



Fagen Friedman & Fulfrost LLP

Personal Technology on Campus: Policy & Practice

Contra Costa County Office of Education
WEBINAR
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Presented By:
Jan E. Tomsy

Objective

- Review what steps a school district can take to promote **CYBER-CITIZENSHIP**



Evolution and Integration of Technology in the School Community



What we've learned:

One voice can have a dramatic impact.



Impact

- Because one voice can wield so much power, it is critical that your community (students, teachers, staff, administrators, school board, parents, community members) understand the importance of:

CYBER-ETHICS

Balance

- At the same time, school districts must understand the limitations of their ability to police students, teachers, and others in cyber-space.



Challenge

- Law cannot keep pace with technology.
- School districts must operate according to statutes and case law that may not contemplate modern technology.



Traditional Framework

- School district responsible for student conduct during school hours.
- “A pupil may not be suspended or expelled . . . unless that act is related to a school activity.”
- Related to a school activity includes, but is not limited to:
 - While on school grounds
 - While going or coming from school
 - During lunch period on or off campus.
 - During, while going to or from, a school-sponsored activity

(Ed. Code § 48900.)

Traditional Framework

- The traditional framework for school district jurisdiction over student conduct is based mainly on geography and time.
- But, new legislation is emerging



CA Passed One of First Laws in Nation on Cyberbullying

- Assembly Bill 86
 - Amended Education Code § 48900, which places limitations on suspending or expelling student
 - Provided school administrators authority to suspend or recommend for expulsion those students who bully others by means including, but not limited to, “electronic act.”

“Electronic Acts”

- An “electronic act” means the transmission of a communication, including, but not limited to, a message, text, sound, or image by means of an electronic device, including, but not limited to, a telephone, wireless telephone or other wireless communication device, computer, or pager.

(Ed. Code § 32261(g).)



AB 746

- Signed by Gov. Brown on July 7, 2011
- Broadens Education Code definition of bullying to specifically include “a post on a social network Internet Web site.” (Ed. Code section 32261(g).)

AB 746

- Legislature's intent is to encourage school districts to promote cyber safety
- AB 746 recommends that school district conduct in-services as a means to achieve the promotion of cyber safety among students

AB 746: Tips

- Imbed a campaign to promote cyber-citizenship throughout the school community in back-to-school and school safety materials

AB 746: Tips

- Train all school staff on how to identify, prevent and respond
- Improved supervision
- Consistent consequences
- Create individualized intervention plans

AB 746: Tips

- Establish District-wide or school-wide expectations
- Respond immediately to reports of bullying

Student Right to Free Speech

- Tinker v. Des Moines
- J.C. v. Beverly Hills USD
- School district may restrict speech if it is reasonably foreseeable that there will be a substantial disruption to the orderly operation of the school.
- Real threats are not protected speech.
- AB 746 does not change Constitutional standards

Personal Technology On Campus

- It's a bird, it's a plane, it's a . . .
Personal Electronic Device!
- Almost every person now carries a phone, a “still” camera, a video camera, a twitter account, and Facebook access . . . in his/her pocket!



Personal Technology On Campus

- Smart phones on campus add to the challenge of controlling student cyber speech and the prevention of cyberbullying.

What Would You Do?

- A 13 year-old student “sexts” a topless photo to a boyfriend.
- She is being harassed and ridiculed by other students because of the texted image.
- A teacher reports seeing shallow cuts on the student’s thigh.

Case Example

- In Witsell, a school social worker provided mental health counseling and had the student sign a no-harm contract
- The social worker did not notify site administrators or student's parents of the counseling or cuts.
- The following day, the 13 year-old hung herself and died.

Sexting

- Pending SB 919
 - The Legislature encourages school districts to provide grade-level appropriate instruction, counseling . . . on the potential risks and consequences of creating and disseminating sexually suggestive or explicit materials through mobile telephones and other electronic devices.
 - The Legislature encourages school districts to provide professional development training to school personnel and to adopt district policies to prevent and discourage sexting that can be shared with parents and children advocacy organizations or posted on the school district's Internet Web site.

Sexting

- Pending SB 919

- Would add the following as a 48900 “expellable offense”:

(s) (1) Engaged in an act of sexting.

“Sexting” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording that depicts a minor's exposed or visible genitals, pubic area, rectal area, or the nipple or areola of a female's breast by a pupil to another pupil or to school personnel *by means of an electronic act* **with the intent to humiliate or harass.**

Sexting

- Pending SB 919
 - “Sexting” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.

Prosecution of Administrators

- In Virginia, administrator prosecuted for child pornography
 - When image discovered, administrator didn't know how to transfer image from student's cell phone
 - Asked student to send him image and then delete it
 - Didn't confirm that student deleted image
 - Student not suspended/parent and police not notified

Prosecution of Administrators

- Virginia Case (cont.)
 - Student didn't delete it
 - Two weeks later, boy previously caught with photo suspended (pulling down girl's pants)
 - When the boy's mother found out about the prior photo incident, she was outraged
 - When principal refused to rescind suspension, mother went to the police with the photo
 - Principal charged with failure to report suspected child abuse

Prosecution of Administrators

- What could administrator have done differently?

Personal Technology On Campus

- If you discover a “sexting” photo on campus:
 - What not to do: pass it on to an administrator.
 - What to do: seal up the image, tell an administrator, and follow reporting protocol.

Personal Technology On Campus

- Immediately refer cases involving sexual images of a minor to law enforcement.
- Do not share, copy, or disseminate sexual images of a minor.
- Criminal prosecution may include child pornography. Consequences include registered sex offender status.

Personal Technology as Instructional Tool

- To the extent a school district is going to utilize outside technology as an instructional tool, school policies should be put in place to promote cyber-citizenship in social networking, blogging, YouTube, etc.

Law Has Not Caught Up with Technology



- Inviting the Cyber-World into the classroom is rife with legal problems.
- Legal perspective: Not trying to stand in the way of education innovation, but trying to assist school districts in implementing innovative technology responsibly.

Personal Technology On Campus

- While on campus, a school district can promote cyber-ethics on personal electronic devices through a “cell phone” policy.
- Education Code section 48901.5: Districts “may regulate the possession or use of any electronic signaling device that operates through the transmission or receipt of radio waves”

Personal Technology On Campus

- Cell phone policies should address student search and seizure procedures (cautiously)

Cell Phones - Search and Seizure

- What is “reasonable suspicion?”
 - Search justified at its inception:
 - Reasonable belief that a school rule or policy has been violated
 - Reasonably related to the circumstances that justified the initial interference:
 - Reasonably related to objectives of search
 - Not excessively intrusive in light of age and gender of student and nature of the infraction



Cell Phones – Search and Seizure

- Klump v. Nazareth Area School District (E.D.Penn. 2006)
 - Students permitted to carry but not use cell phones during school
 - Teacher confiscated Student's phone and searched phone directory, voicemail, and text messages.
 - Teacher called nine students to see if they too were violating the school policy

Cell Phones – Search and Seizure

- Klump v. Nazareth Area School District (E.D.Penn. 2006)
 - Unconstitutional search?
 - Court dismissed some claims but allowed others to go to trial
 - Search appeared to be justified at inception
 - However, teacher had no basis for search of text messages and voicemail stored in phone
 - Parties settled case

Personal Technology On Campus

- Emergency exceptions in cell phone policies
- Emergency Communications Plan



Personal Technology Policies

- Is a focus on “technology” the best approach??
- What is the goal of the policy?

Personal Technology Policies

TO IMPACT BEHAVIOR!

Personal Technology Policies

- If a student copies an essay from an on-line article, what's the real issue?
- If a student uses his cell phone to take a photo of test questions to pass along to other students, what's the real issue?

Personal Technology Policies

Technology will continue to evolve

- Students need to be prepared to use technology responsibly and ethically as citizens

Personal Technology Policies

- Review existing policies and conduct code
- Ensure behavior-based policies and standards
 - Consistent consequences, whether or not misconduct is technology based
- Reviewing cyberbullying reporting practices
 - Ensure that relevant policies (sexual harassment, eg) include and clarify the process

Personal Technology Policies

- Establish policies and guidelines regarding teacher/student communication, whatever the medium
- Training is key!



Thank you!!

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