

School Law and Social Media within the School-Community

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PREPS Conference, Jackson, Mississippi

Part I February 25, 2018 (Sunday) 4:00 P. M.

Part II February 26, 2018 (Monday) 1:30 P. M.

The following represents possible topics we plan to explore as we navigate our way through the “mine field” associated with school law, social (electronic) media, and the school-community’s responsibilities pertaining to attempting to provide a safe and secure educational environment for students, school district employees, and visitors. School district officials along with the school district’s administration, faculty, and staff cannot ensure or guarantee a safe and secure school setting; however, they must function as a reasonable and prudent team to reduce the odds of a school safety issue and, if such does happen, to reduce the intensity of the event. The aforementioned begins with both the school district’s and each individual school’s mission statement.

An example: The Wiseburn Unified School District will strive to provide a safe, orderly environment focused on the academic, social, and physical needs of the whole student while emphasizing community participation. To meet the challenge of the technological and complex world of the 21st century, Wiseburn students will acquire the skills necessary to become capable lifelong learners and productive citizens. (Hawthorne, CA)

An important note: It is importance for students, employees, school visitors, and invited guest to feel physically and psychologically “safe and secure” as such is related to both the “reality” and “perceptionally” of being safe and secure.

Topics:

A few topics for possible consideration:

- A. On the school campus
- B. Off the school campus
- C. School sponsored activity on or off school properties
- D. Use of school owned electronic communication devices
- E. School employees’ possession and use of personal electronic communication devices
- F. Student involving another student
- G. Student involving school district employee
- H. Conditions/policies governing the use of school district owned communication/electronic devices for both district employees and students

- I. School owned student use of electronic devices only for curricular related activities and assignments
- J. Breaking into school district's electronic devices/altering student records
- K. Student possession of personal devices at school and use
- L. School employees communicating with student with school owned vs personal devices
- M. School employees communicating with students' parents/guardians with school owned devices vs personal devices.
- N. Threats, harassment, intimidation, and bullying through the use of electronic communication devices
- O. Personal attacks using electronic devices/media against school district employees
- P. Each school in the district and the district's central administrative office has at least one unlisted land line –with limited use only by designated district personnel
- Q. **Documentation! Documentation! Documentation!**
- R. Additional: _____

1. **The legal tree**

Federal

(Examples only-not inclusive)

- The People
- United States Constitution
- United States Supreme Court
- United States Congress
- Department of Education

State

(Examples only-not inclusive)

- The People
- State Constitution
- State Supreme Court
- State Legislature
- Department of Education

Local School District

(Examples only-not inclusive)

The People

School District Board of Education

School District Policies

Superintendent of Education

School District Administrative Assistants

School

(Examples only-not inclusive)

Building Administrator (Principal)

Assistant Principal

Grade/Subject Chairs

Teachers

Students

2. **Four (4) elements associated with tort liability:**

1. Duty – consistency – backside covered and support of efforts
2. Injury or harm
3. Breach of duty – job description and other related duties & responsibilities
4. Nexis or “cause in fact”—must be a direct cause-and-effect relationship between the breach of duty and injury or harm to prove *negligence*

A few critical legal concepts associated with tort liability:

1. Totality of circumstances
2. Reasonable and prudent person standard
3. Foreseeability
4. Scope of employment
5. Knew or had reason to know about the situation due to district employee’s position – a known hazard
6. “Campus common law”
7. Standard of care
8. Two primary duties: discretionary and ministerial
9. Assumption of risk
- .10. **Documentation** (pre-events, interim events, and post events)

3. **Search and seizure**
 - A. Search and seizure normally falls within preview of the 4th Amendment, but must also be attentive to the 1st Amendment and 14th Amendment
 - B. Search and seizure two different legal concepts
 - C. Reasonable suspicion vs. probable cause
 - Reasonable suspicion:* More than a guess or hunch—a reasonable belief based on facts or circumstances based on training and experience. Must establish to begin a search and to extend the scope of the search.
 - Probable cause:* Reasonable suspicion typically occurs prior to probable cause. Probable cause is “more likely than not” – is the logical belief supported by facts and circumstances that a crime has been, is being, or will be committed.
 - D. Securing evidence, logging evidence, tagging evidence, and storing evidence—all related to **documentation and securing evidence**

4. **Seven (7) elements associated with a student’s misconduct, crime scene, employee neglect of responsibilities/improver professional/personal conduct, and so forth:**
 1. Target
 2. Motive
 3. Opportunity
 4. Capacity
 5. Will
 6. Willing to pay the dues for selected conduct-give up something/make sacrifice
 7. Justification

5. **United States Constitutional Amendments:**
 - A. **Amendment I. Freedom of religion, speech, press, assemblage, and petition of grievances:** Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble; and to petition the government for a redress of grievances.
 - B. **Amendment IV. Search and seizure:** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched and the person or things to be seized.
 - C. **Amendment VIII. Excessive bail, fines, and punishment:** Excessive bail shall not be required, nor excessive fines imposed, or cruel and unusual punishment inflicted.

- D. **Amendment XIV. Citizenship; privileges and immunities; due process; equal protection; apportionment of representation; disqualification of officers; public debt; enforcement:** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction of the equal protection of the laws.

6. **Mississippi Constitutional Amendments:**

A. **Article 8-Section 201.**

Free public schools: The legislature shall, by general law provide for the establishment, maintenance and support of free public schools upon conditions and limitations as the legislature may prescribe.

B. **Article 3-Bill of Rights.**

- a. Section 8. All **persons** resident in this state, citizens of the United States, are hereby declared citizens of the State of Mississippi.
- b. Section 11. The right of people to peaceably assemble and petition the government on any subject shall be never impaired.
- c. Section 13. The freedom of speech and of the press shall be sacred, and in all prosecution for libel the truth may be given in evidence, and the jury shall determine the law and the facts under the direction of the court; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted.
- d. Section 14. No person shall be deprived of life, liberty, or property, except by due process of law.
- e. Section 18. No religious test as a qualification for office shall be required and no preference shall be given by law to any religious sect of worship, but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The right hereby shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state.
- f. Section 23. The people shall be secure in their persons, houses, and possessions from unreasonable seizure or search, and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the persons or thing to be seized.

7. **Federal Laws**

- A. Children’s Online Privacy Protection Act (COPPA)
 - B. Electronic Communications Privacy Act (ECPA)
 - C. Cybercrime laws of the United States (N = 20+)
- Federal statutes relating to crimes against children (N = 20+)
- D. Children’s Internet Protection Act (CIPA)
 - E. Communications Decency Act
Reno v. American Civil Liberties Union, 521 U.S. 844 (June 26, 1997) Declared that the CDA law was *unconstitutional* as so pertaining to components within view of the 1st and 5th Amendments)
 - F. Federal civil rights laws that can enforced through the U. S. Department of Education (ED) and/or Department of Justice (DOJ) as so pertaining to sexual harassment, intimidation, abuse, and threats of physical and/or psychological harm:
 - a. Title VI and VII of the Civil Rights Act of 1964
 - b. Title IX of the Education Amendments of 1972
 - c. Section 504 Rehabilitation Act of 1973
 - d. Titles II and III of the Americans with Disabilities Act (ADA)
 - e. Individuals with Disabilities Education Act (IDEA)

8. **State Laws**

- A. 37-11-29 Reporting of unlawful activity or violent act on educational property or during school related activity; authority of law enforcement officers; reporting of disposition of charges against student; liability of school personnel participating in reporting
- B. 37-11-31 Contents of report pursuant to 37-11-29
- C. 37-11-33 Fees for reports pursuant to 37-11-29
- D. 37-11-35 Penalties for failure to file reports pursuant to Section 37-11-29 or 97-5-24
- E. 37-7-301 General powers and duties
- F. 37-9-14 General duties and powers of superintendent of school district
- G. 37-9-71 Suspension or expulsion of pupils
- H. 37-9-69 General duties of superintendent, principal, and teachers
- I. 37-11-57 Immunity of school personnel from liability for carrying out action in enforcing rules regarding control, discipline, suspension, and expulsion of students
- J. 11-46-1 Definitions (Chapter 46 Immunity of state and political subdivisions from liability and suit for torts and torts of employees
- K. 11-46-3 Declaration of legislative intent (Chapter 46)
- L. 11-46-5 Waiver of immunity; course and scope of employment presumptions

- M. 37-11-69 Anti-bullying personnel and discipline policies and code of student conduct
- N. 37-11-67 Bullying or harassing behavior in public schools prohibited
- O. 97-45-1 Definitions (Chapter 45 Computer Crimes and Identity Theft)
- P. 97-29-45 Obscene electronic communications
- Q. 97-3-107 Stalking; aggravated stalking; penalties; definitions
- R. 97-45-5 Offense against computer users; penalties
- S. 97-45-15 Cyberstalking; penalties
- T. 97-45-17 Posting of messages through electronic media for purpose of causing injury to any person; penalties
- .U. 97-5-24 Sexual involvement of school employee with student; duty to report; penalties for failure to report; immunity from civil liability for report made in good faith
- V. 37-11-35 Penalties for failure to file reports pursuant to Section 37-11-29 or 97-5-24

9. **Case Cases**

- A. Koch v. Adams. (361 S. W. 3d 817), March 18, 2010.
- B. In the Matter of the Suspension of the Certificates of Kramer by the State of New Jersey Board of Examiners. (40 A. 3d 59), October 26, 2010.
- C. Evans v. Bayer. (684 F. Supp. 2d 1365), February 12, 2010.
- D. In Re Nickolas S. (226 P. 3d 1038), March 2, 2010.
- E. Price v. New York City Bd. of Educ. (855 N.Y.S. 2d 530), April 22, 2008.
- F. Layshock Ex Rel. Layschock v. Hermitage School. (496 F. Supp. 2d 587), June 10, 2007.
Layshock v. Hermitage School Dist. (650 F. 3d 205), June 13, 2011.
- G. Doe v. Flaherty. (623 F. 3d 577), October 19, 2010.
- H. Kowalski v. Berkeley County Schools. (652 F. 3d 565), July 27, 2011).
- I. Dunkley v. Bd. of Educ., Greater Egg Harbor High Sch. Dist. (216 F. Supp. 3d 485), October 20, 2016.
- J. **Taylor Bell, Dora Bell, individually and as mother of Taylor Bell v. Itawamba County School Board (Mississippi), No. 12-60264, August 20, 2015.**

Thanks for allowing me to serve.

Strength and honor

JRP

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