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PLAINVILLE PUBLIC SCHOOLS

**WORKSHOP ON POTENTIAL LEGAL ISSUES
ASSOCIATED WITH THE USE OF SOCIAL MEDIA**

Throughout these materials, the use of the phrase “social media” shall be deemed to include Facebook, Twitter, e-mail and any other form of electronic communication. The explosion in the use of social media as a means of communication by and with staff, students and the community at large has presented school districts with a number of legal issues with which to contend. The purpose of this handout is to identify some of the potential legal issues and to address ways in which social media can be used that are both legal and respectful. As an initial matter, it is impossible to anticipate and address every possible contingency that may arise in connection with social media issues as these issues are inherently fact-specific.

I. OPEN MEETING LAW ISSUES

Many forms of social media are not specifically addressed by the Open Meeting Law (hereinafter “the Law”), however, the Law does reference the use of “electronic mail.” At this point, public bodies such as the School Committee must be guided by the Law as it currently exists. Future modifications to the Law may necessarily change how a school committee addresses Open Meeting Law issues.

- The Attorney General’s Office is responsible for enforcing the Law.
- The Law requires that all meetings of a public body must be posted at least 48 hours prior to such a meeting taking place, excluding Saturdays, Sundays and legal holidays.

- The Law requires that a quorum of a public body must deliberate (an oral or written communication, including electronic mail) on any public business within its jurisdiction in open session, unless an executive session exception applies. Any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body.
- Common questions involving the use of social media by School Committee members include:
 1. Can a member write the following on his/her social networking site: "I'm voting YES – I support motion X at next week's meeting". Committee members should refrain from publishing in advance of a posted meeting, the vote on a particular issue. Posting an entry which lists a member's position on an upcoming School Committee vote could be viewed as an attempt to dialogue or "deliberate" with other School Committee members, notwithstanding any statement that members are not connected to one another.
 2. "How should I vote on motion X at next week's meeting?" The wording of this posting is troubling for both legal and perceptual reasons. The question appears to encourage a dialogue with others, whether School Committee members or others, in a manner which runs afoul of the Law because further exchanges could be viewed as a deliberation, even if the initial exchange was not with a

member of the School Committee. The question also has the potential to paint the School Committee member making the post in a negative light. While School Committee members certainly want to be receptive to feedback from their constituents, they do not want to appear indecisive or capable of being influenced based on a posting they receive on a social networking site.

3. “The board will be voting on motion X at next week’s meeting.”

This is a factual statement and is fully appropriate. One of the benefits of social media is its ability to convey information to large numbers of people. A posting that is similar to, if not identical, to the official posting would help publicize the School Committee’s agenda to the community and encourage attendance at School Committee meetings.

- The biggest potential for legal liability is where members of a public body, such as a School Committee, deliberate over a matter that is either currently before the School Committee or is likely to come before the School Committee. It does not matter whether or not this is done on Facebook or a coffee shop; if a deliberation by a quorum of a public body takes place outside of a lawfully posted meeting, it has the potential to be viewed as a violation of the Law.

II. PUBLIC RECORDS ISSUES

The definition of a “public record” is found at Mass. Gen. L. ch. 4, § 7, clause 26. The language states in part that, “Public records shall mean 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 any political subdivision thereof.” The definition further provides a list of exemptions from the definitional language.

The biggest issue for members of the School Committee is that any e-mails, Facebook postings, tweets or other forms of electronic communication, are subject to the Public Records Law. For this reason, many school districts have adopted policies by which School Committee members are assigned e-mail accounts through the school district which allow them to conduct their business through their school district account. This avoids the potential situation where a Public Records request is made of the e-mails of individual School Committee members and, if the member has used his/her personal e-mail account, he/she must sift through all of his/her e-mails to identify the requested documents.

A related issue is the destruction of e-mails that relate to Committee business. Under the Public Records law, all records of the district must be maintained for particular periods of time. If e-mails are deleted on an individual’s personal e-mail account, it could create an inference that the information deleted was harmful to the district’s interests.

III. BULLYING AND CYBER-BULLYING

Mass. Gen. L. ch. 71, § 37O prohibits the bullying by students, either through verbal or physical acts, or through electronic expression. In 2013, the Legislature amended the statute to include members of the school staff, “including but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular

activity or paraprofessional.” Under the amended language, school staff can be found to have engaged in bullying of a student through the use of electronic media. While no cases have yet interpreted this language, presumably electronic media will include Facebook, Twitter, e-mail and other electronic communications. Therefore, it is critical that the School Committee maintain a policy that prohibits bullying and that it regularly monitor the use of its system to identify and prevent the use of social media to accomplish bullying.

IV. DEFAMATION/FIRST AMENDMENT ISSUES

The Committee, its employees, and members of the general public should understand that their use of social media may defame an employee’s reputation and thereby subject the individual making the statement to potential legal liability. In Massachusetts, the elements of a defamation claim are:

1. a false and defamatory communication;
2. of and concerning the plaintiff which is
3. published or shown to a third party.

Libel per se (libel is in writing; slander is spoken; together they are referred to as defamation) in this context seems to encompass statements that charge the plaintiff with a crime, that allege the plaintiff has certain diseases, or that may prejudice the plaintiff’s profession or business.

Therefore, false statements made by a member of the school district or a parent or member of the community which are false and defamatory (i.e., charge the individual with committing a crime; have a certain disease, or prejudice the individual’s profession or business) about a particular individual and are published or shown to a third party may be actionable as libel or defamation.

In the context of social media, it is extremely important that individuals posting to a Facebook account, Twitter feed or sending an e-mail, verify the accuracy of their statements, since once information is sent through one of these forums, it may cause damage to an individual's professional reputation.

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of and concerning the plaintiff which is
published or shown to a third party.

V. CIVILITY AND THE USE OF SOCIAL MEDIA

Separate and apart from avoiding potential legal liability, there are important reasons for using social media in a manner that is civilized and respectful.

1. Children mimic adult behavior, especially behavior by parents and staff who they view as role models. If parents/guardians/staff members use social media in a way that is disrespectful toward other individuals, children will be more likely to engage in similar behavior.
2. Repeated use of social media to harass, belittle or criticize school district employees may adversely affect the school district. No school district wants to gain a reputation as a difficult place to work. It makes it more difficult for the school district to attract and retain good, qualified employees. While some criticism of staff may be warranted based on the particular facts of a situation, the criticism should be done privately and through the chain of command (i.e., discuss first with building principal then superintendent). Public denunciations of staff members on Facebook or other social media, even if not rising to the level of defamation, may be hurtful and damaging to employees' morale.