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Social Networking: Unique Legal Challenges for Independent Schools

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social networking

overview

- new evolving area
- protection of all constituencies
 - students, faculty, staff, parents, donors, alumni, applicants (students and employees)
- protection of school
- create systems limiting liability
 - consider experiences of all users
 - mission and culture of school
 - establish standards and create policies

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embrace the technology

- communication method for current generations
 - accepted form of interaction
 - i.e., access and use of cell phones
- second nature for next generation of leadership
 - cutting edge now is old hat to new leadership
- communicating with students while maintaining role as educator
 - use of facebook as educational tool vs. providing access to personal information
 - what is posted on “school” account; who controls
- marketing, admissions, development

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pitfalls of social media

- bullying, harassment, discrimination
 - between employees, between students, between employees and students/parents
- harm to reputation (of school, of students, of employees)
- inappropriate contact between employee and student/recent alum
- identity theft
- access to private information
 - e.g., criminal activity resulting from pictures and other information on social media



legal framework and potential claims

- violation of state/federal statute or regulation
 - children’s services reporting obligations
 - donor registration reporting obligations
 - state anti-bullying laws
- criminal conduct
 - sexting reporting
 - internet child pornography reporting
- breach of contract
 - violation of promises specific or implied in written agreement
 - enrollment, employment or other contracts
 - e.g., contractual promises to keep student safe
 - e.g., parent refuses to pay tuition after school failed to stop bullying (online and in person) and then expelled student

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legal framework and potential claims

- common law
 - established by court cases
 - negligence (privacy, defamation, supervision)
 - school had duty/failed to exercise duty/harm resulted from failure to exercise duty/obligation to compensate for resulting harm
- wrongful termination
 - e.g., teacher fired for Facebook posts suing school
- labor law
 - all employees (even non-unionized) have rights to “concerted activity”
 - NLRB suit against employer for firing employee after posts about employer
- discrimination, harassment, and retaliation





considerations for approach foundation of philosophy

- boundaries
 - appropriate relationships
 - teacher/student/recent alumni/parents
 - is banning use effective or realistic?
 - school's culture and philosophy
- notification of behavioral expectations
 - what school expects from
 - students, teachers, parents, community
 - expectations of privacy
- school sponsored technology vs. private use
- during “school” time only or also during “private” time
- school technology and/or private technology



considerations for approach tools of the trade

- websites
 - school, employee, student website
- email
 - personal or school sponsored
- youtube
- facebook
 - private or school sanctioned
- twitter
 - private or school sanctioned
- cell phones
 - student or teacher
- blogging
- instant messaging
- skype



student issues: behaviors

- behaviors:
 - bullying, harassment, intimidation
 - sexting
 - must report to authorities
 - have “sext” maintained but not sent to school
 - facebook
 - posts
 - pictures engaging in prohibited activities
 - negative comments about teachers, school or other matters (e.g., “I hate my teacher” blog)
 - banter inconsistent with values of school; e.g., racist, misogynist posts
 - youtube videos of prohibited behavior
 - hacking school’s website
 - emails of a threatening, violent or otherwise inappropriate nature

student issues: potential claims

- potential claims
 - breach of supervision of students filed by parent vs. school
 - student injury resulted from school's failure to supervise student
 - breach of contract
 - failure to enforce promises to keep students safe
 - failure to follow policies regarding reporting discipline on common application
 - refusal to pay tuition
 - invasion of privacy





student issues: protective measures

- protective measures
 - policies (acceptable use)
 - setting standards
 - anti-bullying and anti-harassment policies – should be clearly defined
 - when does it apply (off campus, field trips, summer/holidays, school activities)
 - consistent with code of conduct, mission and philosophy
 - “behaviors inconsistent with values of school”
 - discipline of students
 - clear and defined consequences
 - due process
 - Investigation procedure (establish privacy expectations)
 - when applied (24/7, private source)
 - reporting/investigation of allegations
 - obligations of students and teachers to report violations of policy
 - establish expectations related to reporting offenses to others, including law enforcement
 - training of students/teachers
 - enrollment contract
 - ability to remove a student for violations of policies

teacher/employee issues : behaviors with students

- facebook friends
 - friending current or former students on personal account
 - student exposed to possibly inappropriate or personal information
 - inappropriate contact and solicitation
 - librarian soliciting recent alum through chatroom
 - employees vulnerable to allegations
 - teacher has access to student page and implied obligation to act on information obtained
 - e.g., teacher “official use” twitter account still exposed teacher to students’ personal “tweets”
 - cell phone
 - when is use appropriate
 - calls vs. texting
 - personal email
 - gaming
 - teacher participation and encouragement of student resulted in addiction of student

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teacher/employee issues : behavior outside school

- actions of teacher inconsistent with educator standards
 - websites
 - creation of inappropriate website
 - nature of after school employment
 - activity in existing websites (promotion of violence)
 - Google search results
 - information reflecting poor decision making
- facebook
 - posting by self or others
- youtube postings
 - posted by employee or others
- employees making “official” representations on behalf of the school
- trademark and copyright considerations



teacher issues: potential claims

- failure to comply with representations in enrollment contract or other materials resulted in negative impact on student's performance
 - school representations
 - students treated in an equal and non-discriminatory manner;
 - supporting each member of the school community
- school's failure to supervise teacher resulted in injury to student
- teacher's personal relationship with select parents resulted in preferential treatment of student
 - emailing parents from personal address
 - friending parents
 - providing cell phone number
 - posting pictures
- challenge:
 - employees who are also parents of the school
- wrongful termination
 - breach of employment contract
 - discrimination based on protected category
 - violation of NLRA
 - violation of policies, procedures, handbook, past practice

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employee issues: preventative measures

- clearly established policies
 - bullying, harassment, discrimination, retaliation
 - standards of conduct
 - when does it apply
 - ability to monitor and investigate
 - no retaliation for reporting
 - “behaviors inconsistent with values of school”
 - duties of teachers to monitor students and report
 - discipline of employees
 - clear and defined consequences
 - investigation procedure (establish privacy expectations)
 - establish expectations related to reporting offenses to others, including law enforcement
 - training of teachers and staff
- employment contract
 - ability to remove an employee for violations of policies
 - careful about NLRA





privacy: general

- establish expectation of privacy
 - policies describing rights and appropriate expectations
 - liability to school for demanding waiver of privacy rights
 - student abducted after access to picture on website
- was privacy expectation reasonable?
 - school posts student grades on website
- did school have valid cause to invade privacy
 - claims teacher was visiting pedophile sites during school day
- was the nature of the intrusion reasonable in light of the cause
 - balancing test



privacy concerns: student

- actions resulted in dissemination of confidential information or access to “protected information”
- student information
 - school or individual employee’s use of photos, images and student work without permission resulted in dissemination of private protected information
 - school
 - obtain written permission from parent
 - website, promotional materials, newspaper and other media, facebook page
 - employee precluded from using such information for personal use
 - school monitoring resulted in breach of student privacy
 - webcam
 - installing webcam on student laptops without knowledge of family
 - student emails (school or personal)
 - school’s ability to investigate reports of abuse
 - search of lockers, cars, backpacks, personal laptops, cell phones?
 - demand for passwords or other access
 - place students on notice that school may have to contact law enforcement



privacy concerns: employees

- actions of school resulted in dissemination of confidential information or access to “protected information” of employees
- website
 - mandatory inclusion of pictures, phone numbers, educational history
 - potential claim of privacy or negligence
- employer access to
 - emails and websites visited
 - notify employee of privacy expectation
 - care to secure private financial and medical information of employee
 - social security number
 - salary
 - medical information



privacy: development/marketing/admissions

- actions of school resulted in dissemination of confidential information or access to “protected information”
 - general rules
 - photos and likeness on promotional materials, websites, facebook must be authorized
 - giving and other contact information must be authorized
 - parent contact data not be distributed or sold for solicitation purposes
- Facebook and twitter
 - GREAT CAUTION IN POSTING
 - official representation by school
- email
 - permission from email recipient
 - provide opt out language, assure removal
- website and promotional material clear and honest
 - detrimental reliance and bases of failure to educate
 - i.e. students playing lacrosse when school lacks team
- register with state agencies if soliciting donations through email or other electronic communication



document and policy review

- employee handbook
 - code of conduct
 - use of student images
 - technology and proper use
 - discipline and termination provisions
- employment contracts
 - grounds for termination
 - standards of behavior
- student (parent) handbook
 - technology and proper use
 - code of conduct
 - disciplinary procedure
 - notice to college and university of discipline
 - bullying policy

document and policy review

- enrollment contract
 - student code of conduct
 - grounds for discipline
 - impact of removal on tuition
 - notice to college and university of discipline
- bullying policy
 - reporting policy and procedures
 - employee obligations
 - investigation procedure
 - follow up with parents and other parties
 - discipline standards
- IT
 - portal access policy
 - security policy
 - e-commerce policy
 - monitoring of emails/ web site usage



contact information

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