



EDUCATION

# ALERT

## SOCIAL MEDIA

A vast majority of Pennsylvania public school districts have not as of yet developed social media policies. Indeed, there are profound legal concerns about the implementation of such policies because of the lack of legal precedent, constitutional bargaining concerns with district labor unions on the subject.

Unlike private employers and independent school employees, public school employees have the right under the First Amendment, in certain circumstances, to speak out on matters of public concern. However, Boards may arguably regulate the use of social media by its employees, including employees' personal use of social media, when such use:

- (1) interferes with the work of the school district;
- (2) is used to harass coworkers or other members of the school community;
- (3) creates a hostile work environment;
- (4) breaches confidentiality obligations of school district employees;
- (5) directly disrupts the work of the school district;
- (6) harms the goodwill and reputation of the school district in the community; or
- (7) violates the law, board policies and/or other schools rules and regulations.

There is no question that comments made by school employees on social media sites can hurt employee or student morale. Personal email is not typically the target of such policies; just web pages in the public realm. The major concerns of such policies

are the social media sites Facebook, Twitter, LinkedIn, YouTube and MySpace.

The ultimate question is whether a public entity such as a school district has the right to mandate what people do off school property? The courts are also struggling with these issues as they relate to policies that govern off-site student disciplinary codes.

A policy will likely pass muster if it says that employees may not mention the Board of School Directors, schools, programs or teams on personal social networking sites unless they state that it is a personal communication, and not the views of the District. A valid policy could also specific rules about creating links to school district sites.

Further, a policy could likely mandate that employees may not mention other employees or members of the school community without their consent, unless the subject is of public concern and the speech falls under applicable constitutional protections--whatever that may be.

A school district social media policy could likely also validly address the following issues:

- (1) "Friending" of students and parents by teachers could be forbidden as inappropriate and
- (2) "Personal posts" could possibly be limited by requiring that the employee should use appropriately respectful speech, and refrain from harassing, defamatory, abusive, discriminatory, threatening or other inappropriate

communications. It is obvious that such posts reflect poorly on the school district's reputation, can affect the educational process and may substantially and materially interfere with an employee's ability to fulfill his/her professional duties.

Even assuming that such policy provisions will survive a legal challenge, enforcing such policies is more daunting. Very often, the only way a district

could find out about a violation is by anecdotal reports of others since most school administrators do not have the time to regularly monitor the social media sites of Facebook, Twitter, LinkedIn, YouTube and MySpace.

If you have questions about this Alert, please contact Jeffrey T. Sultanik at 610.397.6515 or [jsultanik@foxrothschild.com](mailto:jsultanik@foxrothschild.com) or any member of Fox Rothschild's [Education Practice](#).



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