

Association of Wisconsin School Administrators

SLATE Conference

School Technology Policies, Practices & Protocols

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Selected Elements of an Acceptable Use Policy

- Identify covered technology (District Technology).
- Define and/or describe legitimate purposes.
- Identify prohibited conduct and prohibited omissions (including conspiring, furthering, or encouraging).
- Account for relevant laws (e.g., the Children's Internet Protection Act).



Selected Elements of an Acceptable Use Policy (Cont'd)

- Address use of personal technology on school time and at school premises.
- Identify special restrictions (e.g., remote access)
- Identify interpreting authorities.
- Disclaim privacy; advise that district will review contents and activity.
- Assign responsibility for knowledge and updating.
- Warn of consequences for violations.
- Disclaim the notion that the policy defines or describes all prohibited conduct.



Common Pitfalls of/with Acceptable Use Policies

- Publication and distribution.
- Faculty and staff acknowledgement (Note: individual teacher and/or administrator contract references).
- Prohibitions must include:
 - Internet activity.
 - E-mail and attachments.
 - Internal/self-contained use, including displaying material.



Common Pitfalls of/with Acceptable Use Policies (Cont'd)

- Catch-all provisions regarding:
 - Burden(s) employees bear to update and understand.
 - Understanding that school district interpretation is final.
- Conduct that impairs district technology or systems.
- Absolute requirements that are unworkable (e.g., mandating that school district technology is exclusively for work).
- Failure to align with school district technology policy.
- Lack of "catch-all" or safety valve language.



Pupil Discipline: Standards for Pupil Expulsion

- A school board may expel a student only for reasons that include the following under Wis. Stat. § 120.13(1)(c):
 - Repeated refusal or neglect to obey the rules established by the school district;
 - Conduct while at school or while under the supervision of a school authority which has endangered the property, health and safety of others, including threats to endanger the property, health or safety of others;
 - Conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school or under the supervision of a school authority, including threats to endanger the property, health or safety of others;



Pupil Discipline: Standards for Pupil Expulsion (Cont'd)

- Conduct while not at school or while not under the supervision of a school authority which has endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled, including threats to endanger;
- Knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives.



Pupil Discipline: Cyberbullying

- DPI guidance on bullying prevention includes cyberbullying, but also makes reference to “use of school equipment.”
- DPI model policy on bullying apprehends cyberbullying.
- Wisconsin expulsion cases decided by DPI have recognized that off-campus conduct can fall under schools’ disciplinary jurisdiction, and generally have concerned danger to persons at school.



Pupil Discipline: Cyberbullying (Cont'd)

See, e.g., *S.B. by the Gilmanton School District*, Decision and Order No. 572 (May 1, 2006). (Threatening to bring gun to school and kill students from home computer; expulsion upheld).
Conclusion: Off-campus cyberbullying must endanger school personnel or those at school, but “proximate cause” theories may be upheld.



Pupil Discipline: Pupil Misconduct that is Furthered by School District Technology

- Pupil conduct and misconduct:
 - Cyberbullying.
 - Drug transactions.
 - Sexting.
 - Photos or descriptions of pupil behavior.
 - Academic misconduct.



Pupil Discipline: Policies Regarding Common Types of Misconduct with Technology (cases in point)

- Cyberbullying (as part of a bullying policy)
 - At a minimum, should be referenced in pupil code of conduct, bullying policy and student handbook.
 - Must capture all relevant behavior under a "proximate cause" approach to the behavior. For example, conspiring, furthering, publishing and republishing, all qualify as behavior to prohibit.
 - Consider warning cyberbullies that publishers bear responsibility for republication.
 - Consider warning cyberbullies about in-school impacts of off-campus behavior.



Pupil Discipline: Policies Regarding Common Types of Misconduct with Technology (Cont'd)

- Drug Transactions and Use
 - At a minimum, would be referenced in drug free schools policies, pupil code of conduct, and student handbook.
 - Use a "proximate cause" model to define prohibited behavior.
 - Constrain behavior that covers all "drugs" to be eradicated (e.g., illegal; legal, but not used for intended purpose; prescription for other person; mood or mind altering, or intoxicating; and similar subjects.
 - Capture where students are and where they should be (during school hours), and expressly state that use of technology to further conduct prohibited by drug policy is prohibited regardless of where or when that technology is used.



Pupil Behavior That Is Not Protected

- Behavior that is a “true threat” to those at school.
- Behavior that causes a “substantial disruption” at school.



Pupil Behavior That Is Not Protected (Examples)

- *Wisniewski v. Board of Education of Weedsport Central School Dist.*, 494 F.3d 34 (2d Cir. 2007). An eighth-grade student was disciplined for using his parents’ home computer, equipped with AOL Instant Messaging (“IM”) software, to send instant messages to a group of approximately 15 of his friends, some of whom were classmates. The software allows a user to attach a unique icon to the messages sent by that user. The student’s icon was a small drawing of a pistol firing a bullet at a person’s head, above which were dots representing splattered blood. Beneath the drawing appeared the words “Kill Mr. VanderMolen,” the student’s English teacher.

The Second Circuit concluded that it crosses the boundary of protected speech and constitutes student conduct that poses a reasonably foreseeable risk that the icon would come to the attention of school authorities and that it would “materially and substantially disrupt the work and discipline of the school.”



Pupil Behavior That Is Not Protected (Examples) (Cont'd)

- *Doninger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008). When school officials became aware of a student's blog posting from her publicly accessible blog referring to school district administrators as "douche bags" and encouraging readers to "piss [the superintendent] off more." Ms. Niehoff barred Avery from running for senior class secretary, based on "(1) Avery's failure to accept her counsel 'regarding the proper means of expressing disagreement with administration policy and seeking to resolve those disagreements'; (2) the vulgar language and inaccurate information included in the post; and (3) its encouragement of others to contact the central office 'to piss [Schwartz] off more,' which Niehoff did not consider appropriate behavior for a class officer." According to school officials, Doninger's conduct in posting the blog message failed to display the qualities of civility and citizenship which the school expected of class officers and leaders.



Pupil Behavior That Is Not Protected (Examples) (Cont'd)

The Second Circuit agreed with the District Court's conclusion that it was reasonably foreseeable that the student's posting would reach school property. Addressing the free speech claim, the Second Circuit noted its own ruling in *Wisniewski v. Bd. of Educ.*, *supra*, that "a student may be disciplined for expressive conduct, even conduct occurring off school grounds, when this conduct 'would foreseeably create a risk of substantial disruption within the school environment,' at least when it was similarly foreseeable that the off-campus expression might also reach campus." The Court reached this conclusion by considering three factors. First, the student used language that was offensive and potentially disruptive in an effort to encourage others to contact the administration. Second, the student's posting was either misleading or false. Third, the participation in voluntary, extracurricular activities is a privilege that can be rescinded when students fail to comply with the obligations inherent in the activities themselves. Therefore, the Court concluded that the student failed to show that her First Amendment rights were violated when she was disqualified from running for class office.



“Cell Phone” Policies

- Wis. Stat. § 118.258

118.258 Electronic communication devices prohibited

(1) Each school board may adopt rules prohibiting a pupil from using or possessing an electronic communication device while on premises owned or rented by or under the control of a public school.

(2) Annually, if the school board adopts rules under sub. (1), it shall provide each pupil enrolled in the school district with a copy of the rules.



“Cell Phone” Policies (Cont’d)

- Selected “cell phone” and/or electronic device policy contents.
 - Define “electronic communication device.”
 - Capture any electronic device that is not used for communication as a separate instrumentality that is subject to school policy.
 - Define restrictions, generally by identifying permitted use (all other use prohibited).



“Cell Phone” Policies (Cont’d)

- Create presumptions for prohibited use (e.g., turned on where use is not allowed).
- Identify specific prohibitions (again, think “proximate cause”) as examples only. In this regard, make clear that any use violating another policy violates this policy.
- Define places where permitted use may occur.
- Determine how your district will approach the privilege/ rights issue in a policy that permits cell phones at school.



Cell Phone Policies: Search and Seizure

- Confiscating a cell phone:
 - For the day.
 - For the day and then to be returned to parents (of minor).
 - For longer periods of time (usually for repeated offenses).
- Inspecting the cell phone’s contents:
 - Reasonable suspicion.
 - Incidental findings.
 - Reporting obligations.

