



School Districts and Robocalls

Many Texas school districts use automated calling and text messaging services to communicate with students, parents, and staff about various issues. Some recent developments in the law affect how districts and their vendors may conduct such calls.

Background

Congress enacted the Telephone Consumer Protection Act ([TCPA](#)) in 1991 to address certain telephone calling practices that may invade consumer privacy and threaten public safety.¹ The TCPA and the [rules](#) adopted by the Federal Communications Commission ([FCC](#)) prohibit telemarketing calls using an artificial or pre-recorded voice to residential telephones without prior express consent of the recipient.² They also prohibit any *non-emergency* calls using an automatic telephone dialing system (auto-dialer) or an artificial or pre-recorded voice to a *wireless* number without prior express consent of the recipient. These types of calls are commonly referred to as “robocalls.” The FCC has concluded that robocalls to wireless numbers encompass both voice calls and text messages.

How Does the TCPA Affect Texas ISDs?

While the rule for residential numbers applies only to telemarketers, the rule for wireless phones includes both telemarketers and informational calls that do not involve an emergency. Therefore, non-emergency robocalls from a district to wireless phones, without consent, could violate the TCPA.

On August 4, 2016, the FCC issued a [Declaratory Ruling](#) that clarified when schools may make certain robocalls to student family wireless phones without prior express consent.³ [Blackboard, Inc.](#), a corporation that provides various services for K-12 school districts, asked the FCC whether *all* robocalls made by an educational organization qualified as calls made for an “emergency purpose,” which would mean that schools would not need prior express consent before making any robocalls. In its ruling, the FCC declined to find that all robocalls sent by schools qualify as calls made for an “emergency purpose.” Instead, it clarified what types of

¹ 47 U.S.C. § 227 (1991).

² FCC Miscellaneous Rules Relating to Common Carriers, 47 C.F.R. § 64.1200 (2003).

³ CG Docket No. 02-278 Declaratory Ruling FCC 16-88 (2016).

robocalls fit under that exception and held that robocalls involving matters “closely related to the school’s mission” do not violate the TCPA when the person being called had given the number to the school.

What Types of Calls Fall Under the “Emergency Purpose” Exception?

In its ruling, the FCC confirmed that, in the context of schools, robocalls that relate to a situation affecting the health and safety of students and faculty fall under the emergency purpose exception and do not require prior consent. The FCC provided some examples of situations that affect the health and safety of students and faculty messages or calls relating to:

- weather-related closures,
- incidents of danger to the school due to fire,
- dangerous persons or health risks (such as toxic spills), and
- unexcused absences.

Regarding unexcused absences, the FCC noted that this type of situation affects student safety because a missing child could be in danger, and that some states require schools to notify parents of an unexcused absence for safety reasons.

Although these types of robocalls do not require prior express consent, the FCC encouraged schools to regularly update their emergency contact lists so that they reach the intended party, to whom the call may be very important. Not only do robocalls to the wrong party implicate the privacy of those who may mistakenly receive the call, such calls could also violate the privacy of students or their safety, as well.

What Is “Closely Related to the School’s Mission”?

In limited cases, the FCC has acknowledged that a person merely giving out his or her telephone number could constitute consent, but only as long as the robocall is closely related to the purpose for which the person gave out the number. The FCC expounded on this idea by concluding that when a parent or student gives only their wireless number as a point of contact to a school, that constitutes consent to receive communications “closely related to the school’s mission.”

In considering Blackboard’s petition, in the Declaratory Ruling, the FCC recognized the following as closely related to the school’s mission:

- Messages about teacher conferences; and
- Surveys to provide input on school related issues.

The FCC rejected Blackboard's suggestion that announcements of local events not connected to the school district could be considered closely related to the school's mission, however. Because without more guidance schools maybe left guessing what the FCC will deem closely related, schools may prefer to seek express consent.

What Does Prior Express Consent Look Like?

In its ruling, the FCC emphasized the importance of prior express consent: *non-emergency* robocalls are lawful if the caller has the person's prior express consent. Blackboard and schools that filed comments in the proceedings confirmed that they usually obtain prior consent to make such calls. When prior express consent has been given, and the call falls within the scope of consent, such calls are permissible under the TCPA, absent any instructions to the contrary.

When a call does not introduce an advertisement or constitute telemarketing, the FCC does not require any specific method for gaining prior express consent, meaning that it could be given orally or in writing. A school district would be wise, however, to obtain consent in writing for non-emergency robocalls.

The FCC has clarified that consent must be given by the person who holds the telephone number, not the person the robocaller intended to reach. Consequently, a school district (or the district's vendor) must have an ongoing means of updating contact information. If a phone number does not belong to the parent the district is trying to reach due to a wrong number or reassigned number, the school district must offer a way for the recipient to correct the wrong number. Otherwise, the district risks substantial fines.

What Are the Consequences for Violating the TCPA?

If a robocaller calls a person with a reassigned number more than once, the robocaller may incur liability under the TCPA, including a fine of up to \$16,000.⁴ This means that if a district or its vendor conducts robocalls, it and/or its vendor could face monetary consequences for making robocalls that require prior consent when the district and/or vendor does not have that consent. Individuals also have the right to sue the district for \$500 or the actual monetary damage for each violation, whichever is greater, with higher damages for willful or knowing violations.⁵ Therefore, districts have a vested interest in ensuring that they do not send robocalls to incorrect parties.

⁴ FCC, DA 16-264 (2016).

⁵ 47 U.S.C. § 227(b)(3) (1991).

Moreover, individuals have sued school districts under the TCPA for receiving robocalls. A man in Florida, Willie Willis, has sued the Broward County School District, seeking \$25,000 in damages. Willis is claiming that the district sent him more than two dozen robocalls, even though he does not have a child in the school district.⁶ In Illinois, four individuals from three different states have brought a class action lawsuit against West Interactive Services Corporation (WISC).⁷ WISC does business as SchoolMessenger, and the four allege that SchoolMessenger sent automated voice and text messages to possibly millions of wireless phones on behalf of tens of thousands of schools and other educational institutions throughout the U.S. WISC has argued that the case may prevent several schools from sending messages to parents about school events, such as school closings and emergencies. At the time this article was authored, both cases were still pending.

What About the District's Mass Communications Vendor?

School districts that have agreements with vendors for their robocalls should review their contracts carefully to make sure the vendors, not the school districts, are responsible for the vendors' mistakes. Districts should also be assured that vendors have processes for updating wrong numbers immediately. Agreements with telecommunications vendors should be reviewed in advance by districts' school attorneys.

Tips for Districts

Consider these suggestions for minimizing the risk that robocalls go wrong.

- If the district's only purpose in making robocalls will be notice of emergency items, robocalls are permitted, even without prior consent.
- If informational items will be sent, either work with counsel to limit the subjects to those "closely related" to school operations or to obtain prior effective consent for the calls.
- Establish a clear protocol between the district and its vendor, if any, to correct wrong numbers immediately.
- Seek legal review of your vendor agreement for robocalls to make sure the vendor, not the district, will be responsible for errors.

With these tips in mind, robocalls may be an efficient and effective way to keep parents and others informed about school matters.

⁶ David Ovalle, *Man sues over repeated school 'robocalls' about child he doesn't have*, MIAMI HERALD (Feb. 8, 2017 6:06 AM), www.miamiherald.com/news/local/community/broward/article131571014.html.

⁷ Jonathan Bilyk, *Court filings: Lawsuit vs SchoolMessenger imperils schools' ability to text, call parents, students*, Cook County Record (Mar. 28, 2017, 12:28 AM), cookcountyrecord.com/stories/511098460-court-filings-lawsuit-vs-schoolmessenger-imperils-schools-ability-to-text-call-parents-students.

For more information on this and other school law topics,
visit TASB School Law eSource online at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.