the board and to influence matters related to staff. Therefore, it is imperative that board members treat all employees with respect and as professionals. Board members are also required to comply with board policies governing employee anti-harassment, non-discrimination, and threatening behavior.

No board member has inherent authority to require any staff member to respond to the board member regarding a specific request for information, or to direct any staff member to perform or not perform any task, except as provided by board policy or as directed by majority vote of the board.

Board member access to and request for school district records and information is governed by board Policy 0143.2 - Board Member Information Requests.

Board Member Records and Confidentiality

Board members are expected to maintain their own public records created on resources not controlled by and thus not maintained by the school district. Each board member is an elected official responsible for preserving all public records the member of the board creates, and to comply with requests to inspect such records. The district has no obligation nor responsibility to assist any board member in fulfilling this responsibility with respect to records that are not maintained by the district.

Board members are encouraged to review board policy defining and explaining public records, their maintenance, and public access (See board policy 8310 - Public Records).

Board members are expected to maintain and protect the privacy of district records, including student records, and communications received in closed session meetings of the board.

Enforcement

Complaints alleging violations of the board member code of conduct may be brought by any person and can be submitted to the board president or, if the board president is the member accused of violating this policy, to the vice president.

The president or vice president shall review the complaint and determine whether the officer can investigate the matter or if the president or vice president needs to contact the school district's legal counsel for support. Upon completion of the investigation, if the conclusion reached is that the board member violated the policy, the investigator shall brief the board and may recommend action to be taken.

Board members are elected officials and therefore cannot be disciplined, prevented from participating in board meetings, or removed from office by the board, except as allowable by law. The board may consider the following:

- A. Formal censure by resolution passed by a majority of the board in an open session meeting of the board.
- B. Removal from board committee assignments for the remainder of the year and until the following organizational meeting of the board, at which time the president is authorized to continue to withhold committee assignment. Approval of this sanction is an adopted exception to Policy 0155 - Committees.
- C. Restriction on board member rights granted by policy, including requesting items for a board meeting agenda.
- D. Referral to proceed with efforts to remove the board member from office for cause, which means inefficiency, neglect of duty, official misconduct, or malfeasance in office, to the extent allowable by law.
- E. Referral to law enforcement if any alleged misconduct constitutes potentially unlawful conduct.
- F. Other efforts to pursue compliance with and adherence to the policy as determined by the board and not prohibited by law.

Revised: 3/30/22; 6/22/22; 4/26/23; 10/11/23

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Legal
17.13, Wis. Stats.
946.12 Wis. Stats.
The Consortium of State School Board Associations
The National Association of School Boards
The Wisconsin Association of School Boards

