

**Comment [KAS1]:** The policy, Cross References, and footnotes are updated in response to ongoing PRESS Advisory Board feedback. Footnote additions discuss this change, along with the Right to Privacy in the Workplace Act, 820 ILCS 55/10, amended by P.A. 99-610, eff. 1-1-17.

## General Personnel

### Personal Technology and Social Media; Usage and Conduct 1

#### Definitions

**Includes** - Means “includes without limitation” or “includes, but is not limited to.”

**Social media** - Media for social interaction, using highly accessible communication techniques through the use of web-based and mobile technologies to turn communication into interactive dialogue.<sup>2</sup> This includes, but is not limited to, services such as Facebook, LinkedIn, MySpace, Twitter, Instagram, Snapchat, and YouTube.<sup>3</sup>

**Personal technology** - Any device that is not owned or leased by the District or otherwise authorized for District use and: (1) transmits sounds, images, text, messages, videos, or electronic information, (2) electronically records, plays, or stores information, or (3) accesses the Internet, or private communication or information networks.<sup>4</sup> This includes laptop computers (e.g., laptops, ultrabooks, and chromebooks), tablets (e.g., iPads®, Kindle®, Microsoft Surface®, and other Android® platform or Windows® devices), smartphones (e.g., iPhone®, BlackBerry®, Android® platform phones, and Windows Phone®), and other devices (e.g., iPod®).<sup>5</sup>

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> This policy is optional. Consult the board attorney because personal technology and social media involve an unprecedented area of the law. Public employees’ First Amendment rights involve an unsettled area of the law. Personal technology and social media platforms change continually. Therefore, instead of prohibiting specific actions, this sample policy focuses on what will not change - maintaining appropriate behavior as outlined in 5:120, *Ethics and Conduct*, the Ill. Educators’ Code of Ethics at 23 Ill.Admin.Code §22.20, and 105 ILCS 5/21B-75 ~~by P.A. 97-607~~ (allows suspensions or revocations of certificates for *immorality* and *unprofessional conduct*, among other things). *Immoral* has been defined by one court to mean “shameless conduct showing moral indifference to the opinions of the good and respectable members of the community,” (see *Ahmad v. Board of Education of City of Chicago*, 847 N.E.2d 810, 819 (4<sup>th</sup> Dist. Ill. App. 1, 2006)).

Consult the board attorney when a board wants to prohibit more specific actions and/or specific speech, e.g., *friending* students on Facebook or similar social media, *tweeting* or otherwise communicating with students on Twitter or similar social media sites, and text messaging or emailing students. See also the discussion in f/n’s 6 & 7 below.

This policy also contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. When a policy’s subject matter is superseded by a bargaining agreement, the board policy can state, “Please refer to the applicable collective bargaining agreement ~~current~~ [insert name of CBA].”

<sup>2</sup> Several definitions of social media exist, and a board may wish to use another definition or create its own with the board attorney. This sample policy’s definition is very broad. It is adapted from a frequently cited Wikipedia definition at [en.wikipedia.org/wiki/Social\\_media](http://en.wikipedia.org/wiki/Social_media). Merriam-Webster’s definition is at [www.merriam-webster.com/dictionary/social%20](http://www.merriam-webster.com/dictionary/social%20).

<sup>3</sup> Optional. A board may want to add other sites. As of October 2010, the publication *eBizMBA Inc.* lists the top ~~4~~<sup>four</sup> social networking sites as Facebook, Myspace, Twitter, and LinkedIn, respectively.

<sup>4</sup> *Personal technology* is not yet defined. It is the title of a weekly column in *The Wall Street Journal*. The column was created and is authored by Walt Mossberg, who frequently directs readers to his review of new technologies on a website titled *All Things Digital* at [allthingsd.com/author/walt/](http://allthingsd.com/author/walt/). Many of the reviewed devices operate as described in this sample definition.

<sup>5</sup> Optional.

## Usage and Conduct <sup>6</sup>

All District employees who use personal technology and social media shall: <sup>7</sup>

1. Adhere to the high standards for appropriate school relationships required by policy 5:120, *Ethics and Conduct* at all times, regardless of the ever-changing social media and personal technology platforms available. This includes District employees posting images or private information about themselves or others in a manner readily accessible to students and other employees that is inappropriate as defined by policy 5:20, *Workplace Harassment Prohibited*; ~~5:100, *Staff Development Program*~~; 5:120, *Ethics and Conduct*; 6:235, *Access to Electronic Networks*; 7:20, *Harassment of Students Prohibited*; and the Ill. Code of Educator Ethics, 23 Ill.Admin.Code §22.20.
2. Choose a District-provided or supported method whenever possible to communicate with students and their parents/guardians.
3. Not interfere with or disrupt the educational or working environment, or the delivery of education or educational support services.
4. Comply with policy 5:130, *Responsibilities Concerning Internal Information*. This means that personal technology and social media may not be used to share, publish, or transmit information about or images of students and/or District employees without proper approval. For District employees, proper approval may include implied consent under the circumstances. <sup>8</sup>
5. Refrain from using the District's logos without permission and follow Board policy 5:170, *Copyright*, and all District copyright compliance procedures. <sup>9</sup>
6. Use personal technology and social media for personal purposes only during non-work times or hours. Any duty-free use must occur during times and places that the use will not interfere with job duties or otherwise be disruptive to the school environment or its operation. <sup>10</sup>

**Comment [KAS2]:** PRESS subscriber feedback that this policy should cite 5:100, staff development because 105 ILCS 5/10-22.39(f) requires boards to at a minimum, once every two years, conduct an in-service training of all district staff on educator ethics, teacher-student conduct, and school employee-student conduct.

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<sup>6</sup> Whether to discipline an employee for his or her speech is always highly fact sensitive and should always occur after a consultation with the board attorney (see f/n 1 and 7). The discipline will require careful balancing of the district's obligations to protect its students with employees' rights. Further, a board may not discipline its employees for discussing the terms and conditions of their employment with co-workers and others or otherwise interfere with their employees' efforts to work to improve the terms and conditions of their workplace (29 U.S.C. §151 et seq.).

<sup>7</sup> The following list is optional and may contain items on which collective bargaining may be required (see f/n 1). To ensure that the listed expectations match local conditions, boards may want to initiate a conversation with the superintendent about these expectations. Expectations will be most effective when they reflect local conditions and circumstances. This conversation provides an additional opportunity for the board and superintendent to examine all current policies, collective bargaining agreements, and administrative procedures applicable to this subject (see f/n 2 of policy 5:120, *Ethics and Conduct*, for more discussion about how to initiate this conversation and f/n 3 of policy 5:100, *Staff Development Program*). Employee conduct issues may be subjects of mandatory collective bargaining, therefore consulting the board attorney should be a part of this process. After discussing these issues, the board may have further expectations and may choose to reflect those expectations here.

<sup>8</sup> Inherent dangers exist when district employees use personal technology and social media without understanding how the information is used within the chosen platform and what choices are available within the platform to control it. Some examples of laws that require the safekeeping of district and school records include: the Federal Educational Rights and Privacy Act, 20 U.S.C. §1232g and the Ill. School Student Records Act, 105 ILCS 10/ (both prohibit the unauthorized disclosure of student school records), 5 ILCS 140/7 (exempts personnel information and other items such as school security and response plans and maps from disclosure), 45 C.F.R. §164.502 (protects the employees' health information), and 820 ILCS 40/ (governs the release of an employee's disciplinary action). For district employees, implied consent may be sufficient in some circumstances, e.g., teachers taking pictures of each other at a birthday party in the teachers' lounge or at a social event off school grounds and later posting those pictures on Facebook.

<sup>9</sup> 17 U.S.C. §101 et seq.

7. Assume all risks associated with the use of personal technology and social media at school or school-sponsored activities, including students' viewing of inappropriate Internet materials through the District employee's personal technology or social media. The Board expressly disclaims any responsibility for imposing content filters, blocking lists, or monitoring of its employees' personal technology and social media. **11**
8. Be subject to remedial and any other appropriate disciplinary action for violations of this policy ranging from prohibiting the employee from possessing or using any personal technology or social media at school to dismissal and/or indemnification of the District for any losses, costs, or damages, including reasonable attorney fees, incurred by the District relating to, or arising out of, any violation of this policy. **12**

**Comment [KAS3]:** The second paragraph of this footnote is relocated to its own f/n 6, above.

The Superintendent shall: **13**

1. Inform District employees about this policy during the in-service on educator ethics, teacher-student conduct, and school employee-student conduct required by Board policy 5:120, *Ethics and Conduct*.
2. Direct Building Principals to annually:
  - a. Provide their building staff with a copy of this policy.
  - b. Inform their building staff about the importance of maintaining high standards in their school relationships.
  - c. Remind their building staff that those who violate this policy will be subject to remedial and any other appropriate disciplinary action up to and including dismissal.

**10** 105 ILCS 5/24-9; Fair Labor Standards Act, 29 U.S.C. §201 et seq. See also f/ns 1 and 6 above.

**11** The Children's Internet Protection Act (CIPA), 20 U.S.C. §630147 U.S.C. §254, requires school districts to maintain a policy and provide Internet access that protects against access to websites containing material that is obscene, pornographic, or harmful to minors. See 6:235, *Access to Electronic Networks*. Because a district cannot subject its employees' usage of personal technology and social media to the same measures required under CIPA (i.e., content filters, blocking lists, or district monitoring of Internet website traffic for patterns of usage that could indicate inappropriate network usage), this statement seeks to balance the district's duty by shifting responsibility for inappropriate behavior to the individual employee.

**12** The Ill. Human Rights Act makes it a civil rights violation to fail to take remedial action, or to fail to take appropriate disciplinary action against any employee, when the district knows that the employee committed or engaged in sexual harassment of a student (775 ILCS 5/5A-102). Sexual harassment of a student is also prohibited by 7:20, *Harassment of Student Prohibited*, and of an employee by 5:20, *Workplace Harassment Prohibited*.

~~Whether to discipline an employee for his or her speech is always highly fact sensitive and should always occur after a consultation with the board attorney (see f/ns 1 and 6). The discipline will require careful balancing of the District's obligations to protect its students with employees' rights. Further, a board may not discipline its employees for discussing the terms and conditions of their employment with co-workers and others or otherwise interfere with their employees' efforts to work to improve the terms and conditions of their workplace (29 U.S.C. §151 et seq).~~

**13** 105 ILCS 5/10-16.7. The school board directs, through policy, the superintendent in his or her charge of the district's administration. One logical method for a board to address the issue of district employees' use of personal technology and social media is to include its expectations during its in-service trainings required by 105 ILCS 5/10-22.39. Many experts in social media risk management advocate training employees about the expectations concerning social media usage. For boards that do not want to include this as a part of the in-service, delete the phrase "during the in-service on educator ethics, teacher-student conduct, and school employee-student conduct required by Board policy 5:120, *Ethics and Conduct*."

Public employee First Amendment issues involve the balance between the importance of the speech and the district's interest in maintaining order and effective school operations. The First Amendment "does not entitle primary and secondary teachers, when conducting the education of captive audiences, to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school system." See Mayer v. Monroe County Community School Corp., 474 F.3d 477 (7<sup>th</sup> Cir. 2007). Nor is the First Amendment likely to entitle a teacher to protection for purely personal speech that does not touch on a matter of public concern. See Pickering v. High School Dist. 205, 391 U.S. 563 (1968). However, when public employees speak as private citizens on their own time about matters of public concern, they may face only those speech restrictions that are necessary for their employers to operate efficiently and effectively (Garcetti v. Ceballos, 547 U.S. 410 (2006)).

3. Build awareness of this policy with students, parents, and the community.
4. Ensure that no one for the District, or on its behalf, requests of an employee or applicant access in any manner to his or her social networking website or requests passwords to such sites. <sup>14</sup>
5. Periodically review this policy and any procedures with District employee representatives and electronic network system administrator(s) and present proposed changes to the Board.

LEGAL REF.: 105 ILCS 5/21B-75 and 5/21B-80.  
 Ill. Human Rights Act, 775 ILCS 5/5A-102.  
 Code of Ethics for Ill. Educators, 23 Ill.Admin.Code §22.20.  
Garcetti v. Ceballos, 547 U.S. 410 (2006).  
Pickering v. High School Dist. 205, 391 U.S. 563 (1968).  
Mayer v. Monroe County Community School Corp., 474 F.3d 477 (7th Cir. 2007).

CROSS REF.: 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria),  
5:100 (Staff Development Program), 5:120 (Ethics and Conduct), 5:130  
 (Responsibilities Concerning Internal Information), 5:150 (Personnel Records),  
 5:170 (Copyright), 5:200 (Terms and Conditions of Employment and Dismissal),  
 6:235 (Access to Electronic Networks), 7:20 (Harassment of Students  
 Prohibited), 7:340 (Student Records)

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<sup>14</sup> Right to Privacy in the Workplace Act, 820 ILCS 55/10(b), ~~added by P.A. 97-875 and~~ amended by P.A. ~~98-50199-610, eff. 1-1-17~~ (also known as the *Facebook Password Law*). The exception for *professional accounts*, ~~added by P.A. 98-501~~, is unlikely to be available to school districts; see the explanation in ~~a footnote 15~~ in policy 5:30, *Hiring Process and Criteria*. The statute specifically permits an employer to: (1) maintain workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use; and (2) monitor usage of the employer's electronic equipment and electronic mail.

The statute ~~also states that it~~ does not prohibit an employer from (1) obtaining information about an applicant or an employee that is in the public domain or that is otherwise obtained in compliance with the statute, and (2) requesting or requiring an applicant or employee to share specific content that is reported to the employer to: (a) ensure compliance with laws and regulatory requirements, (b) investigate certain allegations as outlined in the law, and (c) prohibit certain outlined behaviors in the law. Finally, the statute does not apply to other types of personal technology that employees may use to communicate with students or other individuals, such as personal email or text messages on a personal phone. However, employers may access online accounts that the employer pays for or that an employee creates or maintains on behalf of the employer in connection with the employee's employment. Consult the board attorney about these issues.