

Policy and Legal Issues for Social Networking



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[HTTP://WWW.WALLWISHER.COM/WALL/AASLSOCIALMEDIA](http://www.wallwisher.com/wall/aaslsocialmedia)**

Schools & Social Networking

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Social networking is a new frontier

- Emerging area in both policy development and the law = no clear answers
 - IASB hasn't developed any sample policies yet
 - There are not yet many cases about social networking
 - Must analyze how court decisions on other subjects will apply to this new frontier





Web 2.0 has dramatically increased
the variables in student & staff speech
issues

Then: $x+y=6$

Now: $\frac{x^3+(3ab*341cd)/4ef}{2d/35a*75w}$



Legal Lenses through which to view Social Networking

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- First Amendment (free speech)
- Open Meetings Act /Sunshine Laws(OMA)
- Freedom of Information Act (FOIA)
- Collective Bargaining Agreement
- Staff Handbooks
- Student Discipline Handbook/Code, etc.

Types of Policies

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- ✓ Ethics and new rules for educational ethics
- ✓ Access to Electronic Networks (Resources) - AUPs
- ✓
- ✓ Harassment of students
- ✓ Bullying and harassment
- ✓ Discipline code
- ✓ Be specific about cyber bullying, etc.
- ✓ Electronic devices
- ✓ Sexting
- ✓ Restrictions on publications

- ✓ Social media contracts for staff
- ✓ Social media purpose or mission statement

Illinois Policy Guidelines

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The IASB PRESS service includes several policies which relate to social networking:

5:120 Ethics and new rules for educational ethics

6.235 Access to Electronic Networks

Change networks to electronic resources

6.235 AP Access to Electronic Networks

7.20 Harassment of Students

7.180 Bullying and Harassment

7.190 Discipline Code

Be specific about cyber bullying, etc.

7.190 – AP 5 Electronic devices

7.190 – AP 6 Sexting

7.310 Restrictions on Publications

Don't currently have any specific guidance regarding social networking

Acceptable Use Policy

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- **Should include:**

- Scope of use – educational purposes only
- Prohibited uses
- Rules of use including full disciplinary options
- Liability - district is not liable for the accuracy of information on the web, etc.
- Privacy statement – that the e-mail, etc used on the district's computers are district property and users should have no expectation of privacy
- Password responsibility
- Cyber bullying and sexting should be addressed specifically as well as in your bullying and harassment policies.

Schwartz, Janes & Reed, A Principals' Guide to Internet Policies & Electronic Communication, IASB Education Law October 2008



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Courts have found that one-time notification about acceptable use may not be often enough, making it a good practice to ask students to sign an AUP each year



Basic Tenets of a Social Networking Policy

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1. Purpose of social networking for the organization
2. Be responsible for what you write
3. Be authentic
4. Consider your audience
5. Exercise good judgment
6. Respect copyright laws
7. Protect confidential information
8. Bring value to the organization

Purpose Statement: FEMA Example



- **Why FEMA is involved in social media**
- FEMA has been engaging in Web 2.0 tools and on social media sites nationwide as part of its mission to prepare the nation for disasters. FEMA's goals with social media are: to provide timely and accurate information related to disaster preparedness response and recovery; provide the public with another avenue for insight into the agency's operations; and engage in what has already become a critical medium in today's world of communications. FEMA's social media ventures function as supplemental outreach, and as appropriate channels for unofficial input.

Key Points of FEMA Purpose

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- to provide timely and accurate information related to disaster preparedness response and recovery
- provide the public with another avenue for insight
- engage in what has already become a critical medium in today's world of communications.
- as supplemental outreach and unofficial input

Purpose: Ball State Sample

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- Social media are powerful communications tools that have a significant impact on organizational and professional reputations. Because they blur the lines between personal voice and institutional voice, Ball State University has crafted the following policy to help clarify how best to enhance and protect personal and professional reputations when participating in social media. Social media are defined as media designed to be disseminated through social interaction, created using highly accessible and scalable publishing techniques. Examples include but are not limited to LinkedIn, Twitter, Facebook, YouTube, and MySpace. Both in professional and institutional roles, employees need to follow the same behavioral standards online as they would in real life. The same laws, professional expectations, and guidelines for interacting with students, parents, alumni, donors, media, and other university constituents apply online as in the real world. Employees are liable for anything they post to social media sites.

Purpose: Ball State Sample

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- Social media are powerful communications tools that have a significant impact
- Because they blur the lines between personal voice and institutional voice
- Both in professional and institutional roles, employees need to follow the same behavioral standards online as they would in real life.
- Employees are liable for anything they post to social media sites.

Sample Student Publications

Non-School Sponsored Publications Accessed or Distributed On-Campus

For purposes of this section and the following section, a *publication* includes, without limitation: (1) written or electronic print material, and (2) audio-visual material, on any medium including electromagnetic media (e.g. images, MP3 files, flash memory, etc.), or combinations of these whether off-line (e.g., a printed book, CD-ROM, etc.) or on-line (e.g., any website, **social networking site**, database for information retrieval, etc.).

Creating, distributing and/or accessing non-school sponsored publications shall occur at a time and place and in a manner that will not cause disruption, be coercive, or result in the perception that the distribution or the publication is endorsed by the School District.

Students are prohibited from creating, distributing and/or accessing at school any publication that:

1. Will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities;
2. Violates the rights of others, including but not limited to material that is libelous, invades the privacy of others, or infringes on a copyright;
3. Is socially inappropriate or inappropriate due to maturity level of the students, including but not limited to material that is obscene, pornographic, or pervasively lewd and vulgar, contains indecent and vulgar language, or *sexting* as defined by School Board policy and Student Handbooks;

Continued

4. Is reasonably viewed as promoting illegal drug use; or

5. Is distributed in kindergarten through eighth grade and is primarily prepared by non-students, unless it is being used for school purposes. Nothing herein shall be interpreted to prevent the inclusion of material from outside sources or the citation to such sources as long as the material to be distributed or accessed is primarily prepared by students.

Accessing or distributing “on-campus” includes accessing or distributing on school property or at school-related activities. A student engages in gross disobedience and misconduct and may be disciplined for: (1) accessing or distributing forbidden material, or (2) for writing, creating, or publishing such material intending for it to be accessed or distributed at school.

Non-School Sponsored Publications Accessed or Distributed Off-Campus

A student engages in gross disobedience and misconduct and may be disciplined for creating and/or distributing a publication that: (1) causes a substantial disruption or a foreseeable risk of a substantial disruption to school operations, or (2) interferes with the rights of other students or staff members.

Sample Policy Guidelines

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- Do not post any financial, confidential, sensitive or proprietary information about District 200 or any of our students or staff.
- Speak respectfully about our current, former and potential customers, partners, employees and families. Do not engage in name-calling or behavior that will reflect negatively on your or District 200's reputations. The same guidelines hold true for vendors and business partners.
- Beware of comments that could reflect poorly on you and District 200. Social media sites are not the forum for venting personal complaints about supervisors, co-workers, or District 200.
- If you see unfavorable opinions, negative comments or criticism about yourself or District 200, do not try to have the post removed or send a written reply that will escalate the situation.
- If you are posting to personal networking sites and are speaking about job related content or about District 200 identify yourself as a District 200 employee and use a disclaimer and make it clear that these views are not reflective of the views of District 200.

Sample Policy Guidelines, cont.

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- Be respectful of others. Think of what you say online in the same way as statements you might make to the media, or emails you might send to people you don't know. Stick to the facts, try to give accurate information and correct mistakes right away.
- Do not post obscenities, slurs, harass, or personal attacks that can damage both your reputation as well as District 200's.
- Under no circumstances shall a staff member post any information about a specific student without approval from the superintendent or designee.
- When posting to social media sites; be knowledgeable, interesting, honest and add value. District 200's reputation is a direct result of our employees, students and their commitment to uphold our core values.
- Do not infringe on copyrights or trademarks.

First Amendment

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What about a Facebook page
created by a school?

First Amendment Public Forum Analysis

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- Does the school allow the public to comment on its Facebook page?
 - If so, a court could find that the school intends the page to be a designated public forum
 - The school has effectively granted permission to the public to engage in expressive activity on the page as a matter of course
 - Caveat: a court has not ruled on this issue - guesswork


Dealing with Public Comments

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North Boone District Blog [Try the updated Blogger interface](#) [baules](#)

[Posting](#) [Comments](#) **Settings** [Design](#) [Monetize](#) [Stats](#) [View Blog](#)

[Basic](#) [Publishing](#) [Formatting](#) **Comments** [Archiving](#) [Site Feed](#) [Email & Mobile](#) [OpenID](#) [Permissions](#)

Comments Show Hide 

Note: Selecting "Hide" does not delete existing comments - You can show them at any time by re-selecting "Show".

Who Can Comment? 

Anyone - includes Anonymous Users
 Registered Users - includes OpenID
 Users with Google Accounts
 Only members of this blog

Comment Form Placement

Full page
 Pop-up window
 Embedded below post

The embedded comment form can not be used if you have Post Pages disabled.

Comments Default for Posts

First Amendment

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- **Strict Scrutiny**
 - Any content-based prohibition must be:
 - ✦ Narrowly drawn
 - ✦ Effectuate a compelling state interest

First Amendment

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Social networking options for schools to avoid infringing on First Amendment rights:

- Do not engage in social networking.
- Engage in social networking, but disable “comments,” “wall posts,” and “discussions.”
- Engage in social networking and allow comments, but do not remove comments on the basis of content.

Great Educator Facebook Guidelines

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[HTTP://WWW.SLIDESHARE.NET/JENHEGNA/
GUIDELINES-FOR-EDUCATORS-USING-
SOCIAL-AND-EDUCATIONAL-NETWORKING-
SITES](http://www.slideshare.net/jenhegna/guidelines-for-educators-using-social-and-educational-networking-sites)

[HTTP://WWW.SCRIBD.COM/DOC/16957158/TE
ACHERS-GUIDE-TO-USING-FACEBOOK-READ-
FULLSCREEN](http://www.scribd.com/doc/16957158/Teachers-Guide-to-Using-Facebook-Read-Fullscreen)

OMA – Sunshine Laws

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- Comments or posts on a social networking site could be considered a gathering by electronic means, and thus, be considered a meeting under the OMA where a quorum of a public body comments or posts for the purpose of discussing public business.

OMA ~ Considerations

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- Members of public bodies of the school district should be aware of this potentiality of a violation of the OMA when engaging in social networking activities.
- They should refrain from posting, commenting, or discussing public business via Facebook or other social networking platforms, especially if other members have already commented on the same topic.

Employee Social Networking

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- The Supreme Court's holding:
 - The Court assumed, but did not decide, that Quon had a reasonable expectation of privacy in his text messages
 - ✦ The City had a no-privacy policy regarding computers and emails, but it did not explicitly include text messages

Employee Social Networking

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- The Supreme Court's holding:
 - The employer's search of the text messages was reasonable
 - ✦ Non-investigatory work-related purpose
 - ✦ Justified at its inception
 - ✦ Not excessive in scope

Employee Social Networking

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- Lessons for public employers from *Quon*:
 - Have a clear policy that all employer-owned communication facilities are subject to search at any time and that no employee should have any expectation of privacy
 - Only conduct a search if it is based on a legitimate, work-related purpose
 - Make sure that the search is reasonable in scope – don't be more intrusive than necessary

Employee Social Networking

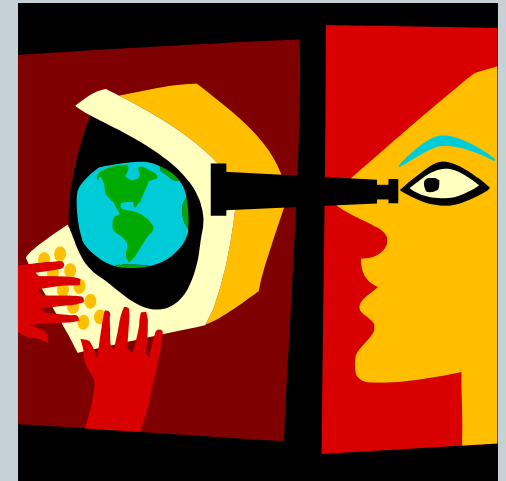
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- Another reason to tread carefully when conducting a search of employees' social media use:
 - **The Stored Communications Act, 18 U.S.C.A. § 2701, *et seq.***

Employee Social Networking

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- What if an employer searches an employee's work computer, discovers the employee's username and password for electronic accounts unrelated to the employer's system (For example, Facebook, Twitter, Gmail, or Hotmail), and then examines the employee's communications in the private account?



Employee Social Networking

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- This could be a violation of the federal Stored Communications Act.
 - The Act prohibits unauthorized access to an electronic “facility” to examine stored communications.
 - It is a criminal offense with civil fines of \$1,000 per violation in statutory damages, without need for proof of actual damages.
 - It is unclear whether the act of access is a single violation or whether each communication retrieved and reviewed is a separate violation.
 - The financial implications of this question are enormous.

Employee Social Networking

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- To avoid a violation of the Stored Communications Act:
 - An employer should not examine an employee's private electronic account without permission.
 - If the investigation is criminal in nature, the access information should be given to police who can then execute a warrant.

Employee Social Networking

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Employment decisions based on social networking



Employee Social Networking

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- What if an employee tweets a disparaging remark about her supervisor, the school principal?



Employee Social Networking

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- Disciplining her could violate her First Amendment rights.

Employee Social Networking

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- *Pickering v. Board of Education*, 391 U.S. 563 (1968)
 - Teacher dismissed after writing a letter to the local newspaper, which criticized how the school board and the superintendent handled funds.
 - The Supreme Court held that this violated the teacher's First Amendment rights.

Employee Social Networking

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- *Pickering v. Board of Education* (1968)
 - First Amendment rights violated when speaking :
 - ✦ As a citizen (not as part of their duties as an employee), and on
 - ✦ Issues of public concern



Employee Social Networking

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- **Balancing act:**
 - Even if an employee speaks as a private citizen on a matter of public concern, he or she may still be disciplined:
 - ✦ Pursuant to an employer's policy, and
 - ✦ Where speech infringes on the employer's operations or on its ability to provide effective and efficient services.



Employee Social Networking

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- Speech is not protected by the First Amendment when statements are made pursuant to public duties
 - *Garcetti v. Ceballos*, 547 U.S. 410 (2006)
 - Schools should require that employees make clear that they are not representing their employer when engaging in personal social networking

Employee Social Networking

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- What should a policy on employee social networking include?

Employee Social Networking

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- All employer-owned communication facilities are subject to search – no expectation of privacy.



Employee Social Networking

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- Any social networking activities done pursuant to the employee's job duties or that occur during working time or while at work are not private and are subject to employer monitoring.

Employee Social Networking

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- Whether and when employees may access social media during working time?



Employee Social Networking

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- Even when engaging in social networking on your own time, make clear that your opinions do not represent those of your employer, and do not post anything that undermines the ability of the employer to operate effectively.

Students, Technology and Social Networking

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- How should schools regulate this behavior?
 - Can schools search cell phones and other electronic communication devices?
 - When can schools regulate off-campus conduct?
- The Standard:
 - *Tinker v. Des Moines*, 393 U.S. 503 (1969)
 - Material or substantial disruption rule: schools may limit students' First Amendment or other constitutional rights only when the students' conduct causes a material or substantial disruption in the orderly operation of the school.

What conduct may schools regulate?

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- This standard is not always easy to apply, see:
 - *Layshock v. Hermitage School Dist.* 593 F.3d 249 (3rd Cir. Feb. 4, 2010)
 - *J.S. ex rel. Snyder v. Blue Mountain School Dist.* 593 F.3d 286 (3rd Cir. Feb. 4, 2010).
- Two cases:
 - Same day
 - Same circuit
 - Opposite conclusions from panel of 3rd Circuit



What conduct may schools regulate?

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Layshock

- In *Layshock*, the panel found that a ten-day, out-of-school suspension violated the student's free speech rights under the First Amendment.
 - The student set up a fake MySpace profile of his school principal. The profile, which the student created on his grandmother's computer at his grandmother's house, referred to the principal as a "big steroid freak," a "big hard ass," and a "big whore" who smoked a "big blunt."

Snyder

- In *Snyder*, the panel upheld a ten-day, out-of-school suspension of the student.
 - Using her parent's computer, the student created a fake MySpace profile of the school principal with a friend. The fake profile did not state the principal's name, but included a picture of the principal from the school district's website. The profile included profane statements suggesting that the principal was a pedophile.

What conduct may schools regulate?

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- The full Third Circuit, sitting *en banc*, heard arguments on these two cases in June of 2010. On June 13, 2011, the Court ruled that the students could not be suspended for creating the parody profiles on MySpace of their principals on home computers because there was not a sufficient nexus between their behavior and school.
- In *Layshock*, the Court ruled unanimously that the student's First Amendment rights were violated when he was suspended and stated, “[w]e do not think that the First Amendment can tolerate the School District stretching its authority into Justin’s grandmother’s home and reaching Justin while he is sitting at her computer after school.”



What conduct may schools regulate?

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- In the *Blue Mountain* case, in which the majority opinion included 8 of the 14 justices, the Court also found that the student's First Amendment free speech rights were violated because "J.S. was suspended from school for speech that indisputably caused no substantial disruption in school and that could not reasonably have led school officials to forecast substantial disruption in school."
- However, Judge D. Michael Fisher, who was joined by five other justices, wrote the following about the majority opinion in the dissent, "It allows a student to target a school official and his family with malicious and unfounded accusations about their character in vulgar, obscene, and personal language."

What conduct may schools regulate?

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- The dissenting justices were of the opinion that the school district had the right to discipline J.S. because substantial disruption was reasonably foreseeable.
- The School District has decided to file a writ of certiorari with the U.S. Supreme Court to ask it to review the decision of the Circuit Court of Appeals.



Can schools search students' cell phones?

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- The *T.L.O.* standard is applicable to a school official's search of a student's cell phone.
 - *Klump v. Nazareth Area School District*, 425 F. Supp. 2d 622 (E.D. Pa. 2006).
 - Seizure of a student's phone is justified if the student is using it in violation of school rules.
 - Further search of the phone is only justified if there are reasonable grounds for believing that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.



Sexting, Cont.

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- Information on sexting prevention is available:
 - <http://www.aap.org/advocacy/releases/june09socialmedia.htm>
 - <http://www.connectsafely.com/Safety-Tips/tips-to-prevent-sexting.html>

Illinois Internet Safety Education Act

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- Public Act 95-0509 states that each school may adopt an age appropriate curriculum for Internet safety instruction of students in grades kindergarten through 12.
- Beginning with the 2009-2010 school year, a school district must incorporate into the school curriculum a component on Internet safety to be taught at least once each school year to students in grades 3 through 12.



Illinois Internet Safety Education Act

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The Statute defines:

- (1) Safe and responsible use of social networking websites, chat rooms, electronic mail, bulletin boards, instant messaging, and other means of communication on the Internet.
- (2) Recognizing, avoiding, and reporting online solicitations of students, their classmates, and their friends by sexual predators.
- (3) Risks of transmitting personal information on the Internet.
- (4) Recognizing and avoiding unsolicited or deceptive communications received online.
- (5) Recognizing and reporting online harassment and cyber-bullying.
- (6) Reporting illegal activities and communications on the Internet.
- (7) Copyright laws on written materials, photographs, music, and video.



Anti-cyberbullying Law

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- Public Act 095-0849 states that a person commits cyberstalking when he or she, knowingly and without lawful justification, creates and maintains an Internet website or webpage which is accessible to one or more third parties for a period of at least 24 hours, and which contains statements harassing another person and:
 - (1) which communicates a threat of immediate or future bodily harm, sexual assault, confinement, or restraint, where the threat is directed towards that person or a family member of that person, or
 - (2) which places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint, or
 - (3) which knowingly solicits the commission of an act by any person which would be a violation of this Code directed towards that person or a family member of that person.

Overhaul of Bullying Statute

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- The State of Illinois recently overhauled its bullying statute, cited as Public Act 96-952.
- The new bullying law defines the act of bullying to include cyberbullying for the first time.
- *Illinois districts are required to update bullying policies every two years*



Questions or Comments?

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