

ATTORNEY RECOMMENDATIONS FOR STAFF & STUDENT INTERACTIONS ON SOCIAL MEDIA

Good morning Stockton Team:

We were asked to provide an Executive Summary on guidance for teachers and staff on use of social media. We regularly prepare guidelines on this subject for staff and recommend professional development to accompany the guidelines. These recommendations are really made for staff to protect themselves from accidentally violating the law and the real examples can be illustrative of how easily it can happen. If you like, such PD can be delivered live over video conferencing, a recorded video, and/or we could meet with the administrative team and give them tips on how to train their staff.

Right now, tensions are very high with returning to school and I have witnessed first-hand how ugly social media communications can be between parents and staff. However, due to the Constitutional right to Freedom of Association, school districts cannot outright prohibit teachers and staff from communicating on social media with students and parents. Rather, we recommend guidelines to encourage staff to not engage in such communications.

There are additional burdens placed on teachers and staff when they engage in social media with students and families. In short, these include but are not limited to:

1. Mandated Reporting. Teachers are mandated reporters of abuse and neglect regardless of where they see it, including on social media. The obligation to report is individual to the teacher and criminally punishable for failure to report. I always say, if you don't want to attend the high school party on the weekend, then why do you want to be privy to all the photos and videos that were taken and posted to social media. It very well may trigger an obligation to report any suspected neglect or abuse.
2. Bullying Prevention. If a teacher witnesses bullying, the Education Code requires them to intervene if safe to do so. Therefore, if a teacher were to witness cyberbullying by being friends with students online, they would have to intervene and take affirmative steps to stop the bullying from continuing. I imagine teachers do not want to police their students on social media, especially outside of work hours.
3. Public Record. When a District employee conducts school business, those records become public records even if they are on personal accounts or personal devices, such as personal social media. Therefore, it is advisable that teachers not conduct communications about their students or any school business with students or families on personal accounts or devices, or else the teacher would have to turn over those records upon District receipt of a Public Records Act. Most teachers would prefer not to have to turn over the content of their personal accounts and devices.
4. Teacher As Role Model. There have been instances where teachers have been terminated for their conduct online and on social media because their employer did not think they were a good

role model to students. This standard sounds unfair and has been challenged in court and the courts sided with the school district and upheld the teacher terminations. As such, by “friending” students and parents on social media, teachers expose themselves to the very subjective standard of always having to be a good role model. Most social media sites allow other people to tag photos of users that one does not even necessarily have control of. There have been several legal cases resulting in teacher discipline that have arisen this way and it is very impactful to share these examples with staff.

Please let us know how we can support the District as it moves forward in addressing teacher and staff use of social media. We also have a free 5 minute video available at www.F3Law.com/privacy called Pause You Post which is intended to be shared with staff and the community about being thoughtful before posting content online and the consequences that can stem from inappropriate conduct. Thanks, Gretchen



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