

Spring 2017 Legal Lab – Technology Implications

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4/10/17

Student Technology Considerations

- Have you recently reviewed your school's technology use policy?
 - Did you involve parents, students, and staff in its creation?
 - Have you educated students and parents/guardians on the content of your policy? (consider having students and/or parents initial off on their review of the policy)
 - Does it reference the capturing of video, photos, or recordings at school?
 - Does it reference use of school owned property both on- or off-campus, as well as use of student owned technology on school property, at school activities, or operating through a school network or on a school managed site?
 - Does your policy reference when technology may be confiscated?

2



Student Technology Considerations

- Was inappropriate content/message sent from school owned technology?
- Was inappropriate content/message sent from student technology off-campus or on-campus?
- Is inappropriate content/message from student technology likely to cause a "substantial disruption" or "material interference" at school? if so, you may take action, regardless of when or where the message was sent.
- Would a reasonable recipient consider the message a true threat? if so, you may take action, regardless of when or where the message was sent.

4/10/17

"articuable and significant threat" → can sharp student name

Student Technology Considerations

- **When may school officials search student technology?**
 - When they have "reasonable suspicion" to search the phone (e.g., tip from a reliable source, teacher sees student on technology during test).
 - Do not play tug of war if a student refuses to hand over his phone! (contact parents, assume a violation, or involve police – depending on the issue)
- **May school officials discipline a student for something found on student technology, if a staff member found something while searching for another reason (e.g., determining the owner of a misplaced device) and the violation was in plain sight on the technology (e.g., home screen)?**
 - Yes.

4/12/17

Student Technology Considerations

- **When may school officials search school-owned technology?**
 - School officials may regularly search (or supervise use of) school-owned technology without reasonable suspicion, as long as students and guardians/parents are informed of the search and supervision practices ahead of time

4/12/17

Student Technology Considerations

- **Sexting is not protected speech**
 - When dealing with sexting or alleged bullying away from campus, err on the side of involving parents on the day you become aware of the incident
 - While it is a violation of both state and federal law to create, distribute, or knowingly possess sexually explicit images or videos of a minor, even if done by the minor him/herself, you do not have a duty to inform law enforcement
 - Consider deferring to parents or the student as to whether they wish to contact law enforcement. Some exceptions may include if images are of a student less than 12 years old or if it appears there is a ring or an individual stockpiling images from multiple individuals

4/12/17

"Knowing keeping" is still unlawful with sexting / pictures (not just distribution)

Student Technology Considerations

- **Sexting is not protected speech**
 - Inform students that they should assume that sexting images or video will go public
 - There are now apps which get around SnapChat
 - Also consider that someone may literally take a photo of a screen
- ★ □ A British study found that 80% of privately taken pornography ends up on pornography sites

4/10/17

7

Communication between Staff and Students

- (1) Do your policies, employee handbook, and/or work rules cover staff communication with students?
- (2) Ask whether the out of class communication is necessary, or whether it may wait until the next school day or practice.
- (3) It should be the rarest of instances when a school official needs to initiate outside of class communication with a particular student.

4/10/17

8

Communication between Staff and Students

- (4) Ask whether the staff member's interaction with students fits societal norms.
- (5) If it is a phone call, have the staff member talk to the parent first, before speaking with the student.
- (6) Discourage staff members from being friends of students on Facebook, or tweeting on Twitter, unless it is an approved class page, or the employee has gained the approval of the administration or parents.

4/10/17

9

Communication between Staff and Students

- (7) If there is a mentoring or other social relationship, the parents should know about it, and it would be wise for another adult to be copied on communications)
- (8) With administration approval, it would be better for staff members to update both students and parents alike (approved website or mass communications to a group)
- (9) Perform due diligence before hiring, such as required background checks, etc.

4/12/17

10

Communication between Staff and Students

- (10) Remember that Iowa law now requires you to make a report to the BoEE if a certified staff member or coach is given written disciplinary action or if the staff member resigns due to an inappropriate relationship with a student. The relationship does not have to be romantic, just "otherwise inappropriate".
- (11) While background checks are not required for volunteers, consider what type of check is appropriate, depending on the volunteer's access to children.

4/12/17

11

Staff Technology Considerations

- 282 Iowa Administrative Code (IAC) 25.3(1) Standard I —conviction of crimes, sexual or other immoral conduct with or toward a student, and child and dependent adult abuse. Violation of this standard includes: . . .
- e. Student abuse. Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction: . . .
- (3) Committing or soliciting any sexual or otherwise indecent act with a student or any minor;
- (4) Soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student.

4/12/17

12

Staff Technology Considerations

- 282 IAC 25.3(6) **Standard VI—unethical practice toward other members of the profession, parents, students, and the community.** Violation of this standard includes: . . .
- a. Denying the student, without just cause, access to varying points of view.
- b. Deliberately suppressing or distorting subject matter for which the educator bears responsibility.
- c. Failing to make reasonable effort to protect the health and safety of the student or creating
- d. **Conducting professional business in such a way that the practitioner repeatedly exposes students or other practitioners to unnecessary embarrassment or disparagement.**

4/10/17

13

Staff Technology Considerations

- 282 IAC 25.3(6) **Standard VI—unethical practice toward other members of the profession, parents, students, and the community.** Violation of this standard includes: . . .
- . . .
- f. **Soliciting students or parents of students to purchase equipment, supplies, or services from the practitioner for the practitioner's personal advantage.**
- . . .

4/10/17

14

Staff member personal social networking activity & technology use-

- (1) What do the employee handbook, acceptable use policy (AUP), work rules, and master contract state about use of technology?
- (2) Did the social networking or other technology use occur on or off work time?
- (3) Did the social networking or other technology use occur through a government computer or account?

4/10/17

15

Staff member personal social networking activity & technology use-

- (4) Consider the impact of laptops and tablets, which are easily taken home.
- (5) Consider permitting some reasonable use of school-owned technology when the use does not directly interfere with the instruction or supervision of students.
 - Such permitted use may protect some activity from potential public records requests under to Iowa Code Chapter 22.

4/12/17 16

Staff member personal social networking activity & technology use-

- (6) Did the employee post comments or media, or otherwise speak in his/her official capacity? (e.g., school or teacher newsletter or update to parents, class Web page)
- (7) Was the posted speech a matter of public concern?
 - Even if it was, does the employer's interest in maintaining an efficient and effective work environment trump the employee's speech rights?
 - Staff members do not have a right to circulate surveys about the administration, board, or other employees

4/12/17 17

Staff member personal social networking activity & technology use-

- (8) Remind staff and prospective staff that they are role models and that inappropriate photos and comments should be removed from social networking pages (abusive alcohol use, sexually explicit matters). **ESPECIALLY MAKE THIS POINT TO NEW EMPLOYEES.**
- (9) Let staff know that just limiting their friends/followers on a site (while it is a good idea) will not prevent information from getting out.

4/12/17 18
