



## **School District Employees' Use of Social Media and Electronic Communications with Students**

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Social networking, text messaging, and instant messaging are all forms of electronic media used by school employees. Employees may use electronic media for personal reasons, such as to check in with family members, or for legitimate work reasons, such as to tell the soccer team where practice will be held. On the other hand, headlines are saturated with stories of educators' using electronic communications to develop inappropriate relationships with students. To what extent can your district regulate employee use of electronic media with students?

Electronic media does not change the basic rules of professional conduct. Districts can regulate employee use of electronic media to the same extent as any other form of employee communication. If an employee's communication violates state or federal law or interferes with the employee's ability to effectively perform his or her job, a district may have grounds for action.

### **What communications are covered by school district policy?**

Texas Education Code section 38.027 defines *electronic communication* as any communication facilitated by the use of any electronic device, such as a telephone, computer, computer network, personal data assistant, or pager. The term includes e-mails, text messages, instant messages, and any communications through an Internet website, including a social media website or a social networking website.

A district's ability to regulate employee communication is not unlimited. Some restrictions could violate employee rights. For example, a restriction that prevents an employee from communicating with members of his or her own family could violate the right to freedom of association under the United States Constitution. Similarly, a content-based restriction that limits an employee's ability to speak on matters of public concern could violate an employee's constitutional right to free speech.

To minimize potential impact on employee rights, electronic media guidelines should distinguish between personal and professional use. A district has little reason to regulate an employee's personal use of electronic media if that use is strictly private, does not violate state or federal law, and does not interfere with the employee's ability to effectively perform his or her job. However, when an employee uses school-owned technology or posts on social media about a matter related to the school district, the district may have a legitimate interest in the employee's activities.

**Workplace communications:** School district policy typically clarifies that the use of school technology, as well as the use of personal devices for work purposes, are subject to the school district's Acceptable Use Policy. See TASB Policy CQ. A district's interest in regulating employee use is highest when the employee is at work, performing professional duties, or using district equipment. For example, a district can prohibit employees from using district computers to update their social network pages. Similarly, the use of cell phones during instructional time can be banned.

**Communications outside of work:** Many districts question whether they can monitor and discipline for employees' private posts on social network pages, blogs, editorial comments (such as "likes"), and YouTube videos.

TASB recommended policies and handbook materials state that employees will be held to the same professional standards in their public use of electronic media as they are for any other public conduct. The sample materials also state that an employee is responsible for the content on any social network site the employee maintains and for choosing privacy settings appropriate to the content. Finally, the materials restate that employees must comply with federal and state law, local policy, and the Code of Ethics and Standard Practices for Texas Educators, regardless of whether the employee is using private or public equipment.

For more information, see TASB Legal Services' article [Employee Free Speech Rights](#).

### **Why should school districts regulate employees' use electronic media to communicate with students?**

Employees who wish to pursue intimate relationships with students seldom brazenly approach a student to initiate a relationship. They instead engage in grooming the student to ease the student into a relationship. The employee may attempt to act as a mentor or friend to a student and in that capacity make seemingly innocent comments about the student's appearance or demeanor that become increasingly sexual over time as the employee escalates the interactions to initiate a physical relationship. The availability of social networking sites, text messaging, e-mails, and other media has increased the opportunities for employees to engage in grooming behavior. Such behavior, even in the early stages, can constitute sexual harassment.

Sexual words and actions are always prohibited between employees and students, regardless of whether the student consents to or even encourages the employee's behavior. Courts will not consider a sexual relationship between an employee and a student to be consensual even if the student is over the age of 18. Tex. Penal Code § 21.12.

The Code of Ethics and Standards of Practice for Texas Educators also prohibits certified employees from engaging in or soliciting sexual conduct or romantic relationships with students. (Standard 3.6) The Code of Ethics also requires educators to maintain appropriate professional educator-student relationships and boundaries based on a reasonably prudent educator standard. (Standard 3.8) Finally, the code requires educators to refrain from

inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

- (i) the nature, purpose, timing, and amount of the communication;
- (ii) the subject matter of the communication;
- (iii) whether the communication was made openly, or the educator attempted to conceal the communication;
- (iv) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;
- (v) whether the communication was sexually explicit; and
- (vi) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student. (Standard 3.9)

19 Tex. Admin. Code § 247.2.

Texas Education Code section 38.027 requires Texas school districts to adopt a written policy concerning employee electronic communications with students. The policy must include provisions designed to prevent improper electronic communications between school employees and students and must allow a school employee to elect not to disclose to students a personal telephone number or e-mail address. The policy must also include information about how an employee should notify appropriate local administrators when a student engages in improper communications with the employee.

TASB has developed sample materials to assist districts in establishing the required policy and guidelines for electronic communication by employees. TASB Policy Service's recommended versions of policy DH(LOCAL) set out the general rule that employees' use of electronic communication is subject to the same professional standards as communications by employees through other means. In addition, the Model Employee Handbook, produced by TASB HR Services for its members, includes sample language regarding employee use of electronic communication. As a related matter, TASB Policy Service's Model Student Handbook notifies parents of the district's local restrictions on electronic communications between students and employees and allows a parent to opt out of one-on-one communications by contacting the principal.

Whether a district develops its own materials or uses the TASB sample materials, here are a few key points to ponder:

Some districts have banned all electronic communication with students, only to find that this approach is not workable. Clear guidelines, communicated in advance, help to head off misunderstandings and most abuses. The TASB sample materials provide a starting point for regulating the “who, what, when, where, and how” of communicating with students through electronic media.

Who: Specify which employees will be allowed to communicate with students through electronic media. The TASB sample materials permit only certified or licensed employees, or employees who are authorized in writing by the superintendent or a campus principal, to communicate electronically with students who are currently enrolled in the district. The sample materials provide that all other staff—uncertified administrators, secretaries, bus drivers, janitors, cafeteria workers, etc.—are prohibited from communicating with students by telephone, text messaging, email, Internet, or any other electronic means.

The sample materials recognize an exception for family and social relationships. This allows an employee to communicate electronically with relatives, the children of friends, friends of the employee’s children, and members or participants in the same civic, social, recreational, or religious organizations.

The sample materials specify that an employee who claims an exception based on a social relationship outside of school must provide written consent from the student’s parent. The written consent must include an acknowledgement by the parent that:

- The employee has provided the parent with a copy of the district’s rules on employee use of social media with students;
- The employee and the student have a social relationship outside of school;
- The parent understands that the employee’s communications with the student are excepted from district regulation; and
- The parent is solely responsible for monitoring electronic communications between the employee and the student.

A related consideration is whether to further restrict which employees may use text messaging to communicate with students. Districts are often uncomfortable with the use of text messaging because of the potential for misuse. The TASB sample materials restrict the use of text messaging to employees with responsibility over extracurricular activities. A broader—or narrower—prohibition on the use of text messaging may be appropriate for your district.

In addition, the sample materials provide for transparency of text messaging. An employee who communicates with a student using text messaging must comply with the following protocol:

- The employee must include at least one of the student’s parents or guardians as a recipient on each text message to the student so that the student and parent receive the same message;

- The employee must include his or her immediate supervisor as a recipient on each text message to the student so that the student and supervisor receive the same message; or
- For each text message addressed to one or more students, the employee must send a copy of the text message to the employee's district e-mail address.

Whether a district uses TASB's sample materials or designs its own policies and procedures, it is necessary to ensure the documents all reflect the same requirements.

For example, TASB Policy Service's Model Student Handbook notifies parents if the district's employee handbook requires copying a parent or a supervisor on text messages to a student.

What: Consider whether to restrict the topics of electronic communication. Employees who use electronic media to develop romantic relationships often communicate with students about personal matters. The TASB sample materials limit electronic communication to matters within the scope of the employee's professional responsibilities. For example, a teacher is limited to communicating about such matters as class work, homework, and tests. An employee with extracurricular responsibilities is limited to communicating about the extracurricular activity.

When: Consider time-of-day restrictions. Late-night communication increases the risk of inappropriate contact. The TASB sample materials restrict the hours of day during which an authorized employee may communicate electronically with students. For example, a district might restrict employees from communicating between the hours of midnight and 5:00 a.m. This restriction protects both the employee and the student from eroding boundaries between private and school life.

Where: Consider a requirement to create a professional social network page. Most experts agree—teachers should not “friend” their students on the teachers' personal social network pages. The TASB sample materials require authorized employees who wish to communicate with students through a social network to maintain a separate page for professional communications. Employees are expressly prohibited from communicating with students through a personal social network page. Better yet, consider a district-owned and operated social network page and restrict communications with students to that platform.

How: Emphasize openness. Inappropriate communications are more likely to occur when interactions are secret. Open communication protects both the employee and the student. The TASB sample materials state that, upon request from administration, an employee must provide information identifying any electronic media the employee uses to communicate with students. Similarly, an employee who creates a professional social network page must grant parents and administrators access to the page. The TASB sample materials also allow parents and students to opt out of electronic communication: upon request from a student or parent, an employee must stop using electronic means to communicate one-on-one with the student.

## **What steps should a district take if it learns that an employee has engaged in inappropriate communications with a student?**

Because of the implications of any allegation of inappropriate relations between an employee and a student, districts should take all allegations seriously and devote appropriate resources to investigating the claims. If an allegation of misconduct or misuse of electronic communications arises, please consult TASB Legal Services' document [Guidelines for Responding to Allegations of Employee Misconduct](#). The Guidelines were developed in collaboration with representatives from school districts, law enforcement, the Texas Education Agency, the State Board for Educator Certification, the Texas Department of Family Protective Services, and other entities. The document provides considerations for school districts to develop plans with local authorities for responding to allegations of sexual harassment, improper relationships, and child abuse. Also see the related [Timeline for Responding to Allegations of Employee Misconduct](#) for a summary of reporting duties and other issues addressed in the Guidelines.

As explained in more detail in the Guidelines and related timeline, school officials may have an obligation to notify Child Protective Services immediately. See TASB Policy FFG (LEGAL). In addition, if the employee resigns or otherwise leaves the employment of the school district, the employee's principal and superintendent may have reporting obligations designed to assist the State Board for Educator Certification in preventing the employee from gaining employment in another school district. Once an investigation is underway, most districts place an employee on administrative leave during the pendency of the investigation.

If the district determines that an employee's communications with a student violated policy or law, the district should take appropriate corrective action in proportion to the offense. Corrective action may include, depending on the circumstances, reprimanding the employee and directing the employee not to make inappropriate comments to students; suspending the employee pending investigation; or terminating employment.

### **Conclusion**

No policy or regulation is going to prevent all abuses of electronic media by employees. Sound local procedures and practices will, however, give well-intentioned employees appropriate ground rules for electronic communication. Written policies on electronic communications with students are not only required by law; when implemented consistently, these policies also provide a district with a basis for disciplinary action should an issue arise. If you have further questions, please call TASB Legal Services or your school attorney.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/sch-dist-employees-use-of-social-media-and-comm-with-students.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/sch-dist-employees-use-of-social-media-and-comm-with-students.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoolawesource.tasb.org](https://schoolawesource.tasb.org).

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