



# Legal Update

Presented by Sarah Spatafore  
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# Agenda



- Social Media Training
  - Implicated Policies
  - Role as a Public Employee
  - Open Meeting Law Issues
  - Public Records Issues
  - Best Practices



# Social Media: A Fixture in Most Everyone's Lives





Privacy

**Anything you put on the internet, whether through Facebook, Instagram, Twitter, etc. could become public. Check your settings and make sure you monitor your online presence.**

Social  
Media

# Considerations When Posting

- School Policies

- As we all know, the Shrewsbury Public Schools has a number of policies about ethics, respect, non-discrimination/harassment, and other core values.
- These policies apply both in the workplace and out side the workplace.
- When outside conduct – including public postings on social media – impact the school, it becomes a school concern.

# A Few Specific Policies

- The School Committee Ethics Policy contains a number of provisions that could impact social media usage:
  - “Remember that they represent the entire community at all times.”
  - “Refer all complaints to the administrative staff for solution and only discuss them at committee meetings if such solutions fail.”
  - “Realize that members should not make statements or promises of how they will vote on matters that come before the Committee.”
- Other key policies:
  - Involvement with Proposition 2 ½ Ballot Questions
  - Internet Acceptable Use (extends to use of wifi)
  - Harassment
  - Regulations for the Conduct of Staff

# Your Role as Public Official

- As a public official, particularly a School Committee member, there is an extra level of public scrutiny.
- Considerations to keep in mind when posting:
  - Am I making clear that what I am posting is my personal opinion?
  - Am I posting on matters that are within the jurisdiction of the Committee?
  - Am I deliberating by interacting with/communicating to other Committee members?
  - Would I want SPS students/their parents to read what I am posting?
    - Modeling good behavior?
  - Would I want it on the front page of the paper/on the evening news?



# Teacher Loses Job After Commenting About Students, Parents on Facebook

By KI MAE HEUSSNER and DALIA FAHMY • Aug. 19, 2010

Share with Facebook

Share with Twitter



ABC News

Dr. June Talvitie-Siple was fired after her Facebook postings about residents of Cohasset were discovered by parents.

# Cohasset Teacher Loses Job

- A High School math and science supervisor was forced to resign after making comments on her Facebook describing students as “germ bags” and parents as “arrogant” and “snobby.”
- Two parents found the comments and alerted the Superintendent.
- The teacher thought her comments were “private”.



# Student Privacy

- As we all know, there are strict laws that protect student records/student privacy.
- Student records are any record that could lead to the identification of a student
  - Much broader than report cards, etc.
- Be cautious when posting on social media that you do not include any information about students that could lead to their identification
  - Photos – School Selfies
  - Comments about occurrences that day
  - References to students without using names

# Friending

- It is your decision who to “friend”, follow, or share your social media posts with.
- Some considerations to keep in mind:
  - Once you learn information, you know it for all purposes.
  - If you are friends with employees, students, parents, they are likely going to learn a great deal about your personal life.
  - If you are friends with people you employ in the SPS, they are likely going to learn a great deal about your personal life.
    - Ex. Your friend tags you in a picture on vacation when supposed to be on sick leave.

# Beware Friending Students

## Abington Teacher Fired for Friending Students

- An Abington coach was fired for having “inappropriate conversations” with students on Facebook.
- The District had a policy to avoid fraternization with students on Facebook or similar social media sites.

***When interacting with students on social media, use caution.***

# The Open Meeting Law

- M.G.L. c. 30A, § 18:
  - **Deliberation**: an **oral** or **written** communication **through any medium, including electronic mail**, between or among a quorum of a public body on any public business within its jurisdiction.
- Exceptions to a “deliberation” (whether orally or in writing):
  - Distribution of a meeting agenda;
  - Distribution of scheduling information;
  - Distribution of other procedural information; or
  - Distribution of reports or documents that may be discussed at an upcoming meeting

Provided that no opinion of a member is expressed.

# What is a “Deliberation”? (continued)

- Members of a public body cannot participate in a series of communications with less than a quorum which when added together result in participation by a quorum on a matter of public business within the jurisdiction of the public body.
- A member cannot gauge or solicit the opinions of the other public body members on a matter of public business outside of a public meeting.

# What is a “Deliberation”?

## (continued)

- A member cannot transmit his or her opinion or those of another member on a matter of public business to a quorum of other public body members, even if none of the other members respond.
  - SEE: Cambridge City Council (OML 2013-76) and Worcester City Council (OML 2013-75):
- A staff member can send an email to the entire membership of the public body (in those cases, proposed language of an order to be considered).
- However, members of the public body cannot express an opinion via email to a quorum of the public body.



# What is a “Deliberation”? (continued)

- From the MA Attorney General’s FAQs:

**May members of a public body communicate with the public through social media platforms such as Facebook, Twitter, and webpages?**

- Yes, members of public bodies may communicate with members of the public through any social media platform. However, members of public bodies must be careful not to engage in deliberation with the other members of the public body through such communications. If a member of a public body communicates directly with a quorum of the public body over social media platforms such as Facebook or Twitter, that communication may violate the Open Meeting Law. Public body members should proceed with caution when communicating via these platforms.



# What is a Public Record?

- “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose...” - G.L. c. 4, § 7 (26)

# Substance Over Form

- Ignore the Source or Destination of the Record
  - Public records may be received or sent from each of the following:
    - Work or Personal Computer
    - Smart Phone or Tablet
    - External Storage Device, e.g. USB Flash Drives
    - Personal or Work Email Accounts
    - Third-Party Servers, i.e. the “cloud”

# Records Presumed To Be Public

- In all proceedings pursuant to 950 CMR 32.00, there shall be a presumption that the record sought is public. 950 CMR 32.03(4)
- Assume that any document, email, computer file, or other data that is created or utilized in your public position is a public record.
- This includes emails sent via a private email account, if they contain information related to your public position.
- Unless there is a statutory exemption, or another legal protection such as attorney/client privilege, you will likely have to disclose the records in some form.

# Best Practices

- Separate Public/Professional/Private Life
  - Use school e-mail account for all school business
  - If someone contacts you through text or personal e-mail, regarding school business, reply that you only correspond about school business by means of your school e-mail account
- Do not conduct school business by text, personal e-mail or other social media
- Do not delete any e-mail associated with school business
  - Note: Whenever a government employee relinquishes his office or terminates his duties, he shall deliver over to his successor all such public records that he is not authorized by law to retain. G. L. c. 66, § 14

# Tips

- Check your settings
- Review School Policies
- Think before Posting
- Beware the Open Meeting and Public Records Laws
- Review who you are Following and who is Following you
- **Do not comment on behalf of the Committee without authorization**
- Consider student record laws/restrictions
- Remember: social media and privacy do not go hand in hand

# Questions

