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JCPS superintendent goes under oath in LPM records lawsuit

Louisville Public Media | By [Jess Clark](#)

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Kentuckiana Court Reporters

JCPS Superintendent Marty Pollio says he's never been formally trained on the state's records retention laws.

JCPS Superintendent Marty Pollio said under oath that he texted throughout last year's first day busing crisis, messages over.



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When it comes to email, there's a common wisdom school district employees know well, according to Jefferson County Public Schools superintendent Marty Pollio.

“The line is: ‘whatever you email, you can expect to be on the front page of the newspaper,’” he said last month during a deposition related to a civil lawsuit filed by Louisville Public Media.

When Pollio can’t talk district business with someone face-to-face, he prefers a phone call or text.

And as [the disastrous opening day of JCPS’ 2023-2024 school year unraveled](#), Pollio said he was primarily texting with his top staff.

JCPS officials are trying to keep those texts secret. They say that they don’t have the texts because they are stored on employees’ personal phones, and are therefore not subject to the state’s open records law.

The messages would provide a window into how school officials were responding in real-time to the first-day fiasco that left families scrambling to find kids late into the evening and ultimately upended the district's transportation plan.

LPM [filed a lawsuit in Jefferson Circuit Court in March](#) asking a judge to force the district to provide top staff’s communication records from last year’s first two days of school — including text messages.

“Records don’t lie,” said Amye Bensenhaver, the co-director of the Kentucky Open Government Coalition, a nonpartisan, nonprofit group that advocates for open records laws. “Ultimately I don’t think parents’ concerns can be assuaged until they know the truthfulness of what transpired.”

She said that if the text concerns public business, it’s a public record and subject to records requests.

“The fact that you transmit it by email or text is irrelevant,” Bensenhaver told KyCIR.



Public officials have tried to rely on texts to hide their official communications since texting began in the late 1990s and early 2000s, said Aaron Mackey, the Free Speech and Transparency Litigation Director with the Electronic Frontier Foundation, a California-based nonprofit that advocates for civil rights and open government.

“I think it’s an outdated view that many public officials believe,” he said.

Mackey said JCPS’s claim that they don’t have the texts in their possession because they are stored on personal phones is “just a dodge to try to avoid accountability.”

“I think what it says is they don’t actually value transparency,” he said. “And that’s really disappointing just because I question then: who are they serving?”

The best record

In the August deposition, Pollio said he’s never told anyone to eschew email for

text, but a [an independent auditor that examined the busing fiasco](#) noted that one JCPS leader said they “felt encouraged to use cell phone texting instead of district email because it was perceived that texting was less subject to open records requirements.”

Pollio himself said he sends just 10-12 emails a week, and texts “at least as much” as he emails.

On the first day of school last year, Pollio said he was mainly texting with JCPS’ Chief Communications Officer Carolyn Callahan and Chief of Staff Katy DeFerrari. Callahan uses a JCPS-owned phone, but a district search of the device yielded no text messages from that day. Pollio said it’s possible he was texting Callahan on her personal device.

Pollio said he also uses a personal phone for district business, even though his contract allows him a district phone.



He said he’s never had any formal training on records retention laws and is not

aware of any records training his senior staff has had, either.

State [public records regulations](#) require most correspondence between public school officials be kept for at least two years and superintendent correspondence may be kept permanently.

That real-time correspondence can be the “best record” of what district officials “were doing and thinking in a moment of crisis,” said Mackey with the Electronic Frontier Foundation.

Mackey pointed to an investigation into the 2022 Robb Elementary School shooting in Uvalde, Texas that revealed local officials delivered a false account of the event to the public when they said law enforcement “rapidly devised a plan” to stop the shooter.

Public records, combined with interviews, showed officers were disorganized, leaderless and waited outside classrooms for more than an hour while students and teachers bled out and pleaded for help.

Texts or no texts

As that calamitous first day unfolded, Pollio said he never heard from any of the district’s seven school board members.

But Linda Duncan, who represents District 5 in south Louisville, said she thinks she texted Pollio to let him know her granddaughter didn’t arrive home until nearly 10p.m. that night.

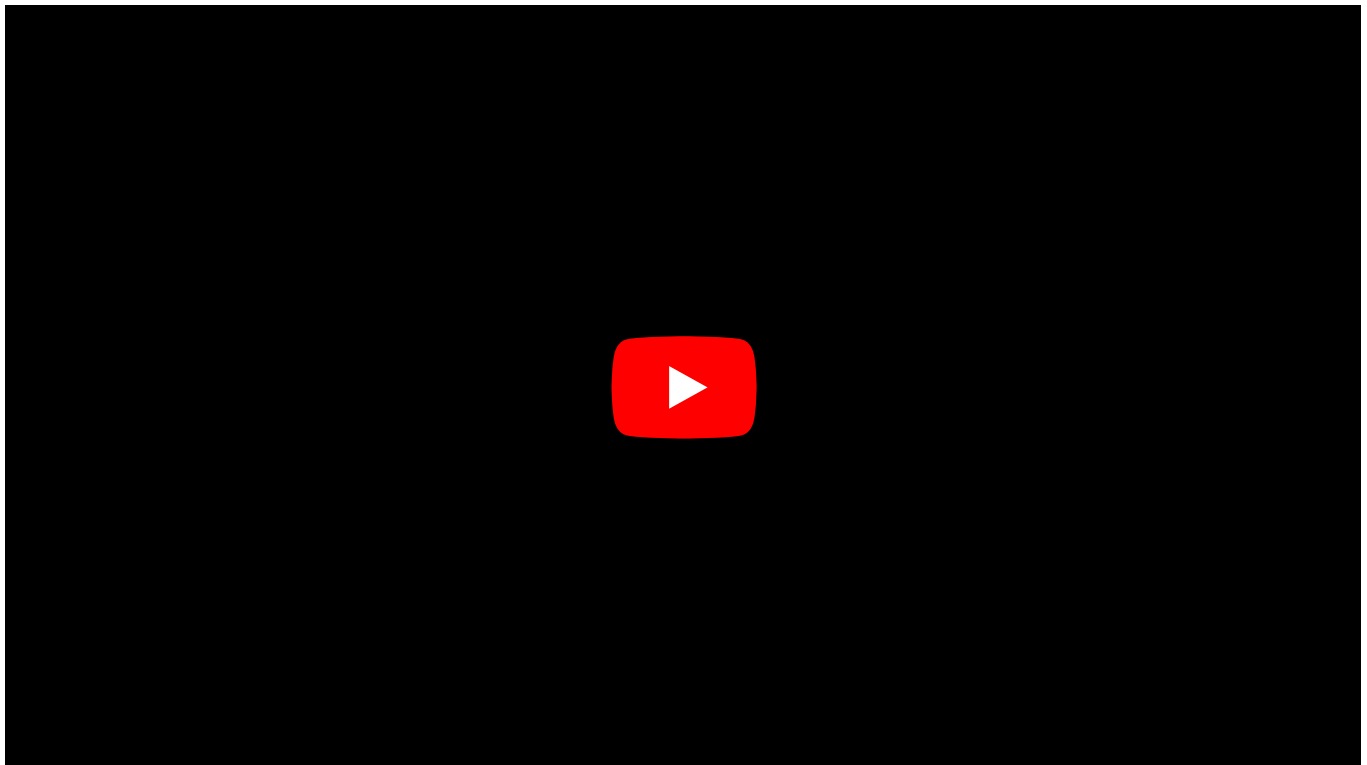
“It was just informational — like ‘Uh-oh! Here was a problem at my house,’” she said.

She can’t be sure if she did, and she can’t check, either, because she regularly deletes nearly all of her texts — even those about district business.

Duncan said Kevin Brown, the district's general counsel, told her doing so is legal.

"He said if you do that regularly as a part of how you handle all of your messages ... he didn't think that was a violation [of the open records act]," Duncan told KyCIR.

The only texts Duncan saves, she said, are those from her family, since they often contain photos of her grandkids.



Sarah Cole McIntosh, who represents District 7 in southeast Louisville, said she also might have texted Pollio or his chief of staff that evening.

She can't check, either.

McIntosh said she'd deleted "all kinds of things" from her phone while vacationing at Disney World last November. She needed more room for pictures, she said.

Callahan, the district's chief communication's officer, said JCPS officials cannot comment on any legal advice Brown gave to board members.

"Dr. Pollio stands by everything he said in his deposition," Callahan wrote in an emailed statement.

James Craig, who represents District 3, wouldn't say if he communicated with Pollio on last year's first day. Chris Kolb, from District 2, and Joe Marshall, from District 4, did not respond to KyCIR's inquiries.

Diane Porter, who represented District 1 at the time, told KyCIR that on the first day of school she communicated with Brown, the district's attorney. She did not respond when asked to clarify if that meant she had not communicated with Pollio.

Corrie Shull, who represents District 6 and is the current board chair, said he did not reach out to Pollio by text, but may have by phone.

"You're asking about something that was a year ago," he told KyCIR. "I don't remember who all I talked to."

Bensenhaver, the Kentucky open government advocate, said school board members "just don't have the right to destroy public records at will."

"That's a hugely important proposition," she said. "Because once that record's gone, it's gone."

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Jess Clark

Jess Clark is LPMs Education and Learning Reporter. Email Jess at jclark@lpm.org.

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