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Insta-Suspension #Detention @Expelled: Student Discipline in the Age of Social Media

National Association of Independent Schools 2019 Annual Meeting

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A Whole New World – Prevalence of Social Media and Electronic Communication



- The U.S. Department of Education has defined social media as "forms of communication either Internet or text-based that support social interactions of individuals."
- Texting, sexting, Facebook, Instagram, Finstagram, Snapchat, Twitter, YouTube, Reddit, Tumblr, etc.
- Most social media services have a use age minimum of 13. This is widely ignored and unenforced.
- Some statistics:
 - Almost half of children have a cell phone service plan by the age of 11.
 - 95% of teenagers have a smartphone or access to one and 45% say they are online on "a near constant basis."
 - As of a 2018 survey, the most common social media platforms for teenagers were Instagram, YouTube, and Snapchat (displacing the previously leader, Facebook).
- Social media is here to stay!

Should Schools Get Involved in Regulating Student's Electronic Behavior?

(School owned technology and on-campus behavior)



- To the extent students are using electronic communication that is school owned/regulated, or that occurs on campus or at a school event/activity, the school must get involved.
- Most schools require that students keep cell phones in lockers during the school day and prohibit social media use at school.
- Schools should have electronic communication policies which set forth appropriate use of the schools technology, and student-owned technology when used at school.

Should Schools Get Involved in Regulating Student's Electronic Behavior? (Off-Campus)

- The more challenging questions: Should schools get involved in regulating off-campus student social media and electronic communication interactions? If so, to what extent?
 - Some schools attempt to avoid involvement in off-campus activity, including social media, reasoning that parents, not schools, should address such behavior. Some schools even include language in their enrollment contract where families release the school for claims arising off-campus.
 - Other schools, particularly boarding schools, are very involved in student electronic communication and social media use even if off-campus.
 - Most schools come out in the middle, getting involved in off-campus electronic communication and social media use when it involves cyberbullying, harassment, unlawful activity, a safety issue, or otherwise creates a risk of disrupting the school environment.

Hypotheticals

Let's talk about a few hypothetical situations before we go through some of the legal framework and best practices. Should a school get involved in the below situations, and if so, how?

- 1) Jane, a 6th grader, comes to school on Monday and reports to her English teacher that her classmate, Olivia, harassed her over the weekend using text messages and Instagram direct messages. The teacher asked for information about the harassing behavior and learned that Olivia texted Jane 46 times over the weekend and sent her 18 direct messages on Instagram.
- 2) Jordan created a finsta account under a pseudonym. The account included photos of students from the school with comments about those students being "fat, ugly, and gay." Another student approached an administrator to notify them of the account and told them that they believe the account was created by Jordan. Jordan denies creating the account.
- 3) Josh regularly posts status updates on his Facebook account about how much he hates his school. He sometimes posts photographs of guns and other weaponry. Another student notifies the School that Josh posted a recent status which reads "they'll all be sorry."
- 4) Kelly posts a photograph on Instastory of her and 3 friends from the Hip School at a party on Saturday night, vaping and drinking. Kelly includes the hashtag #hipschoolfun.
- 5) Three 8th grade students made a blackface video at a sleepover party last year. They thought the video had been deleted but it resurfaced and has been shared with classmates. The administration has not seen the video. The 3 students admit to having made a video but say they are sorry, that they never referenced any classmates or made racist comments, and that they didn't intend to hurt anyone's feelings or for the video to be shared in any manner at any time.

Legal Framework



- The constitution does not apply. While public schools grapple with not infringing on students First Amendment rights to Freedom of Expression, this does not apply to private schools. Nonetheless, it is useful to know some limitations on First Amendment rights where even public schools can regulate and discipline student speech/expression (including on social media).
- Courts have found that schools can discipline a student for their expressions when:
 - There is a violation of a code of conduct established by school policy.
 - The social media content is directed at the school community in a threatening manner.
 - The content is obscene, lewd, discriminatory, or otherwise inappropriate in a school setting.
 - The content promotes illegal activity such as drug or alcohol use.

Cyberbullying

- Consider your state and local laws on bullying. Even if such laws do not apply to private schools, we suggest considering them for guidance/negligence standard.
- New York, for example, has a statute called the "Dignity For All Students Act" which prohibits cyberbullying. Cyberbullying is defined as "harassment or bullying by any form of electronic communication" and "includes incidents occurring off school property that create or would foreseeably create a risk of substantial disruption within the school environment."
- Acts of bullying include, but are not limited to, those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

Criminal laws and safety issues



- Consider criminal laws involving student use of social media in sexually explicit ways:
 - federal child pornography laws
 - state laws including sexual performance by a child
 - sexting
- Consider students using social media to make threats of violence against other students, faculty, or the School itself.
- Consider students using social media and electronic communication to express thoughts of suicide, self-harm, eating disorders, and other mental health concerns.

Best Practices



To prepare for the inevitable social media related student crisis or discipline situation, schools should:

Adopt/modify policies.

- Bullying and student harassment policies should address cyberbullying.
- Student Codes of Conduct should make clear that violations of the School's behavior expectations can occur electronically and via social media.
- "Evidence of rules being violated through social media, whether or not school is in session, and whether on or off campus, may result in disciplinary consequences if the photos/videos or text are behavior unbecoming of a school student."

Trainings – Consider age appropriate and mission aligned trainings for students, faculty, and parents about social media, appropriate use, dangers, etc.

Best Practices Continued...

Investigations – Have procedures and resources for investigations in advance before a crisis arises. Have a chain of command for social media discipline situations, as well as appropriate experts from the school (i.e. school psychologists, guidance counselors, etc.) available to consult. Have outside resources available (investigation firms, forensic computer companies, local police departments, school counsel, etc.) in case they are needed.

Discipline – Any discipline that results from a social media/electronic communication incident should be consistent and non-discriminatory (as should all discipline). Because schools cannot/do not investigate and discipline every troubling social media or texting issue, the school must be able to differentiate/justify why it chose certain incidents to discipline.

Public Relations – Because of the viral nature of social media posts, be prepared that both the troubling social media post/comment, as well as any school response to it, will be shared widely and quickly. The School's communications with its community and with the media should be carefully considered alongside internal and external PR consultants where appropriate.



Q & A