



School Leaders Risk Management Association

UPDATE

APRIL 2021

Has Your District Updated its Social Media Policies? If Not, It's Time to Hit Refresh!



One cannot exaggerate the importance of regularly reviewing and updating a district's Social Media policies. Nothing seems to change as quickly as the means to communicate electronically, and nothing has permeated our society as thoroughly as the use of the internet to disseminate information. Due to the global pandemic, even the delivery of classroom learning has been, and may still be, done over the internet. It is now critical to re-evaluate your district's policies regarding student social media use.

The pandemic has highlighted our dependence on electronic communication. Students today spend countless hours engaged via electronic connections. Over the past year, students have been attending school via Zoom —or other platforms— and then may continue with additional screen time after class on computers, tablets, and phones. Due to social distancing, social media is vital to most students’ social lives. TikTok, in particular, has recently exploded in popularity. The vast majority of middle and high schoolers have an Instagram (or Finsta, a/k/a “a fake” Instagram) account and utilize Snapchat. In its March 3, 2021 article, the Academy of Child & Adolescent Psychiatry reported that 90% of teenagers are engaged on social media.

Social media is a double edged sword. Our electronic communication connects people in positive ways, builds communities of support, and helps foster creative expression. On the flip side, social media can be employed as a powerful tool for cyber bullies, may allow students to access harmful or inappropriate content, and can increase students’ feelings of alienation. These negatives can all potentially lead to anxiety and depression for students. Districts’ social media policies must keep up with this ever-evolving technology while concurrently balancing the students’ First Amendment right of free speech. Adding to the mix of issues, Districts must also consider their policies regarding bullying, harassment, and discrimination. For instance, how can public schools protect students from cyber-bullying yet not infringe on their students’ first amendment rights?



Throughout the years, the United States Supreme Court has addressed students’ rights to free speech. To date, the high court has focused on student speech while on campus or off-campus speech at school-sponsored activities. Older cases obviously do not address social media and other electronic forms of speech. In 1969, the Supreme Court held that schools may restrict speech that threatens to “materially and substantially disrupt the work and discipline of the school.” In 1986, the Court decided that schools may ban speech that is patently lewd, vulgar, profane, obscene or offensive if it undermined the school’s basic educational mission.

However, the Supreme Court has not addressed student *off campus, non-school sponsored speech* -- but it soon will! In July 2020, we reported on a federal appellate court case, *B.L. v. Mahanoy Area School District* (you can find that article and case in our newsroom under “First Amendment” at www.slrma.org.) In that case, the Third Circuit found that the school was not justified in disciplining a student for her off-campus, vulgar speech (which took the form of a Snapchat of the student flipping the bird after she failed to make the varsity cheer team). The Supreme Court recently granted the District’s petition for writ of certiorari and will hear arguments at the end of April. We will report on that decision when it is entered, as it will offer valuable guidance on this important issue.

As noted above, there are many factors to consider when formulating a district’s policy on student use of social media. To assist districts in creating or revising social media policies, SLRMA has prepared the following, “Social Media and Electronic Communication: Self-Audit Checklist and Best Practices for School Districts.” This is an update of the Self-Audit Checklist published several years ago. Please note that this checklist is not intended to constitute legal advice. We recommend that districts work with their counsel to comply with current federal, state, and local law on these issues. As always, thank you for letting us be your partner in risk management.

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Recent Updates from the Newsroom Available on SLRMA.org

New Federal Guidance

Federal Appellate Court Denies Governmental Immunity to Educators for 3rd Grade Student’s Suicide ***Meyers et. al. v. Cincinnati Board of Education et. al.***

January 2021

By denying public school educators’ governmental immunity, a federal appellate court permitted a parents’ wrongful death and civil rights suit to proceed. Parents of 8 year- old Gabriel Taye filed suit against the Cincinnati Board of Education, superintendent, principal, assistant principal, and school nurse after their son hanged himself. The US Court of Appeals for the Sixth Circuit rejected public school educators’ governmental immunity defense in the case. School video footage allegedly recorded a vicious attack of Gabriel by other boys in the bathroom that rendered the boy unconscious for seven minutes. When the Assistant Principal arrived at the scene, he allegedly did not check Gabriel’s vitals or call for help. Allegedly, the school nurse later called Gabriel’s mother and advised that Gabriel had “fainted,” and that he did not require further medical attention. Two days later, the third grader hanged himself. The Court found that the parents sufficiently alleged facts to show recklessness on the part of the defendants. Furthermore, the Court found that “if a school is aware of a student being bullied but does nothing to prevent the bullying, it is reasonably foreseeable that the victim of the bullying might resort to self-harm, even suicide.” You can read the summary of the case and the Court’s opinion at www.slrma.org.

Recent Updates from the Newsroom (Cont.) Available on SLRMA.org

New Federal Guidance

“Offhand Remark” About Husband’s Salary Sinks School’s Defense, Keeping Teacher’s Pay Discrimination Suit Alive.

Kellogg v. Ball State University d/b/a Indiana Academy for Science, Mathematics and Humanities

February 2021

A federal appellate court reinstated a teacher’s Title VII and Equal Pay Act suit based on an administrator’s offhand comment. In 2006, Cheryl Kellogg was hired as a science teacher by a public school for gifted high school upperclassmen. During salary negotiations, the school’s director told Kellogg that she didn’t need any more money because her husband was working and they made a “fine salary.” Read our article and find out how the Seventh Circuit applied the “paycheck accrual rule,” which enables a new cause of action for pay discrimination to arise every time a plaintiff receives a paycheck resulting from an earlier discriminatory compensation practice. Please visit www.slrma.org to read our article and the Court’s opinion.

Retaliation Claims Were the #1 Basis for Charges Filed with the EEOC in 2020.

Equal Employment Opportunity Commission (EEOC) Press Release 2-26-21

March 2021

In 2020 retaliation claims constituted the most frequently filed charges with the EEOC. According to the EEOC Chair Charlotte Burrows, “the current pandemic is not only a public health crisis and economic crisis—it’s also a civil rights crisis.” Please visit www.slrma.org to view the press release and find out what other types of discrimination topped the EEOC’s list of filed charges.

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SLRMA proudly announces the winners of the 2020 Give-Away! The PIVO Silver Starter Pack will enable these lucky winners to a turn smart phone camera in to an auto-tracking device:

- Belfry Public School
- Channahon School District 17
- Charlotte County Public Schools
- Frederick Area School District
- Holton USD 336, Holton
- Medicine Valley Public Schools
- Teton County School District

SLRMA | April 2021

The Mission of the School Leaders Risk Management Association (SLRMA) is to assist public school districts (K-12) with supplemental risk management support. We help you accomplish your own mission of risk avoidance in a number of ways.

- We keep members informed of the current legal issues that will likely affect your school district through our work with the Federal Legislation Insurance Committee (FLIC).
- We provide pro-active, timely tools to help prevent unwanted and unwarranted school board legal liability claims.
- We give members access to special reports featured in our Newsroom. The topics are specific to the School Board Legal Liability school boards face today and will in the future.

Members are equipped with an array of self-audits and checklists to help ensure you are in compliance with the latest requirements and guidelines which govern school boards and school districts. We are a not-for-profit and are governed by a Board of Directors. The Board consists of current Executive Directors of State School Boards Associations.

SCHOOL LEADERS RISK MANAGEMENT ASSOCIATION

Social Media and Electronic Communication: Self-Audit Checklist and Best Practices for School Districts

This self-audit checklist provides a helpful and practical starting point for a district to review, evaluate, and revise – and in some cases, create – policies and procedures to appropriately set expectations regarding students’ use of Social Media. The goal of this checklist is to incorporate legal requirements with best practices and an understanding of the day-to-day experiences of school administrators, faculty, staff, and students. This checklist is not intended to constitute legal advice. District personnel should consult with an attorney who is experienced and knowledgeable about the requirements of the law in order to determine the district’s level of compliance and potential exposure.

I. Social Media Policy Development

The district should have a written policy that addresses student Social Media use. The policy should: clearly outline the activity/behavior covered by the policy; define Social Media; describe the purpose of the policy; outline expectations regarding student Social Media use; and specify how to report violations of the policy. The policy should also cross-reference other applicable district policies, including anti-discrimination.

The team that drafts the policy should include both school personnel who regularly use Social Media and those who do not. It may also be helpful to solicit information from students – for example, the types of technologies that students use for social networking. Districts should also consult their board attorney to ensure that the policy complies with legal requirements.

A. <i>Scope</i>	<u>Yes</u>	<u>No</u>
<p>◆ Does the policy state that it applies to a student’s use of Public Social Media (<i>e.g.</i>, class discussion posts related to an assigned reading)?</p> <p><u>Note:</u> As described in the introduction to this checklist, Public Social Media means Social Media that is undertaken by an administrator, teacher or student in furtherance of the school’s educational mission, to facilitate school-sponsored</p>	<input type="checkbox"/>	<input type="checkbox"/>

<p>student activities, and/or to transmit information, services and educational opportunities to teachers, parents/guardians or students. Public Social Media can be and generally is available to anyone.</p>		
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<p>◆ Does the policy state that it does not typically apply to a student’s use of Personal Social Media (<i>e.g.</i>, a student’s Instagram profile)?</p> <p><u>Note:</u> As described in the introduction to this checklist, Personal Social Media means Social Media that is undertaken by an administrator, teacher or student, on or off school grounds, that the user or person intends to be personal (<i>i.e.</i>, not related to Public Social Media). Personal Social Media may be limited to a select audience or generally available to anyone – for example, an Instagram profile that may be viewed only by approved followers or an Instagram profile that is public and may be viewed by anyone.</p>	<input type="checkbox"/>	<input type="checkbox"/>
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Download the complete checklist at SLRMA.org

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