

**OSC | 11**  
Ohio Safety Congress & Expo



**#406 Social networking by teachers and students: Legal risks for schools**

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**Ohio** Bureau of Workers' Compensation

**Ohio Casualty**  
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**Social Networking by teacher and students: Legal Risks for schools**

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**What is social networking?**





An online community of people who share interests and/or activities, or who are interested in exploring the interests and activities of others. Most social network services are web-based and provide a variety of ways for users to interact, such as e-mail and instant messaging services.




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**What is social networking?**

Wikipedia lists 142 major active social networking websites. The most popular include:

- My Space;
- Facebook;
- Twitter;
- LinkedIn;
- Tagged.com.

Other sites include:

- You Tube;
- Flickr;
- Blogspot.

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**When Young Teachers Go Wild on the Web**



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**"Fools names, like fool's faces ..."**

- 2008 Washington Post Article entitled "When Young Teachers Go Wild on the Web." – Facebook.
- "One Montgomery County special education teacher displayed a poster that depicts her talking about sperm and invokes a slang term for oral sex."
- "One woman who identified herself as a Prince William County kindergarten teacher posted a satiric shampoo commercial with a half-naked man having an orgasm in the shower."
- "A D.C. public schools educator offered this tip on her page: 'Teaching in DCPS -- Lesson #1: Don't smoke crack while pregnant.'"

### Question Presented.

- “[T]he crudeness of some Facebook or MySpace teacher profiles, which are far, far away from sanitized Web sites ending in ‘.edu,’ prompts questions emblematic of our times: Do the risqué pages matter if teacher performance is not hindered and if students, parents and school officials don’t see them? At what point are these young teachers judged by the standards for public officials?”

### Intersection of Facebook & the Classroom.

- “Erin Jane Webster, 22, a long-term substitute teacher in Prince William, keeps a page similar to other teachers’. Portions are professional, but some parts suggest the author is in the throes of sorority rush.”
- Ms. Webster’s page featured multiple “bumper stickers,” including one that uses a crude acronym for attractive mothers (“MILF”) and another that said: “you’re a retard, but i love you.”
- The problem: “Webster teaches students with emotional and learning disabilities.”

### “Retard” posting = liability.

- *Schroeder v. San Diego Unified Sch. Dist.*, 2009 U.S. Dist. LEXIS 40422 (S.D.Cal. 2009).
- A tutor in a special education classroom had a MySpace page with derogatory comments about special education students. School disciplined tutor for the comments but tutor remained in classroom.
- Tutor later sexually molested a student in the special education classroom.
- Summary judgment denied for individual School supervisors, in part based on School’s knowledge of tutor’s attitude towards special education students as shown on MySpace page.

### MySpace Comments Admissible.

- *Ian J. Clark v. State of Indiana*, No. 43S00-0810-CR-575 (Ind. October 15, 2009).
- Defendant killed his two year old daughter while drunk.
- “One of his trial objections does pose a novel question: should the trial court have permitted the State to offer into evidence Clark’s entry from the social networking website MySpace? We hold that this electronic evidence was admissible, and we affirm Clark’s conviction and sentence.”
- Clark put his character at evidence.
- Defendant tried to keep it out under Rule 404, Indiana Supreme Court held: “Thus, the State is right to observe that this is solely evidence of his own statements, not of prior criminal acts. It was Clark’s words and not his deeds that were at issue, so Rule 404(b) does not apply.”

### Teachers and Explicit Photos



- Tamara Hoover was suspended for allegedly explicit photos that had been posted on Flickr.
- The photos, taken by her partner, depicted Hoover topless in the shower, nude wearing a dog collar, and with a nude male model, all allegedly as art.
- The photos came to light as a result of a feud with another teacher. Students who had seen the pictures showed the teacher in class, who then notified school officials.

### Discipline for Hoover.

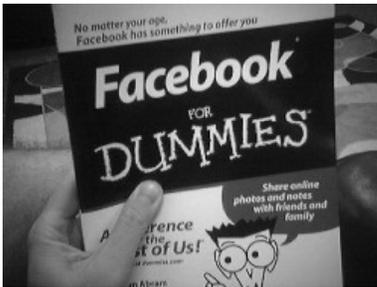
- According to Hoover, “[o]n Friday May 19 a ‘fellow’ teacher was complaining about me in front of her students. A student in her class said, if you dont like ms h you should check out ‘this’ website, (celestadanger.com). the fellow teacher instructed the student to pull up the site. in which they did in front of the class. when she saw nude images of me along with her class full of students she proclaimed, ms hoover is a pornographer! she then went to a teacher next door and then they went and told the administration. within 30 minutes, the administration escorted me off campus.”

### Discipline for Hoover.

- Ms. Hoover was put on paid administrative leave and the administration began termination proceedings.
- Ms. Hoover hired an attorney and threatened litigation contending that her nude pictures were protected by the 1<sup>st</sup> Amendment as part of her “right of free expression.”
- Rather than fight, on August 16, 2006, Ms. Hoover agreed to resign, with the board paying her \$14,850 representing several month’s salary.

***“Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”***

### Teacher/Student Social Networking.



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# Teen Risk

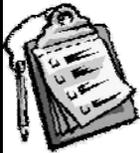
Lebanon High School

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## Overview

### Survey conducted

- 896 of 1,009 students participated in the study
  - 10 questions on cell phone behavior
  - 11 questions on social networking



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# Social Network

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## Social Network

**Q** – Do you have an account on Facebook and or MySpace?

**A** – 89% of all respondents have social networking accounts.



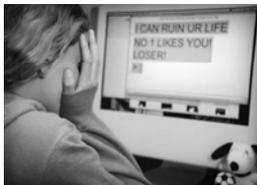
## Social Network

**Q** – Have you ever accepted a complete stranger to your friends list?

**A** – 54% of respondents admit to accepting strangers as “friends”.



## Social Network



**Q** – Have you ever been a victim of cyber-bullying on a social networking site?

**A** – 15% of all respondents say yes.

## Social Network

**Q** – How many hours per day do you spend on Facebook or MySpace?

	0-1	2-3	4-5	6+
12 <sup>th</sup>	108	38	2	0
11 <sup>th</sup>	171	75	13	5
10 <sup>th</sup>	127	44	4	1
9 <sup>th</sup>	156	52	12	5

## Social Network

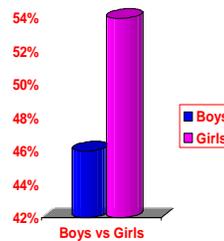
**Q** – Have you ever posted an inappropriate photo of yourself on-line?



## Social Network

**Q** – Have you ever posted a negative comment about someone on-line?

**A** – Out of 798 respondents 328 said yes



## Blurring the Boundaries.

What happens when the lines between teachers and students become blurred on social networking sites?

- Studies show that 10% of female students "report being sexually harassed or abused by a school employee."
- There are two types of child molesters, the "grabbers" and the "groomers."
- Social networking sites allow an unmonitored opportunity for the blurring of the boundaries between teacher and students giving the "groomers" unfettered access to students outside of the school environment.
- "The process of sexual grooming involves finding a suitably vulnerable student and engaging in increasingly invasive boundary invasions behaviors with that student. The boundary invasions reveal which students may be taken advantage of."

Based on "Protecting Children from Sexual Misconduct by School Employees", May, 2008 Issue of Inquiry & Analysis.

## Blurring, cont'd.

Sexual grooming is defined as a five step process:

1. Identifying a vulnerable child – At risk children show low self-esteem, lack self-confidences, in trouble at school;
2. Engaging the child in peer-like involvement - Social networking sites provide the perfect opportunity for these interactions;
3. Desensitizing the child to the conduct – To do this, known molesters inevitably blur the boundaries between appropriate and inappropriate contact. They attempt to normalize inappropriate contacts;
4. Isolating the child – Social networking sites are perfect for this by allowing the individual to monopolize the child's time and to encourage the child to keep secrets;
5. Making the child feel responsible – The initial contact is used to arouse the child's curiosity interest in sexuality, and then the child is made to feel responsible for the interest in sex.

Based on "Protecting Children from Sexual Misconduct by School Employees", May, 2008 Issue of Inquiry & Analysis.

## Blurring, cont'd.

- On Facebook users can add friends and send them messages, and update their personal profiles to notify friends about themselves. Additionally, users can join networks organized by city, workplace, school, and region.
- The Facebook friends process provides the perfect opportunity for grooming behavior by potential molesters, and especially those who may be school employees.
- The process begins with a friend request, which may be completely innocent, and can be linked to legitimate school purposes like homework help.
- Once the school employee and the student become friends, the privacy capabilities of Facebook permit the remaining three steps of grooming behavior, desensitization, isolation, and responsibility, to take place in private.

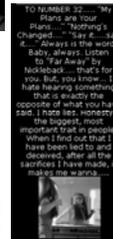
## Brian D. Hindson.

- In March of 2006, an individual in North Carolina reported to the FBI that she found two videos showing what appeared to be a high school female in a locker room changing out of a bathing suit on a computer that had been sold to her on eBay.
- An investigation revealed that the seller was Brian Hindson a long-time swim coach in central Indiana.
- A review of his computer equipment revealed that Mr. Hindson had been secretly taping girls at pools throughout central Indiana for more than ten years.
- According to press reports, "Mr. Hindson admitted to the FBI that he hid video cameras in locker rooms at Kokomo High School and Westfield High School -- where the swim club operated."

## Hindson cont'd.

- Perhaps more disturbing than the covert photography was Mr. Hindson's use of Internet chat rooms and texting to meet and exchange photographs and videos with young girls.
- According to testimony at his sentencing hearing Mr. Hindson would enter chat rooms posing as a male teenage swimmer.
- He would begin chatting with young females and eventually would go off-line and exchange e-mails and text messages with them.
- These cyber-relationships would progress into sexual matters and Mr. Hindson would exchange nude or semi-nude photos with them.
- At least one young girl eventually sent him several explicit sexual videos which he later posted on the Internet.

## Pamela Rogers



- Former Gym Teacher who was found guilty of having sex with a 13-year-old boy and served 6 months;
- Was rearrested after she allegedly sent sexy videos and pictures to the boy as well as contacting him indirectly through her MySpace website;
- Sentenced to two more years for 4 new felony charges for sending pictures through a cell phone in addition to having to serve her entire original 7 year sentence.

### How Significant a Problem?

- CyberTipline – Nation’s hotline for reporting sexual exploitation of children received 223,374 reports in 2010, double a year earlier.
- Using Facebook and Twitter, kids keep their “friends” updated with their activities 24-7. This also updates potential pedophiles.
- New services like Foursquare and Gowalla provide incentives for smartphone users to utilize the GPS locator to provide constant updates regarding their locations.
- These “location-based social networks” are a boon for sexual predators.

### Legislative Solutions.

- Louisiana requires schools to have a policy that would:
- “Require that all electronic communication by an employee at a school to a student at that school relative to the educational services provided to the student shall use a means provided by or otherwise made available by the school system for this purpose and prohibit the use of all such system means to electronically communicate with a student for a purpose not related to such educational services except communication with an immediate family member if such communication is specifically authorized by school board policy.”

### Legislative Solutions.

- “Specify that the occurrence of any electronic communication made by an employee at a school to a student at that school or that is received by an employee at a school from a student at that school using a means other than one provided by or made available by the school system shall be reported by the employee.”

### Legislative Solution.

- “Provide a means for a parent or other person responsible for a child’s school attendance to request that the child not be contacted through electronic communication by any school employee unless the purpose of such communication is directly related to the child’s educational services and is sent to and received by more than one student at the school.”
- “No city, parish, or other local public school board or member of such a board shall be civilly liable for any electronic communication by an employee to a student that is prohibited as provided in this Subsection.”

### What Schools Can Do.

- Revise handbook and board policies (e.g. harassment, workplace violence, confidentiality) to address employee blogging and use of social networking websites;
- Adopt a consistent approach to employee discipline for policy violations;
- Advise teachers that they have no expectation of privacy when using a school computer system;
- Prohibit disclosure of confidential information;
- Consider policies that follow either or Texas approach.

### Drafting a Policy.

- Prohibit the disclosure of personal information of supervisors/co-workers;
- Prohibit violations of school/board policy – harassment, workplace violence, code of ethics, etc.;
- Prohibit conduct disruptive of the school environment;
- Prohibit use of the school’s name, logos, web material;
- Prohibit any suggestion that the teacher represents the school in on-line activities;
- Express warning regarding disciplinary action for boundary invasions with students.

## Texas Forms.

- Texas Association of School Boards ("TASB") proposed electronic use modifications to Employee Standards of Conduct policy;
- TASB 2010–2011 Model Employee Handbook provision on Personal Use of Electronic Media;
- TASB statement on "School District Employees and Electronic Media."

## Nonlegal Methods of Dealing With Inappropriate Internet Speech.

- With respect to social networking sites get the MySpace.Com Administrators' Guide.
- Google which operates Blogger.com and blogspot.com provides terms and conditions for users at <http://www.blogger.com/terms.g> and <http://www.google.com/accounts/TOS>. These conditions purport to ban speech that involves "Illegal Purposes, Spam, Identity Theft and Privacy, Hate Content, or Defamation/Label."
- However, these protections are largely toothless. Google states that "if we have reason to believe that a particular statement is defamatory (a court order, for example), we will remove that statement." Hate content will generally not be removed, but will just be "flagged."

## References and Sources.

- "It's a New CyberWorld Out There: Tips to Avoid Personnel Pitfalls." The School Administrator, October, 2007;
- "Protecting Children from Sexual Misconduct by School Employees", May, 2008 Issue of Inquiry & Analysis;
- "Employee Use, Misuse, and Abuse of Social Networking Sites", January, 2008 Issue of Inquiry & Analysis.

## References cont'd.

- Legal Clips: Free weekly e-newsletter
  - Legal news and online resources
  - Short, written in plain English
  - Subscribe: [www.nsba.org/legalclips](http://www.nsba.org/legalclips)
- COSA's Inquiry & Analysis
- NSBA School Law pages:
  - [www.nsba.org/schoollaw](http://www.nsba.org/schoollaw)

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