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“Friending” Students on Social Media

By Charles J. Russo, J.D., Ed.D.

The rise in social media use raises questions about appropriate use by educators and students.

The use of social media, particularly services such as Facebook and Twitter, has grown exponentially in recent years. Yet to date, relatively little litigation has arisen around the issue of teachers and other educators engaging in questionable or inappropriate use of social media when communicating with students. Even so, parental complaints do arise when teachers share inappropriate communications with students through social media. Consequently, as social networking continues to increase, school business officials and other education leaders should devise policies to help deal with this growing trend.

Given the widespread use of social media, this column examines emerging legal questions about whether educators should be able to “friend” their students on social media sites such as Facebook. The column first reviews litigation on the free speech rights of teachers before highlighting cases that illustrate the importance of having policies in place concerning interactions between teachers and their students on social media sites.

Recommendations are then offered for education leaders as they seek to balance the sometimes-competing interests of teachers to engage in free speech on social media sites and of boards to protect students from the admittedly small number of individuals who may intentionally or inadvertently cross the line into engaging in unacceptable communications with their students, thereby creating risks for their districts.

The Free Speech Rights of Teachers

As a preliminary matter, it is worth recalling the words of the Supreme Court in *Tinker v. Des Moines Independent Community School District* (1969), wherein it upheld the rights of students to protest American

involvement in Vietnam by wearing black armbands to school. As part of the analysis leading to the Court’s judgment, but not its holding, the justices were of the opinion that “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (p. 506). The challenge, of course, is to identify the right balance between the duties of boards and the free speech rights of public school teachers in the education workplace.

Over the years, the Supreme Court has sought a middle ground in cases directly involving the free speech rights of teachers and the interests of school boards. In its first case, *Pickering v. Board of Education of Township High School District* (1968), the Court acknowledged that educators are free to speak out on matters of public concern.

The Court later restricted the rights of public employees, and by extension teachers, in *Connick v. Myers* (1983), a dispute that involved an assistant district attorney who was dismissed for trying to circulate a petition in the workplace. In *Connick*, the Court ruled that if speech deals with matters of public concern, the interests of employers in promoting effective and efficient services can outweigh the employees’ rights.

In *Garcetti v. Ceballos* (2006), another case involving a district attorney who was dismissed, this time for questioning a superior, the Court further limited the speech rights of public employees if they are speaking in their official capacities rather than as private citizens. With the emergence of the Internet and social media, as the following cases illustrate, lower courts apply Supreme Court precedent as they grapple with the boundaries of teacher First Amendment speech rights on the Internet, particularly social media sites.

Illustrative Cases

All five of these exemplary cases involving K–12 settings dealt with technology in schools, even if they did not concern social media or Facebook per se. Still, the cases are informative insofar as they provide insight into judicial thinking, especially where educator postings are disruptive or inappropriate.

The first case arose in Florida where a teacher sent profanity-laced, sexually explicit material to 16 seventh-grade students through the Internet. An appellate court affirmed that the teacher's actions warranted the permanent revocation of her certification (*Wax v. Horne* 2003). The court added that the revocation was appropriate because it was consistent with the past practice of the state's Education Practices Commission.

In Indiana, a federal trial court refused to dismiss Title IX, equal protection, and intentional infliction of emotional distress claims against a teacher–tennis coach who harassed a female student by continually sending her instant messages from his personal computer. The student did not block the teacher's messages because she was afraid she might suffer negative consequences if she did so. Although the student did not read all of the messages sent or suffer adverse consequences by not reading them, the court denied his motion for summary judgment (*Chivers v. Central Noble Community Schools* 2006).

The court permitted the case to proceed because questions of fact remained about whether the teacher's actions were sufficiently serious to create a hostile environment, whether the harassment was due to the student's gender or because of a personal attraction, and whether he acted under color of state law (misusing his power) in sending the messages.

A nontenured teacher in Connecticut unsuccessfully challenged the

nonrenewal of his contract—which was due in large part to his interactions with students on Myspace—claiming that board officials violated his protected right to free speech.

In reviewing the evidence, the court noted that in speaking about the teacher's social media page, a guidance counselor at the school “stated that near the pictures of the students were pictures of naked men with what she considered ‘inappropriate comments’ underneath them.” She also “testified that she was disturbed by the conversations the Plaintiff was conducting on his profile page [with students, noting they were] ‘very peer-to-peer like,’ . . . talking to him about what they did over the weekend at a party, or about their personal problems,” adding her fear that “the Plaintiff's profile page would be disruptive to students” (*Spanierman v. Hughes* 2008, p. 298). Finding that the teacher's speech was not a matter of public concern entitled to First Amendment protection, and that the online postings could have been disruptive, the court granted the school board's motion for summary judgment, essentially dismissing the teacher's suit.

In a nonreported case, a federal trial court in Pennsylvania rejected the claims of a student teacher in a high school (*Snyder v. Millersville University* 2008). Among other infractions, the plaintiff most notably posted an inappropriate remark about her cooperating teacher on her personal Myspace page along with a photo of herself drinking beer and wearing a hat with the message “Drunken Pirate,” both of which were accessed by her students.

Most recently, another federal trial court in Pennsylvania upheld the dismissal of a tenured high school teacher for posting controversial comments about her students and colleagues on her personal blog (*Munroe v. Central Bucks School District* 2014). The court rejected the teacher's claim that officials

violated her right to free speech because they believed the postings caused disruptions.

Recommendations

As central as the First Amendment right of free speech is to Americans, courts have long agreed that boards can restrict the expressive rights of public school educators in the interest of smooth operations coupled with the need for student safety and well-being. The twist here is that insofar as the speech is expressed through social media rather than in print, by the spoken word, or on political buttons, board policies need to be updated. It is important to have current policies in place because as innocently as communications between educators and students may begin, teachers must be careful to avoid even the appearance of impropriety when dealing with students.

Having teachers maintain a healthy distance from students is crucial, because in addition to protecting children, one accusation, even if proved false, can ruin educators' careers while creating division in districts. The following recommendations, then, identify issues that school business officials, their boards, and other education leaders should consider when developing or revising policies concerning teacher communications with students on social networking sites.

1. To reiterate, it is imperative that education leaders work with their boards to devise sound policies that clearly identify what teachers can and cannot do when communicating with students on social media sites. As discussed in recommendation 3, policies that lack preciseness are likely to be invalidated on the grounds of “vagueness and overbreadth.” Conversely, carefully crafted rules are likely to survive judicial scrutiny.

The need to address the limits on social media is important because many districts have Web



in advance from parents. Teachers should share information about site addresses with parents so they can supervise the activities of their children. Education leaders and their board attorneys must take the lead in devising forms for parents to sign and return to educators in a timely manner, indicating that they are aware that sites are available and that they intend to monitor the behavior of their children.

5. If policies permit educators to post student pictures on school pages, teachers should not post student names, addresses, or other personal information along with photos. It is important for policies to highlight the fact that insofar as younger students may be at greater risk when contacted by strangers on social media sites, educators must take additional care to safeguard children in lower grades.

6. Policies should remind teachers that once they have made postings with photos and any accompanying text (such as names of school teams or organizations and other identifying features), all privacy is lost as those postings take on lives of their own and cannot be retrieved or changed. Even if deleted, information likely has already been viewed and still resides in the cyberworld. Educators should thus be careful to comply strictly with board policies.

7. With regard to personal social media pages, board policies should instruct teachers neither to “friend” students nor to post their pictures on their personal sites. Policies should pay particular consideration to teachers and other staff whose children attend district schools. Put another way, educators who are parents certainly have the right to “friend” their own children, but they should avoid placing pictures of their children with their friends on their personal social media sites. In a related point, boards should think twice about having provisions that, for example, lift prohibitions against “friending” students after

pages, Facebook pages, and Twitter accounts as a means of quick, efficient, and cost-effective communications with parents and students about matters ranging from school delays from inclement weather to the scheduling of school activities, such as practices and rehearsals. Those social media tools may be managed by teachers.

2. In creating or reviewing policies, district leaders should assemble broad-based teams that include, but are not limited to, a board member, a member of the district’s leadership team, representatives of teachers’ and other employee groups, parents, a representative of the police or child welfare groups, and a student, especially in secondary (and perhaps middle) school, because young people are often more tech-savvy than their elders.

3. In light of the Supreme Court precedent reviewed earlier, policies should remind teachers that although they have a First Amendment right to free speech, their ability to engage in online communications with students, especially on district-owned sites, can be limited if they are not about matters of public concern or are disruptive or potentially so. As demonstrated in the illustrative cases, lower courts continue to uphold policies that are

rationally related to legitimate board concerns for student safety—a blanket extended to cover communications on social media sites.

Against that backdrop, it is essential for board policies to be specific when describing teacher rights on district-maintained systems. Policies should thus direct teachers to avoid discussing their private lives or those of their students and giving out their private home or cell phone numbers or Email addresses, or seeking the same from students. Depending on whether it is even allowed by board policy—and assuming for the sake of discussion that it is—teachers should not post pictures of or with students at school-related events unless and until they have express written consent from parents.

At the same time, social media policies should use such language as “includes but is not limited to” because courts are willing to recognize that it is not always possible to address every item that may arise; catchall phrases can be helpful in demonstrating educators’ awareness of the unforeseen.

4. If teachers wish to use social media and other online sites to communicate with students about classes or activities, policies should direct that they provide notice to and obtain express written permission



reasonably short periods, such as five years. Those time limits can be problematic, because even after five years, some “friended” students may have siblings or friends in the classes of teachers who may run the risk of being accused of favoritism. All such communications need not be prohibited forever, but this is an area that education leaders must address carefully.

8. Education leaders should provide regular professional development sessions on teacher use of social media. Updating educators is essential because in light of the speed at which technology continues to evolve, it virtually outpaces the ability of the law to keep up with emerging developments. As such, up-to-date policies can enhance student privacy and safety, while avoiding such potential headaches as public relations and costly legal battles if controversies over postings do arise.

9. Policies should provide for a range of sanctions for educators who

violate policies ranging from verbal warnings to dismissals. Although teachers have due process rights, superintendents and principals must highlight the dangers associated with posting unauthorized content on social media Websites.

10. Education leaders should review their policies annually, between school years rather than right after controversies arise, so that cooler heads can prevail. Annual reviews can help ensure that policies are up-to-date on the latest developments in both social media technology and the law.

Conclusion

As technology continues to play an increasing role in schools, it is all the more urgent for education leaders to remain vigilant regarding its use by enacting policies that are designed to protect the rights of everyone in school communities. Although certainly not wishing to limit legitimate educational communications between students and teachers, boards should think long and hard about the potential consequences of permitting teachers to “friend” students on their personal social media sites and so would be better served to advise them not to do so. In sum, sound policies can help boards avoid

the potentially risky situations that can arise when educators are in positions where it difficult to avoid the appearance of impropriety in social media contacts.

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