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February 1, 2019

Social Media Silencing, 4th Circuit Rules Against Banning Individuals from Government Social Media Account

In the age of social media, it has become increasingly common for governmental entities and officials to use Facebook and Twitter accounts to communicate with the public and inform them of urgent issues. Although these social media accounts increase access and transparency, they may also impose some obligations. On January 7, 2019, the Fourth Circuit Court of Appeals held that a public official could not block an individual from commenting on her official Facebook page as it constituted a public forum protected by the First Amendment.

Phyllis Randall was the Chair of the Loudon County Board of Supervisors who maintained an official Facebook page in her role as Chair. The Facebook page listed her official contact information and invited members of the public to post issues on her page. Randall often engaged with her constituents on the Facebook page and used the page to inform the public of issues concerning Loudon County.

Brian Davison, an outspoken resident of Loudon County, attended a joint town hall meeting which included the Loudon County Board of Supervisors and the Loudoun County School Board where Mr. Davison questioned the approval of certain financial transactions. After the meeting, Chair Randall posted about the meeting on her official Facebook page. Mr. Davison, through his personal Facebook profile, Virginia SGP, commented on the post and again suggested that certain school board members were unethically approving financial transactions and receiving kickbacks. Chair Randall removed her post along with Mr. Davison's comment from her Facebook page and banned Mr. Davison from commenting on the Chair's Facebook page.

Mr. Davison filed suit over his removal arguing that it violated his First Amendment right to free speech. The District Court for the Eastern District of Virginia held that Chair Randall violated Mr. Davison's First Amendment free speech rights.

The case was appealed to the Fourth Circuit Court of Appeals who affirmed the District court's ruling.

Although this case was not decided by a court that governs the State of Illinois, it is still instructive to school districts and school personnel nationwide. If a school district's social media account allows members of the public to comment and engage with the District, given the ruling of the Fourth Circuit, these social media accounts likely constitute public forums and individuals commenting on such forums may not be banned for exercising their right to free speech. However, if a school district has a social media account but does not allow the public to comment and engage with the school district on the account, then it is likely not a public forum and the school district does not have to worry about the First Amendment rights of the public.

Restriction on Public Comment Violates Open Meetings Act

On January 9, 2019, the Public Access Counselor issued a binding opinion, [PAC 19-002](#), finding a School District in violation of Section 2.06(g) of the Open Meetings Act when it restricted the public comment portion of its October 22, 2018 board meeting to 15 minutes.

The Board of Education discussed hiring an English teacher at its October board meeting which motivated many of the approximately 100 members of the public to comment. The Board announced at the meeting that members of the public would be able to comment for three minutes each for a total of 15 minutes for all speakers. Most of the individuals intending to comment did so, however, the Board refused further public comment after the 15-minute period and refused to extend the time. A member of the public submitted a Request for Review to the Public Access Counselor (“PAC”) alleging that the Board violated the Open Meetings Act (“OMA”) by restricting the public comment period.

The PAC found that the Board violated Section 2.06(g) of the OMA, which states, “[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.” The PAC found that any rules regarding public comment must be “established” and “recorded” meaning that they must be adopted by the Board and reflected in its Board Policy Manual. Although the Board’s three-minute limit per speaker was formally adopted in Policy 2:230 of its Board Policy Manual, the 15-minute limit was not. Since the 15-minute limit was not contained in its Board Policy Manual, the District violated the OMA by imposing such a rule in its October board meeting.

This is not to say that a 15-minute limit on public comment would violate the OMA, just that the limit must be reflected in the District’s Board Policy Manual for it to be imposed at the board meeting. In fact, the PAC stated in its opinion that “a public body has inherent authority to conduct its meeting in an efficient manner, and the lack of a specific time period for public comment in established and recorded rules does not necessarily mean that public comment must be allowed to continue indefinitely.” Therefore, school districts should examine their Board Policy manuals and make sure that any reasonable restrictions on public comment are explicitly reflected therein. If a school district imposes public comment restrictions that are either unreasonable or not reflected in its Policy Manual, it risks violating the OMA.

UPCOMING EDUCATION EVENTS

Every Student Succeeds Act (ESSA) Conference

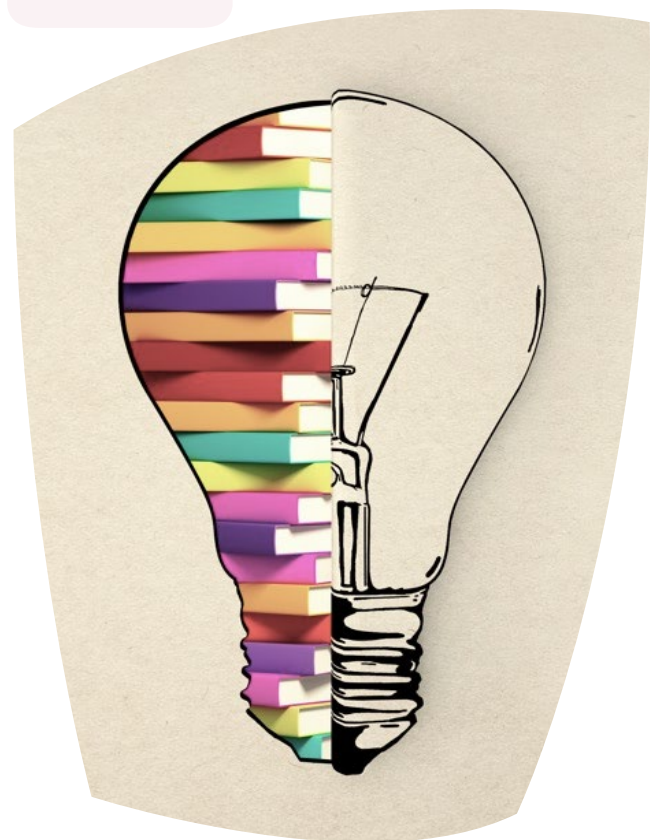
Hosted by the Illinois State Board of Education
February 11-13, 2019
Chicago, IL

Trends in Collective Bargaining

Hosted by the Illinois Association of School Boards
February 23, 2019
Naperville, Springfield, Mount Vernon

Illinois Alliance of Administrators of Special Education (IAASE) 20th Annual Winter Conference

Hosted by the IAASE
February 21-22, 2019
Springfield, IL



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