

# Bowles Rice

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## Can Board Members Block Comments on His or Her Social Media?

**Question:** *If a board member posts on his or her personal social media (Facebook, Twitter, TikTok, etc.) about the board of education's news or business, can the board member "block" individuals from commenting on the social media platform or delete comments that criticize the board member's post?*

For example, imagine a board member makes a post to his or her personal Facebook page about a recent visit to a local elementary school to view an orchestra performance. A critical Community Caren comments, "it would be nice if you'd visit for something that really matters, like for a meeting with parents on why this 'New Math' even matters."

### Can Community Caren be blocked or her comment deleted?

**Answer:** *The short answer is "NO" board members cannot "block" individuals for indefinite periods of time from commenting on social media posts about board of education business OR delete critical or unfavorable comments. Board members must take caution when they post about official board of education business on their personal social media pages and must consider the following:*

- Prohibiting certain users from commenting on social media posts related to official board business necessarily implicates the First Amendment to the Constitution and its protection of freedom of speech.
- There have been a significant number of recent lawsuits that dealt with the application of the First Amendment to activities of elected officials, such as board of education members, on social media platforms. Particularly when courts find the social media platform (such as Facebook page or Twitter account) to be a forum for public discussion, courts have found blocking participants from commenting or deleting unfavorable comments to be unconstitutional.
- Courts have found it compelling that members of the public may attend and offer comments at in-person board of education meetings. Courts have likened social media platforms as an opportunity for board of education members to engage in public discourse similar to that in a public meeting. By creating the original "post" on Facebook or "tweet" on Twitter, board of education members are essentially inviting interaction and comments from the public.

- It is easy to see why courts have held that blocking individuals for indefinite periods of time or removing their comments entirely is a violation of Constitutional rights. Just as members of the public are permitted to attend board meeting and express their viewpoint, so too must the public be allowed to comment on board business and news appearing in “posts” and “tweets” on Facebook, Twitter, and other social media platforms.
- However, courts are not completely lacking in sympathy for board members who simply want to disseminate information quickly and efficiently to the public regarding board of education business. Courts have encouraged board members who maintain social media platforms to establish rules of etiquette that prohibit repetitious “spamming” on social media and comments that disrupt the original post.
- Some courts have implied that a ban of a disruptive or repetitious commenter on social media platforms may be appropriate for shortened periods of time. Courts have compared a shortened ban of a disruptive commenter to be akin to the reasonable removal of an unruly person from a public meeting. Nevertheless, courts emphasize that board of education members cannot block commenters indefinitely or delete unfavorable comments, while permitting favorable commentary and other interactions with the public.
- Public officials who wish to moderate public discussion on social media platforms should recognize it can be an effective way to provide awareness about board activities, but that it involves a great deal of discretion. Again, courts encourage officials, such as board of education members, to adopt rules about online comments and a clear outline of the consequences (such as limited blocking) for violating such rules. CAUTION-If board members are considering creating “rules of decorum” for comments on their personal social media platforms and consequences for violators, these officials would be well-advised to seek legal advice before proceeding.
- In sum, if board members share board of education news and business on their personal social media platforms, such as Facebook or Twitter, they are essentially inviting discussion by and with the public. Therefore, tread cautiously, because blocking an individual or removing their comments will likely be viewed as a violation against Constitutionally-protected free speech.

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*Leigh Ann Wilson focuses her work primarily on issues related to labor and employment and higher education. She has assisted in the defense of employers against claims for discrimination, harassment, wrongful discharge, and retaliation, as well as claims brought under family and medical leave and disability accommodation laws. She is a former National Board-Certified teacher.*

