UPDATING THE DISTRICT'S COMPUTER USAGE POLICIES

Education Law Alert
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Computer technology, and specifically the advent of social networking technology, has a significant impact on the modern workplace, and school districts are no exception. Not only can employees upload personal information that an employer believes is inconsistent with its image or mission, but social media may also provide a venue for employees to discuss work-related issues outside of management oversight and to potentially disclose (purposefully or inadvertently) confidential student information (information protected by Family Educational Rights and Privacy Act (FERPA)).

The law has not necessary caught up with the technology yet. Because there is not much legal guidance regarding the use of computers, social networking, and social media in the workplace, employers must rely on basic principals regarding privacy, anti-discrimination and harassment law, education law, and other applicable laws in order to attempt to navigate the changing technological environment.

What is the advantage of reviewing the district's computer policies?

There is no question that implementing effective computer policies can increase productivity in the workplace. However, there are other benefits. Reducing non-authorized computer usage can help to curb spam and malware. Implementing effective policies can also help to curb violation of other employment policies (for example the district's anti-discrimination/harassment policy) and prevent cyber-bullying at work. These policies are also helpful for positively influencing the public's perception of the district. Moreover, if implemented correctly, these policies can provide significant protection to the district if engaged in litigation.

What policies should be reviewed?

The relevant policies include the district's Acceptable Computer Usage Policy, Anti-Harassment/Anti-Discrimination Policy – Code of Acceptable Professional Conduct, Document Retention Policy, and Social Networking Policy.

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Acceptable Computer Usage Policy. Most school districts have a general policy related to usage of their computer hardware and software. This policy should clearly state that the hardware and software are property of the school and that employees should have no expectation of privacy when using this equipment. Also, it is worth reviewing the policy to confirm that it is up to date and covers all of the technology utilized by personnel (e.g., smartphones, laptops, etc.) and that the district's IT staff is able to monitor compliance with the written terms of the policy.

Anti-Harassment/Anti-Discrimination Policy – Code of Acceptable Professional Conduct. The district's anti-harassment/discrimination policy must contain information regarding the types of prohibited conduct and a complaint procedure. Consider revising the section regarding prohibited conduct to refer to conduct perpetrated using computer technology.

Document Retention Policy. New York State law requires the retention of student records according to the Records Retention and Disposition Schedule (ED-1), which indicates the minimum length of time that officials of school districts, including community school districts in New York City and "special act" or institutional school districts; BOCES; county vocational education and extension boards; and teacher resource and computer training centers must retain their records before they may be disposed of legally. Before records disposition takes place, this schedule must be formally adopted by resolution of the governing body. In general, records transmitted through e-mail have the same retention periods as records in other formats that are related to the same program function or activity. E-mail or other electronic records should be scheduled for disposition in conjunction with any other records related to the program function. Districts may only delete, purge, or destroy e-mail records after they have been retained for the minimum retention period established in ED-1 and are not being used for a legal action or audit. The district's retention policy should adopt and incorporate Schedule ED-1 and articulate that the school will appoint a records retention officer.

Social Networking Policy. Before a school district can develop a policy, the district must first determine its philosophy regarding the scope of the policy. The policy should include provisions related to interaction between staff members and between staff and students. The policy should specifically prohibit any conduct between staff members that would violate any other employment policies, including the computer-usage policy that relates to the use of district computer hardware and software. Many districts decide to prohibit all social networking interactions between students and teachers. However, there may be various reasons why a district would create a policy with permissible social networking interactions between staff and students under specific controlled conditions.

Once the scope of the social networking policy is determined, there should be a general statement of purpose, and the policy should instruct teachers and staff on the risks of social networking and why it is important to the school district to create and enforce the policy. Prohibited conduct should be specifically articulated (e.g., teachers may not "friend" current district students, former students under the age of 18, or parents of current students). Be cautious not to include any terms that would violate the terms of service of the various social networking site providers. Also, include a reporting obligation for potential violations and a recitation of potential disciplinary penalties for violation of the policy. Like with the district's acceptable computer usage policy, before issuing the policy to employees, confirm that the district's IT staff is equipped to police the policy and ensure compliance.

Conclusion

Because the law has not kept up with technology, it is necessary to continue to review and update your computer policies as the law evolves. However, following these general guidelines based on other relevant laws should best position your district to address issues related to evolving technology and the law.