

Is Your Facebook Page a Public Record?

By: Nicole Wingard Williams, Esq.

According to a recent ruling by the State's Office of Open Records ("OOR"), the short answer is maybe.

In August, the OOR issued a Final Determination in *Purdy v. Borough of Chambersburg*, OOR Dkt. No. AP 2017-1229, finding that because the Facebook page of the Borough's mayor was linked to on the Borough's official website, stated "Public Figure Chambersburg, Pennsylvania" and contained discussions and posts of activities within the Borough, the page was a record of the Borough under the Right-to-Know Law ("RTKL").



Nicole Wingard Williams

In *Purdy*, the requester sought, in part, "copies of all Facebook posts and associated comment threads from Mayor Darren Brown's public figure Facebook page relating to or mentioning in any way, the Rail Trail mural proposal that was presented to Borough Council on May 22, 2017. This is to include all related posts and comments that have been deleted from the Facebook page." The Borough denied the request as it pertained to the

Facebook page of the Mayor, asserting that the records requested were not records of the Borough. The requester subsequently appealed to the OOR. On appeal, the requester claimed that the Mayor had both a public figure account and a private account on Facebook and that he was seeking only posts on the Mayor's "official" Facebook page.

The Borough argued that because the Facebook account was not created, administrated or required by the Borough, the Facebook account was not a Borough record. The OOR agreed with the requester and ordered that the Borough provide access to the requested records. The OOR found that it was immaterial whether the Borough oversaw, authorized or even blocked the page from its computer network. Instead, the OOR found that because the

continued on next page

Pennsylvania Supreme Court Issues Unanimous Ruling Limiting Charter School Amendments

by Lisa M. Colautti, Esq.

The Pennsylvania Supreme Court recently issued a unanimous decision holding the Charter School Law (CSL) does not provide procedures for charter schools to amend material terms of their charters, nor does the law provide the Charter Appeal Board jurisdiction over appeals involving charter amendments.



Lisa M. Colautti

In *Discovery Charter School v. School District of Philadelphia*, __ A.3d __ (Pa. 2017) 2017 WL 3392877, Justice Baer delivered the unanimous opinion of the Court, which conducted a thorough review of the CSL.

The Court has limited the charter amendment process to that which is written in the Charter School Law.

The Court concluded the CSL did not provide procedures or a standard to evaluate charter amendment applications, and that past decisions from the Commonwealth Court finding that it did were in error. The

Court further found that because the Legislature failed to include this framework in the law, the state Charter Appeal Board, known as CAB, does not have jurisdiction to hear appeals from a district's action or failure to act on a charter school's amendment request. The Court emphasized that this decision does not preclude charter schools and districts from agreeing to changes if the charter so permits, nor does it prohibit charter schools from applying for and obtaining a new charter under the requirements for new charter applications in the CSL.

continued on next page

Limiting Charter School Amendments, *continued*

This Supreme Court decision specifically overruled several Commonwealth Court cases which permitted charter schools to use the amendment process to expand their schools to include more grades in another location, to expand student enrollment in another facility, and to operate its school at a second location. The Court held that, "...the charter amendment approach adopted by the Commonwealth Court is simply not authorized by the CSL." While CAB retains jurisdiction over denials of charter applications, revocations and non-renewals, review of a district's decision on a request to amend a charter would be conducted by the Court of Common Pleas under the Local Agency Law. More importantly for districts, the Court has limited the charter amendment process to that which is written in the CSL. Following *Discovery Charter School*, charter schools seeking material changes in their charters, such as grade expansion, change in location or the opening of a new building, without the agreement of chartering districts, must now go through the more rigorous charter application process outlined in the CSL.

The decision in *Discovery Charter School* is considered a victory for school districts across the state, as districts will have more control on the growth of charter schools. *Should you have any questions about this ruling or how it may affect charter schools and their expansion in your district, we encourage you to contact your solicitor or the attorneys at Weiss Burkardt Kramer.*



We're Speaking...

- On September 20, 2017, Attorney Ira Weiss presented on the topic of "Negotiations Preparation, Fact Finding, and Status Quo" to the Pennsylvania Association of School Business Officials, Southwest Human Resource Managers.
- Attorney Jocelyn Kramer will be speaking at the Exceptional Children's Conference in Lancaster, PA on October 30, 2017. The subject of Ms. Kramer's presentation will be "Special Education Remedies."
- Attorney Rebecca Hall will be presenting at the National Business Institute's "The Top Special Education Legal Mistakes (and How to Avoid Them)" seminar in Pittsburgh on December 8, 2017. Ms. Hall will present on "The IEP Development Process and Implementation Disasters" and "IEP Design Mistakes."

Is Your Facebook Page a Public Record? *continued*

Borough operates through its elected representatives and the page of the elected representative, in this case the Mayor's Facebook page, contained "discussions and posts regarding activities within the Borough, including those relating to the police department and council members, and contains contact information for the Borough" which align with the responsibilities of borough mayors as recited in the Borough Code, the Facebook page was a Borough record.

School officials and board members who have Facebook and other social media accounts should take note of this Final Determination.

School officials and board members who have Facebook and other social media accounts should take note of this Final Determination. Any social media account of a public official in which that official holds himself or herself out as a public official and discusses the school or school business is likely to be deemed a record of the school entity subject to disclosure under the RTKL. *If you have any questions regarding social media accounts of your school entity or officials in light of this recent Final Determination, we recommend contacting your solicitor or the attorneys at Weiss Burkardt Kramer to discuss the best practices moving forward.*

Weiss Burkardt Kramer, LLC

445 Fort Pitt Boulevard Suite 503 Pittsburgh, PA 15219
www.wbklegal.com Phone: (412) 391-9890 Fax: (412) 391-9685

Ira Weiss	iweiss@wbklegal.com
M. Janet Burkardt	jburkardt@wbklegal.com
Jocelyn P. Kramer	jkramer@wbklegal.com
Laura M. McCurdy	lmccurdy@wbklegal.com
Aimee Rankin Zundel	azundel@wbklegal.com
Lisa M. Colautti	lcolautti@wbklegal.com
Nicole W. Williams	nwilliams@wbklegal.com
Rebecca Heaton Hall	rheatonhall@wbklegal.com
Claude C. Council	councillaw@verizon.net
Hobart J. Webster	hwebster@wbklegal.com
Annemarie K. Harr	aharr@wbklegal.com

This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer, LLC.

Copyright 2017, Weiss Burkardt Kramer, LLC