



Social Networking Policies For School Employees

By Christopher P. Stief (Philadelphia)

In our April 2011 issue, we discussed strategies for schools to limit their exposure to liability stemming from employees' off-campus interactions with students. School employees' participation in online social networking, such as Facebook and Twitter, presents many of the same perils, but merits its own discussion because of the unique aspects of online interactions. Recognizing that faculty and staff likely are using social media at an increasing pace, schools should formulate and communicate policies for staff online social media interactions with students and parents.

Adult Use Of Social Media

It should come as no surprise to any school administrator that many of your employees are on Facebook. Indeed, they probably use more than one social networking site – it is quite likely faculty and staff members also are using Twitter, LinkedIn, and others. Facebook statistics indicate that:

- at least 35% of Facebook users are over 35 years of age; users spend 700 billion minutes per month on Facebook;
- 200 million active Facebook users access the site through their mobile devices; and
- Facebook is the second most frequently visited site on the Internet (after Google)

So some of your faculty and staff members undoubtedly spend some of their off hours on Facebook, either at home, from their mobile devices and perhaps even from school premises during breaks in their work schedule. Facebook of course also is heavily used by your students, and as a result can become a seemingly casual and freewheeling format for off-duty and off-site interaction between students and employees.

Statistics suggest some of your employees likely also are "tweeting" messages out through Twitter's abbreviated, casual messaging service. Twitter boasts more than 175 million users, who send out more than 95 million messages per day. Twitter messages – "tweets" – are limited to 140 characters, which often precludes the type of careful wording administrators normally demand when communicating with members of the school community.

Each Twitter user receives a live stream of tweets from any other Twitter users they are "following." This service provides a format for the broadcasting of unfiltered abbreviated messages, which under Twitter's default settings can be searched for and viewed by anyone, whether they are "following" the particular user who issued the tweet or not.

LinkedIn is a professionally-focused business-networking site. It has more than 90 million members whose average age is 41 years old. Average



household income of a LinkedIn user is approximately \$110,000, and 25% have an investment portfolio value of more than \$250,000. Your students' parents are likely heavily represented on LinkedIn. And so are your faculty members. Searches on LinkedIn in June 2011 showed approximately 8000 secondary and primary education faculty and staff members on LinkedIn in the Philadelphia area alone; 7300 in the Dallas area; and 9200 in the San Francisco area. LinkedIn is an online place where your employees and parents are quite likely to meet, network, and exchange information with each other.

The Dangers Presented

There are three primary groups with whom faculty and staff might interact that should be considered as part of any school's social media policy:

1. Networking with students

There is a line that schools walk every day in trying to both foster and manage student-teacher relationships. These relationships are essential to any school's mission, but there are dangers when those relationships continue outside of official school activities. Given the strong relationships that sometimes develop during school hours and extracurricular activities, it should be no surprise that students and faculty or staff might seek to "friend" each other on social networking sites like Facebook. When a student and teacher become friends on Facebook, there are a series of risks that arise almost immediately. Here are some examples:

- the teacher may learn things about the student that the teacher might never ask about otherwise, such as religious views, political leanings, sexual orientation, dating habits, drug and alcohol use, and a variety of other activities;

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Cyberbullying: A Continuing Concern For Schools

By J. Freedley Hunsicker (Philadelphia)

School bullying has been a problem that schools have wrestled with for years. Traditionally, much of the focus has centered on students being bullied because of their religious, ethnic or life-choice identifications. In a recent and highly publicized situation in Philadelphia, Asian students were targeted by African-American students at South Philadelphia High School. In many instances over the years, students who identify as gay have been publically bullied. Most of the bullying has involved violence, threats, merciless teasing and behaviors that are customarily regarded as schoolyard or playground bullying.

These concerns have prompted anti-bullying legislation in many states and directives from state boards of education for public schools to develop anti-bullying policies. Most independent schools have strong anti-bullying policies in their student codes of conduct to cover these behaviors. Typically policies are addressed to cover behavior at school or at school-sponsored events. But technology has created another and far more insidious form of bullying. "Cyberbullying" takes place over the Internet or through cell phones. Even if not acting maliciously, students can be utterly clueless about the harmful consequences of their online statements or cell phone-texting, and this form of activity presents a much greater challenge for schools than traditional schoolyard bullying.

There isn't a school administrator who isn't aware of problems caused by online postings by students on the Internet. During the past year the suicide of a Rutgers University freshman, following his humiliation by the online video streaming of his homosexual encounter with another student, made national news. It was an example of the devastation that can ensue by student use of the Internet and social media sites such as Twitter and Facebook to engage in invasions of privacy and harassment.

Stories of this type of misuse of modern technology by students are legion. The medium allows a sender to appear anonymous. It is a sad fact that many students do not appreciate the power of their posted online communications – which they might think harmless and amusing when composed – to hurt and destroy their target by exposing the target to humiliation and scorn. Cyberbullying most commonly occurs among schoolmates, and often involves middle school students.

Some Real World Examples

Some cases have involved sexually explicit pictures of pre-teens and teenagers being posted for the world to see. The Rutgers student was not the only suicide reported as having been caused by cyberbullying. Students also have targeted teachers and administrators at times. In a middle school in Chapel Hill, North Carolina, an eighth grade girl – unhappy with a perceived slight by a teacher, recently announced on her Facebook page that the teacher was a "pedophile." Her Facebook "friends" piled on, noting in their comments that the teacher was a child rapist and that he suffered from bipolar disorder. None of the comments about the teacher were true. He eventually heard about them, was concerned because they could do career-ending harm if believed, and he complained to the principal.

What did the principal do? She called the girl into her office, demanded that she use her password and log on to her Facebook account so she could review the offending posts. The posts violated a school code of conduct prohibiting students from "falsifying, misrepresenting, omitting or erroneously reporting allegations of inappropriate behavior of a school employee toward a student." The principal demanded the girl delete the

offending posts from her Facebook page and directed her to write an apology to her teacher. The principal then called in the girl's parents and offered them the choice of their daughter's being expelled from school for the balance of the semester and enrolled in an "alternative" school for "problem children," or of facing a tribunal which might impose even harsher sanctions.

The student was devastated. She explained her posts were not meant to be serious and had been intended as a joke. Her father acknowledged what the girl did was wrong but was concerned that the punishment of sending his daughter to what used to be charitably referred to as a "reform school" could ruin his daughter's future. He has threatened a lawsuit against the school for violating her privacy by forcing her to log on to her Facebook page.

But unlike the girl in Chapel Hill, many perpetrators of cyberbullying are hard to identify. Postings often are anonymous. Students have created fictitious Facebook and MySpace pages in the names of their targets. Several years ago a teen-aged girl in the Midwest created a fake Facebook page in the name of her social rival, a young girl who she believed had stolen her boyfriend. The postings were explicit and humiliating. The targeted girl suffered severe significant stress and ended up dropping out of school.

Similarly the *New York Post* has reported that the daughter of an Indian diplomat and a senior at John Bowne High School in New York was arrested in May 2011 and suspended from school for cyberbullying two of her teachers. The offending and anonymous emails were sexually explicit, with references to incest, rape, and prostitution. One of the few printable emails stated: "You disgusting bastard. I hope you die in Hell." Her arrest was made at school by uniformed police officers, who paraded her in handcuffs in front of much of the school community. The student claims she did not commit the offense and has threatened to sue the school district for \$1.5 million. The problem was a faulty investigation and too hasty a conclusion.

Apparently those who investigated misunderstood how to read Internet protocol addresses, which pinpoint an email's origin, and then compounded their mistake by misusing circumstantial evidence to arrive at a less-than-certain conclusion. Among the bits of evidence relied on by the school for its accusation against the student was the fact that she was the only student in both teachers' classes, that she speaks French and one of the emails used a French curse word; another point the school noted was that she had complained about the level of instruction of one of the teachers on Facebook. But officials apparently ignored the fact that the student had asked the same teacher for a college recommendation at the same time the flurry of emails was ongoing. The police have dropped charges. The school district may be sued.

Doing Too Much Versus Doing Too Little

Those who have been targets of the phenomenon of cyberbullying often feel that there is nothing that can be done to stop the bullying or harassment short of retaining a lawyer and threatening a lawsuit. And even the potential lawsuit is fraught with risk. While the courts hold online comment to be public and therefore subject to the same defamation laws that apply to the news media, there is always a defense argument that the postings are mere hyperbole. They will look to schools for support.

But some states have enacted laws against cyberbullying and have subjected it to possible criminal sanctions. What is a school to do? Many schools have taken steps to reduce the exposure of their students and

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- the teacher may learn all of those same things about the friends of the friended student; or
- the student may learn things about the teacher that the student should not know, and the casual nature of Facebook sharing and communication can erode the professional boundaries schools generally want to maintain.

Our advice: For these reasons, we recommend that schools prohibit teachers from connecting with students on social networking sites, such as Facebook. Faculty and staff should be instructed to decline any “friend” or connection invitations they receive from students. Likewise, faculty or staff who use Twitter might be instructed to change from Twitter’s default settings, making their tweets accessible only to viewers who request permission from the user to “follow” that user and thereby view his or her tweets. This would allow the faculty or staff member to decline any requests from students to follow. So that students do not take Facebook or Twitter declinations as a slight, consider communicating to students that school policy prohibits faculty and staff from engaging in online social networking with students.

2. Networking with parents

The adult-to-adult nature of the faculty and staff relationship with parents makes it a closer decision for schools when considering the pros and cons of faculty and staff networking online with parents of students. Social networking – especially on professionally oriented sites such as LinkedIn – can be a very fruitful way to build a sense of common purpose and support among the adult members of the larger school community.

Faculty, staff, or even administration may find the networking powers of a site like LinkedIn to be very useful in development, marketing and recruiting efforts. The easiest policy to administer, of course, would be to prohibit faculty and staff from connecting with parents online, but many schools may prefer to manage this potentially useful activity rather than ban it.

Our advice: If your school decides to allow networking online with parents, consider a policy that requires faculty, staff and administration to conduct themselves in their online interactions with parents according to the same standard of behavior that is demanded of in-person interactions. Professionalism should continue to govern. Schools may wish to consider a policy that prohibits networking with parents if the faculty or staff member’s shared information on that site includes information that normally would not be permitted to be shared with parents.

A practical approach might be to suggest that faculty and staff connect with parents only through a professionally oriented site like LinkedIn, which is constructed to share only the types of information that are appropriate for professional or business-oriented interactions. It is much less freewheeling than Facebook, and as a result is less likely to cause problems.

3. Networking with other faculty and staff Members

Schools should not attempt to restrict their employees from networking with each other online. The National Labor Relations Board has been aggressively acting to protect its belief that employees – whether unionized or not – have the right to talk to each other about their working conditions, their compensation, their supervisors, and

their employer. This means an employee’s rights to make negative comments about a supervisor or about your school are, to some degree, protected if the employee is communicating with other employees about it.

Our advice: Proceed with extreme caution in this area. Generally, it will not be a good idea for a school to attempt to restrict its employees’ online communications with each other. In the event that the school learns of negative or harmful statements or online postings by an employee, the school should consult with employment law counsel before taking action. Compliance with applicable labor law protections for employees in this type of circumstance will require a fact-specific discussion with counsel.

4. Discussing students, families or school business online

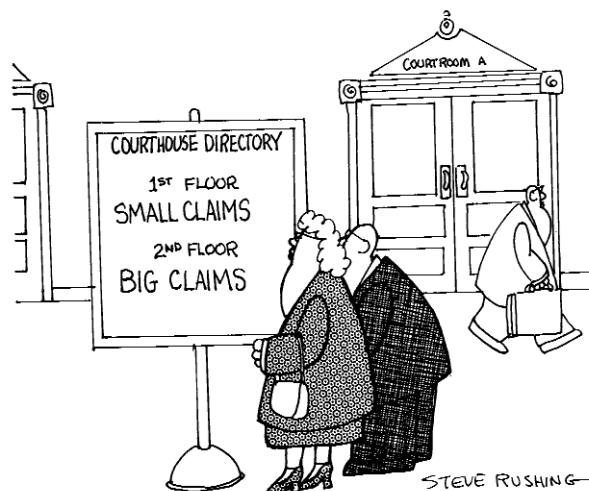
Most of us probably have already heard about the highly publicized case of Natalie Monroe, the suburban Philadelphia high school English teacher who blogged on her personal blog site that her students were “rude, lazy, disengaged whiners.” She blogged under a pseudonym and, while she was quite critical of students in general, she did not name any names. Her public school district suspended her and she became the topic-of-the-month for February 2011. Her lawyers threatened litigation and suggested First Amendment rights were being violated. Independent schools of course are not public entities so the First Amendment does not come into play, but all schools should consider how they want to address this type of issue in their policies.

Our advice: Schools should remind all employees that their duty to maintain confidentiality of personal information about students and families governs them at all times, including during their online activity. Schools may want to consider a policy that, if employees choose to have personal blogs or Facebook accounts, they are not permitted to identify themselves as speaking on behalf of the school.

Some schools may even want to encourage blogging or social media activity by employees as part of their job duties. If your school goes in this direction, a social media policy will be an important tool to guide employees in their use of social media on behalf of the school.

There is no one-size-fits all approach for schools in dealing with social media. A school’s policies must reflect and further the culture the school seeks to cultivate. But regardless of how you decide to handle social media at your school, it will be important to formulate a clear social media policy that acts in concert with the school’s core beliefs and existing policies.

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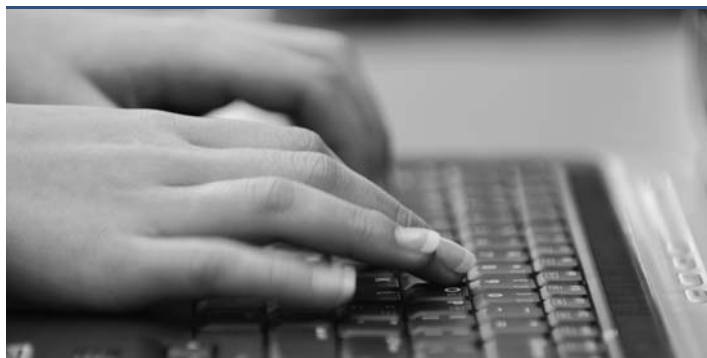
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teachers to cyberbullying and to protect themselves from potential lawsuits arising out of discipline imposed for off-campus behavior.

The first legal issue is whether a school can discipline a student for off-campus behavior. The courts long have held that public school administrators, restrained by the Constitution, can discipline students only for behavior which has resulted in a "substantial and material disruption." One problem is that this issue has not really been addressed in the digital age of the school environment. And disruption can be in the eye of the beholder. Two recent decisions of the United States Court of Appeals for the 3rd Circuit show how the courts are struggling with the issue of to what extent a public school can discipline a student for online posting effectuated from an off-campus computer.

In the case of *Layschock v. Hermitage School District*, a three-judge panel ruled in favor of a high school student who had been suspended from Hickory High School in Hermitage, Pennsylvania, for using an off-campus computer to create a fake MySpace page in the name of his high school principal who he characterized as a habitual drug user. The court ruled that the remarks were in the nature of a parody and were speech protected by the First Amendment.



But in *J.S. v. Blue Mountain School District*, the same court upheld the suspension of a female middle school student who also had created a fake MySpace page in the name of her principal, and had used sexually explicit language to describe him as a bisexual who liked hitting on students and their parents. In an effort to reconcile these two apparently conflicting opinions from panels in the 3rd Circuit, the court consolidated the cases and last summer heard oral argument before a 15-judge panel. The opinion which should be clarifying is still pending.

Our Advice

Independent schools do not suffer from the same constraints as public schools, and so have more leeway than public schools in dealing with the problem. The first step in protecting your school is to expose the problem, by educating both parents and students. Make them aware of the potential devastation caused by hurtful words disseminated to a potentially infinite audience by the mere pushing of the "send" button. Consider whether your school should empanel a committee of teachers, administrators, and students to meet and discuss the problems. Because they are closest to the problem, such a group can develop its own strategies and suggestions by reviewing and proposing updates to school policies. Virtual bullying, like schoolyard bullying, is best stopped through the engagement of the students themselves.

Second, review your school's student code of conduct and determine whether it is appropriately worded to cover cyberbullying. There is a delicate balance here. If the school is a public school, make sure the policy is not so broad that it results in improperly suppressing student freedom of speech. The policy should cover issues of student complaints, confidentiality, investigation, and discipline. The policy should be clarified and explained in plain English. Encourage students to bring matters like this to the attention of administrators.

Third, review your school's protocol for investigation in order to avoid taking action against someone whose computer identity may have been stolen, and to avoid a too-hasty rush to judgment such as what may have happened with the diplomat's daughter in New York. A protocol should also provide confidentiality guidelines to protect student privacy during and after the investigation and limit dissemination of the results of the investigation to those with a need to know. Review these policies for compliance with education attorneys familiar with the developments in this area.

Finally, there is the question of discipline. Administrators often feel their hands are tied if they cannot demonstrate that a post they find offensive has caused disruption at school and they are unwilling to invoke discipline for fear of being tied up in the courts. Yet administrators retain significant ability to address these problems.

Indeed, even public schools can take informal action, such as calling the student and parents in to the school, expressing dissatisfaction, and enforcing an extracurricular sanction. Take advantage of every situation to have a teachable moment for the school.

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