

Know Your Rights

School Board Members & the First Amendment



School board members are elected representatives of the public. They are not employees of the administration and do not lose their First Amendment rights upon taking office. While board members must comply with applicable law, such as student confidentiality requirements, they retain the right to speak as citizens on matters of public concern in their individual capacity. Elected officials do not forfeit constitutional rights by assuming public office.

The First Amendment protects elected school board members' right to speak as individuals on matters of public concern, including education policy, governance, and public spending.

What Board Members May Do

1. Board members may communicate directly with parents, taxpayers, and community members. Includes views on:

- Curriculum and instruction
- School safety and discipline
- Budget and taxation
- Policy and governance

2. Board members may speak with journalists without prior approval.

A school board may designate an official spokesperson for district statements but cannot restrict individual speech. Public officials generally retain personal speech rights when not speaking for the board.

3. Board members may publicly disagree with board decisions or policies.

The First Amendment does not require uniformity of opinion among elected officials.

4. Board members may use personal accounts to communicate with the public.

Whether speech is "official" depends on context. Social media activity is attributable to government only when the official is authorized to speak for the government and is acting in that capacity. However, be aware, that even when speaking in your personal capacity (using a personal email, social media account, cell phone, etc.), the communication may still be subject to the public records law.

Common Misconceptions

“Only the superintendent or board president may speak to the media.”

False. Official messaging may be centralized, but individual First Amendment rights remain intact.

“Board members cannot respond to constituents.”

Incorrect. Board members are elected to represent the public and may communicate directly (subject to applicable laws such as those governing student confidentiality). Reminder: All written communications related to district business are subject to Wisconsin public records law.

“Criticizing district decisions is prohibited.”

Incorrect. Raising concerns related to public issues is fully protected.

Limits on Speech

The First Amendment provides broad protection for speech, including speech that is critical, controversial, or offensive. Government may not discriminate against speech based on the ideas or viewpoints it expresses. Only a few narrow categories, such as true threats and unlawful incitement, are not protected. Beyond these exceptions, government authority to restrict speech is highly constrained.

Best Practices

- Clarify when speaking in an individual capacity
- Keep communications factual and professional
- Engage regularly with the public
- Ask for legal authority if told you may not speak

Adverse Action by other Board Members

Just as you have a right to free speech, other board members have a free speech right to criticize you. They may do so individually or collectively.

Key Takeaways for School Board Members

School board members are elected to represent their communities—not to remain silent. The First Amendment protects the right to speak, dissent, and engage the public on matters of public concern. That protection is foundational to representative government.