



EDUCATION LAW & GOVERNANCE UPDATE

WINTER 2012

SCHOOLS & SOCIAL MEDIA

By: Jaime Fernand

First and foremost, Happy New Year and best wishes for a healthy, happy and successful 2012 from all of us at Cohen Schneider LLP.

Traditionally, a school's environment and culture were largely confined to the four walls of a school building. However, in an age where over 132 million

people in the United States are using Facebook and other social media websites, the reach of a school day

and a school's responsibilities have greatly expanded. The lines between First Amendment rights and student and teacher privacy have become blurred. School administrators, teachers and students are realizing that electronic conduct, even outside of a school day, can have a substantial impact on the educational environment. While schools can benefit from



establishing an effective social media presence such as a school sponsored and monitored Facebook page, the dangers of social media's misuse in schools is abundant. In a recent New York Times article, Richard J. Condon, Special Commissioner of Investigation for the New York

City School System, said there has been a steady increase in the number of complaints of inappropriate communicatio

n involving Facebook in recent years -- 85 complaints from October 2010 through September 2011, compared with only eight from September 2008 through October 2009.

School administrators are forced to reexamine what their appropriate role is outside of the school's four walls. With the rapid changes in how people

Important Upcoming Dates for NY Charter Schools:

State Education Department RFP for New Applications:

<http://www.p12.nysed.gov/psc/startcharter.html>

Related Deadlines:

2012 Round One Submission Deadlines:

- Full Applications: February 27, 2012.

Note: Letters of Intent were due on January 17, 2012.

2012 Round Two Submission Deadlines:

- Letters of Intent: June 25, 2012
- Full Applications: July 18, 2012

SUNY Charter Schools Institute RFP for Spring Round of Applications:

<http://www.newyorkcharters.org/openAppKit.htm>

Related Deadlines:

- Completed Spring Proposals: February 28, 2012.

Note: Letters of Intent and Evidence of Active Community Outreach for the Spring 2012 application cycle were due on January 18, 2012.

Charter Schools Lobby Day in Albany: February 7, 2012

2012 National Charter Schools Conference

<http://www.publiccharters.org/conference/2012/home.aspx>

June 19-22, Minneapolis Convention Center, MN

communicate through technology, laws and policy are changing as well. In line with school districts across the country, the New York City Board of Education is currently thinking through these issues and is developing a social media policy that it expects to roll out in the spring. It is unclear whether this policy would be applicable to New York charter schools. Since all New York charter schools are required to adhere to health and safety requirements applicable to other public schools, except as specifically provided in the Charter Schools Act, an argument can be made that charter schools could have to comply with such a policy. Either way, it is important to be mindful of this when charter schools are developing their own policies and looking at the evolution of the laws in this area.

It is worth noting that more schools than ever are facing scandals and litigation involving inappropriate communication and images transmitted using social media. Employees and students have found that their posts or images thought to be private, have reached the hands of the school community. Just last month, controversy erupted in a Bronx school after students found a racy photograph on Facebook of the school principal dancing with a shirtless man. This photograph was plastered by students throughout the school. This reflected poorly on the school, raised questions about the principal's judgment, and led to a major interference with school activities. Educators across the nation are coming under fire for text messages, private email exchanges over social media sites and the electronic sharing of personal information. This has given rise to a number of legal challenges for schools. School employees have lost their jobs because of inappropriate fraternization with students through "friending" and texts or posts through social media sites. In extreme cases, this has led to the filing of criminal charges. Law enforcement officials often cite the popularity and misuse of electronic information between educators and students as a potential cause of recent sex abuse scandals.

In addition, the increasing popularity of social media sites has resulted in more students than ever becoming victims of cyber-bullying.

Cyber-bullying is the use of information technology to deliberately harass, threaten or intimate others. It can come in many forms, through social media sites or other electronic means, and needs to be taken seriously. With 45% of New York students recently reporting that they have been cyber-bullied, schools have an added responsibility to protect their students, mission, and culture. Practically and legally, disciplining students for conduct that occurs outside of school grounds, such as cyber-bullying or other types of electronic communication like sexting, is complex and relatively new ground. It can be difficult to determine how far a school's reach is when disciplining students for such actions. A clearly articulated Code of Conduct that addresses electronic communication is crucial in this regard.

RECOMMENDATIONS

It is important that schools have sound practices in place to handle situations involving social media. Each school should put in place an acceptable use policy and a social media policy that outlines for employees and students what type of electronic conduct is permissible. For instance, schools may want to consider a policy that bans teachers from listing students as "friends" on social network sites, sharing information about their students, and having contact with students outside of school-approved email or a school webpage. In addition, schools should consider adopting a policy to address how employees can appropriately share concerns or opinions on school decisions, rather than posting this information online. Before a school disciplines an employee for conduct on social media sites, it is important to weigh free speech and privacy rights and ensure that the consequence is in conformance with the school's disseminated policy.

As mentioned above, reviewing your school's Code of Conduct to ensure that the prohibition and consequences of cyber-bullying and other inappropriate forms of electronic communication are clearly articulated is critical. Due Process protections afford both employees and students the right to know what type of

behavior is permissible both inside and outside of the school day. Following strong policy that outlines acceptable conduct and potential consequences for noncompliance can protect the school and prevent litigation.

Cohen Schneider LLP would be happy to assist you with social media issues such as these. Please feel free to contact Jaime Fernand at jfernand@cohenschneider.com or any of our other attorneys.