

SCHOOL BOARD ETHICS: Crafting a Code That Protects Speech

Many school board ethics codes chill board members' speech with vague or subjective language. Promoting ethical behavior is important but cannot come at the cost of First Amendment rights to association and free speech/expression.

While some states have specific statutory requirements, many school board ethics codes are adopted based on recommendations from a statewide school board association. Boards often have some ability to individualize their ethics codes, allowing them the opportunity to adopt codes which protect speech rather than restrict it. Regardless of state requirements, boards are responsible for the adoption and enforcement of ethics codes and therefore are potentially liable when those codes restrict constitutionally protected speech.

Affirmative Speech Protections

Ethics codes can take affirmative steps to protect speech. School boards, depending on state requirements, may incorporate affirmative protections for speech into their chosen ethics codes to better protect their board members' rights. Below are some examples of provisions providing affirmative speech protections.

- “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.” *Colorado Sch. Bd. Ass’n. Leadership Guidebook Sample Code of Ethics*
- “A local board of education shall not adopt or follow any code of ethics which prevents the members of such board from discussing freely the policies and actions of such board outside of a board meeting.” *Georgia Dep’t of Ed. Model Code of Ethics Domain V.7*

Chilling Speech

Vague and subjective language is common in school board ethics codes. Such language makes it difficult for school board members to follow the codes. To avoid a potential violation, members may choose not to speak at all. This chilling effect raises serious First Amendment concerns.

As elected officials, it is especially important that school board members are able to freely express themselves. Limitations on members' speech prevent them from effectively communicating with constituents and diminish voters' ability to make informed decisions.

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Speech-Chilling Provisions to Avoid

Vague and subjective language in school board ethics codes can chill the speech of school board members and limit their ability to communicate effectively with their constituents. Promoting ethical behavior is important but cannot come at the cost of First Amendment rights to association and free speech/expression.

A number of ethics codes address similar issues in speech-restrictive ways. Often, these ethical concerns can be addressed adequately without infringing on board members' speech rights. This chart provides examples of common ethics code language, the speech issue it creates, and potential alternatives for addressing the problem.

Common Language/Provision	Free Speech Issue Created	Possible Alternatives
<p>Limitations on partisanship or interest group influence</p> <p><i>E.g. I will represent all school district constituents honestly and equally and refuse to surrender my responsibilities to special interest or partisan political groups.</i></p> <p><i>Render all decisions based on available facts by exercising independent judgment instead of the opinion of individuals or special interest groups</i></p>	<p>Infringes on freedom of association</p> <p>Chills affiliations and speech that are not school-board-related</p> <p>Prevents board members from seeking expert opinions</p> <p>Prevents board members from engaging with professional organizations, advocacy, and charitable work</p>	<p>Language like “Board members are encouraged to make policy decisions only after full discussion at publicly held board meetings” ensures transparency and enables the community to be informed on how board members are approaching issues. Elections then allow the public to address any concerns about partisanship or other interest-group influence.</p> <p>Conflict of interest and anticorruption laws and provisions prevent abuse of position.</p>
<p>Prohibitions on voting statements</p> <p><i>E.g. By refusing to make statements or promises as to how he or she will vote on any matter which should properly come before the board as a whole.</i></p>	<p>Prevents communication with constituents on issues, limiting community input</p> <p>Denies board members ability to make campaign pledges/discuss their goals if elected, limiting informed voting</p>	<p>Concerns about vote trading/selling can be addressed with anti-corruption and conflict of interest laws/provisions.</p> <p>Open Meetings laws typically address matters, like contract negotiations or employee/student discipline, to be kept confidential by boards.</p>

Common Language/Provision	Free Speech Issue Created	Possible Alternatives
<p>Required public support for board decisions, current and previous</p> <p><i>E.g. By recognizing the integrity of previous board members and the merit of their work.</i></p> <p><i>Recognize the integrity of my predecessors and associates and appreciate their work.</i></p> <p><i>Recognize that decisions are made by a majority vote and the outcome should be supported by all board members</i></p>	<p>Potentially compels speech, against the First Amendment</p> <p>Prevents board members from engaging in criticism of policy which they may have campaigned on changing</p> <p>Creates an inability to raise legitimate issues or address problems</p> <p>Limits informed voting and community input</p>	<p>Language like “Board members may speak out about/criticize board decisions with which they do not agree but must abide by those decisions in the execution of their duties.”</p> <p>School boards can create official channels for communication and inform the public that the board as a whole will only communicate through these channels.</p> <p>This makes it clear that individual members are not speaking for the board as a whole when using individual social media accounts.</p>
<p>Limiting criticism to specific situations, especially prohibiting from board meetings</p> <p><i>E.g. Present personal criticism of district operations to the superintendent or administrator, not to district staff or to a board meeting.</i></p> <p><i>Make no disparaging remarks, in or out of school board meetings, about other members of the school board or their opinions.</i></p>	<p>Chills speech, including reasonable disagreement among members</p> <p>Limits board members’ ability to raise legitimate issues</p> <p>Limits informed voting and the ability to address constituent concerns</p> <p>Limits members’ ability to raise issues in their personal capacity as parents</p> <p>Funnels criticism to the superintendent, who might be the subject of the complaint</p>	<p>Open Meetings laws typically already address matters which should be handled in closed sessions, like employee or student discipline.</p> <p>Ethics codes should avoid regulating speech of board members, particularly outside of meetings.</p>

Bottom Line: Board members do not lose their rights upon election. Their ability to freely express themselves is fundamental to effective school boards and informed voters.