



**Is Big Brother Watching? Managing Social Media on Campus** - March 17, 2016, 12:30 pm-1:45 pm

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**Goals**

- Ownership of Social Media Sites
- BYOD Devices
- Confidential Information
- Concerns With Students and Parents
- Employee Concerns
- Investigations/Background Checks
- Best Practices




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**Why Should Schools Care About Social Media?**

- Benefits:
  - Advertising/Branding
  - Increased Visibility
  - Communication With Students, Families And Community
  - Improving Employee Morale





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## Why Should Schools Care About Social Media?

- Concerns:
  - Ownership of the Site
  - Harassment/Discrimination
  - Breach of Confidentiality
  - Communication With Students, Families And Community
  - Safety issues
  - Loss of Productivity



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## Ownership of School Social Media Sites

- Employer owns, operates, and manages the account
- Require employees to set up these accounts with their School e-mail address
- Require employees to provide IT with usernames and passwords to these accounts upon setup and each time this information is changed
- Use an application/request form to document this information and require the employee's acknowledgment of these terms and conditions



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## To Own or Not To Own

School Issued Devices

v.

BYOD



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## To Own or Not To Own

- Security
- Employee Privacy
- Trade Secret/Confidential Materials
- Wiping
- Expense Reimbursement
- Wage and Hour



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## Policy Recommendations for BYOD/Dual-Use

- Restrict personal use during working hours
- For hourly employees, restrict work when off the clock.
- Require password protection
- Define acceptable/unacceptable use



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## Policy Recommendations for BYOD/Dual-Use

- Regulate cloud syncing and access
- Define School communications as property of the School
- Address Privacy Limits



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### Policy Recommendations for BYOD/Dual-Use

- Set minimum technical requirements for the device
- Grant School access for business purposes
- Require installation by IT of School-specific security software



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### Policy Recommendations for BYOD/Dual-Use

- Require cleaning of device by IT upon separation of employment or other business needs ("remote wipe" if lost/stolen)
  - Including personal information if mingled with School information
  - Employees should back up personal information
  - Employers are not responsible for lost personal information



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### Confidential Information

- HIPAA
  - No Information About Protected Leaves!
  - No Employee Health Information At All!!!
- FERPA
  - No identifying information about students
  - No photos without parental and school
  - Recommend No Comments



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### Confidential Information

- Other protected confidential information
  - Personnel
  - Business information
  - Marketing information
  - Enrollment information



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### Boundaries With Students And Parents

- Friending on School Sites
- Friending on Private Sites
- Sharing posts, links, jokes, blogs or photos
- Student access to Employee's equipment



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### Student Safety Issues

- Bullying
- Suicide Threats
- Threats of Violence Toward School
- Criminal Conduct
- Mandated Reporters



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### Students' Harassment of Other Students

- *J.C. ex rel R.C. v. Beverly Hills Unified School District*, 711 F. Supp. 2d 1094 (C.D. Cal. 2010)
  - Student created a YouTube video during non-school hours off school property using her personal cell phone
  - The video was accessible from school computers
  - The video ranted about another student
  - PROTECTED



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### Students' Harassment of Other Students (continued)

- *LaVine v. Blaine School District*, 279 F.3d 719 (9th Cir. 2002)
  - A student wrote a poem off campus about how it felt to kill classmates
  - She asked a teacher to review it, who became alarmed
  - Emergency suspension
  - NOT PROTECTED in light of Columbine aftermath



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### The mother of Oklahoma teen sued Tulsa Public Schools – Jan. 2013

- Half-naked photo of daughter was posted to Twitter, subjecting daughter to severe taunting and harassment at school.
- Mother said daughter was changing out of her uniform following a basketball game when a teammate grabbed her and [restrained her so that a second teammate could take photos of her in her underwear](#). The students later posted the picture to Twitter, where the image was retweeted repeatedly.
- Cooks complained to school officials, who told her there was nothing the school could do about the harassment and urged her not to complain further, for fear of "making the school look bad to the Tulsa Public Schools District administrators."
- The two students involved were accused of intentional infliction of emotional distress, assault, battery and invasion of privacy, and their parents were accused of negligence. Mother also accused TPS of negligence for failing to act on her bullying reports.



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### Students' Harassment of Teachers

- *Snyder v. Blue Mountain School District*, 650 F.3d 915 (3rd Cir. 2011)
  - Using her home computer, student created a fake MySpace page profile of her principal that could not be accessed from school computers
    - General interests: "detention, being a tight ass . . . spending time with my child (who looks like a gorilla) . . . fucking in my office, hitting on students and their parents"
  - Teachers reported students' discussions of the page
  - Principal disciplined the student
  - PROTECTED



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### Student's Harassment of Teachers (continued)

- Union County School District, Columbia, South Carolina.
- Teacher Leigh Anne Arthur, 33, told police on Feb. 18, 2016, that while she stepped out of her classroom, a 16-year-old boy took her unlocked smartphone from her desk, opened the photos, and found a nude selfie she had taken for her husband.
  - Then, using his own phone, the boy took a picture of the image and shared it. Soon, other students were sharing it on social media, and someone left copies, along with a harassing note, in Arthur's mailbox.
  - Superintendent David Eubanks forced Arthur to resign or be fired (she resigned), and said that it's her fault for leaving students unattended during a four-minute break between classes.



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### How do we protect teachers from harassment by parents and students?

- Parent/Student Handbook
- Expulsion Policies
- School administrator may notify a person that consent to be on the campus has been withdrawn whenever there is reasonable cause to believe that such person has willfully disrupted the orderly operation of such campus.
- Restraining Order



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## Employee Conduct



- Cyber-Slacking – Misuse of School time
- Sharing Confidential Employee Information May Be Invasion of Privacy
- Employer Can Be Liable For Harassment/Discrimination - Even If Posted On Personal Social Media Pages While Off-Duty!



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## Employees' Harassment of Employees

- Liability for employees' conduct
- EEOC Press Release, March 12, 2014
  - "Even if employees post harassing or derogatory information about coworkers away from the workplace, for example, an employer may be liable for a hostile work environment if it was aware of the postings, or if the harassing employee was using employer-owned devices or accounts."



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## Discrimination - Harassment

- *Blakely v. Continental Airlines*, 751 A.2d 538 (N.J. 2000)
  - Employer could be liable for hostile environment created by derogatory postings on internet bulletin board
  - Supervisors "friending" and "poking" subordinates on Facebook
  - "Sexting" and "textual" harassment



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## Employee Investigations/Discipline

- When Can You Use Information Found on Social Media to Discipline?



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He's licked! Taco Bell fires shell-licking employee - NBC News.com Page 1 of 1

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**CONSUMER**

### He's licked! Taco Bell fires shell-licking employee

Amy Langrfield, CNBC

9 hours ago



The Taco Bell shell licker is looking for a new job.

The unidentified employee and his co-worker photographer are no longer working at the involved Taco Bell franchise, the company announced on its website. A picture posted on Facebook had shown the employee licking a tall stack of shells and the social media masses were pretty grossed out.

"We do not believe these employees harmed, or intended to harm, anyone," Taco Bell said in a statement Tuesday. "But we deplore the impressions this has caused to our customers, fans, franchisees, and team members. The behavior is unacceptable for people working in a restaurant. Our franchisee is responsible for the employment and conduct of his restaurant's employees and he has informed us that he immediately suspended the employee shown in the photo and is in the process of terminating his employment. The employee who took the photo no longer works there. As we complete our

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## Employee Investigations/Discipline

- Can You Require an Employee to Give You Access to Employee's Private Social Media Page?



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### Employee Investigations/Discipline

- Can You Look at an Employee's Private Social Media or E-mail if it is on School Computers?

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### Risks of Using Social Media as Investigative Tool

- Invasion of privacy
- Violation of social media statutes
- Defamation
- Violation of federal electronic communications statutes
- Violation of background check laws
- Violation of employers policies

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## BACKGROUND CHECKS

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### Employer-Conducted Searches

- Risks of conducting Internet searches of applicants
  - Protected information available on social media webpages
    - Protected categories
    - Criminal conduct (e.g., Megan's Law)
    - Private medical information
  - If searches are conducted, create a firewall between the searcher and the decision-maker



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### Discrimination – Hiring Decision

- *Gaskell v. University of Kentucky* (2011)
  - Employer could be liable for religious discrimination after internet search resulted in religious inquiry concerning job candidate
  - Mr. Gaskell was the number 1 candidate of 7 applicants. He ended up not receiving the job after information regarding his religious views was found, when a search of his current employer's website was linked to his personal website
  - Employer acknowledged it decided not to hire Mr. Gaskell because of his religious views



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### Facebook Posting Protected Activity: Pier Sixty, LLC and Hernan Perez

- Two days before a union election, catering employee was told by his manager to "Turn your head that way and stop chitchatting."
- Employee takes a break and posts on Facebook from his phone:
  - Bob is such a NASTY MOTHER F\*\*\*\*\* don't know how to talk to people!!!!!! F\*\*\* his mother and his entire f\*\*\*\*\* family!!!! What a LOSER!!!!!! Vote YES for the UNION!!!!!! (redacted for print).



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### Facebook Posting Protected Activity: Pier Sixty, LLC and Hernan Perez

- Manager at Pier Sixty saw it; the employee who posted was terminated and filed a Unfair Labor Practice claim.
- The NLRB ruled that the employee's Facebook comments were protected, concerted activity and the offensive language was not "so egregious as to exceed the Act's protection."



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### Wage and Hour

- Does "connected" mean "hours worked"?
- Reading of e-mail on vacation days for exempt employees
- On call time
- Reporting/show-up time
- Split-shift premium
- Meal/Rest periods



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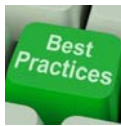
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### Best Practices Include Terms of Use

- Transparent Boundaries
- Types of Posting on School Equipment
- Types of Posting During Work Hours
- Types of Posting During Non-Work Hours and on Non-School Equipment
- Private Media Site v. School Media Site
- Ownership of Media Site
- Notice that monitoring will occur and there is no expectation of privacy in use of School equipment, email, or internet
- Posting must comply with all School policies



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### Best Practices

- Employees should not accept invitations to non-school related social networking sites from parents, students or alumni under the age of 18
- During emergencies, post only a general statement of well-being only it does not interfere with your normal work duties
- Employees should be advised that personal site content may impact their employment



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### Recommendations for Staff:

- **Never** post any identifying student information without written informed consent of parent and the Principal
- **Never** post any identifying staff information without the informed consent of the staff member
- **Never** share confidential or privileged information about students or personnel
  - Grades, attendance records, or other pupil/personnel information



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thank  
you!



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