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Teachers' Social Media Use and Its Legal Implications

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Abstract

As society becomes increasingly dependent on technology, school leaders must navigate the evolution of websites, resources, and platforms, including social media, as part of their responsibility to facilitate a safe and productive learning environment for students. This article reviews both constitutional and case law as a means of informing educational leaders of their rights and duties, as well as providing a foundation upon which effective K-12 social media policies and practices for educators can be built. Specifically, we offer an analysis of landmark cases involving the First Amendment and free speech, the delicacy around teachers' roles as both public employees and private citizens, and recent court cases involving social media use. Additionally, we propose guidelines around social media use, compiled from both practitioners in the field and relevant literature.

Keywords
social media, school leadership, law

As of 2022, 58.4% of the population uses social media for a daily average of 2 hours and 27 minutes (Chaffey, 2022). In other words, 4.62 billion people worldwide are getting online to connect with others, digest news, and seek entertainment. (Pew Research Center, 2021). Having discovered the personal and professional benefits of social media, educators, and more specifically teachers, account for a portion of these subscribers. While social networking sites have the potential to contribute positively to K-12 communities, such as deepening relationships between teachers and students or increasing accessibility to professional development, they also present a variety of ethical dilemmas of which all school employees should be wary. These precarious situations can include teacher engagement in illegal activity, behaviors that reflect poor professional judgments, and inappropriate contact with students (Warnick et al., 2016). School leaders are now exploring how to create guidelines around teacher social media use that honor employees' First Amendment rights to free speech, while also maintaining the collective responsibility to create safe and productive learning environments. Therefore, the purpose of this paper is to review relevant landmark and recent court cases in order to inform the

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development of effective K-12 teacher social media policies and practices.

Teachers' Social Media Use

Social networks have changed contemporary life, in terms of how "individuals play, socialize, worship, and work" and offer "a significant way to express individuality and to build and affirm connection with others" (Warnick, et al., p. 772). These online sites, such as Twitter, Facebook, Pinterest, and Instagram, offer endless opportunities for teachers to connect with others for both personal and professional purposes. As private citizens, teachers can share updates, in a variety of formats, with friends and family. As public employees, they are able to network and learn alongside other professionals, parents, and students. However, social media also contests the traditional construct of teaching, student learning theory research, and even the organization and structure of schools (Bartow, 2014). While using social media can appear novel and exciting, it is important for teachers to critically consider both the advantages and drawbacks associated with online engagement.

Personal Use

Teachers are citizens who have families and friends, as well as hobbies and interests outside of work, and share the basic need for human connection (Stiles, 2021). Some of the top reasons the general population uses social media include staying up to date with news, finding entertaining content or researching products, sharing photos or opinions, and staying in touch with others (Kemp, 2021). The Pew Research Center reports that seven-in-ten Americans use social media, a statistic "that has remained relatively stable over the past five years" (Auxier & Anderson, 2021). So, it is not surprising that 71% of instructors use Facebook for personal reasons on a daily basis, followed by Google + (33%), Pinterest (32%), Instagram (27%), and Twitter (18 %) (Ascione, 2016).

Professional Use

Educators are taking advantage of social media in a variety of ways, ranging from distributing information and creating community to revising pedagogy and acquiring materials. For example, Twitter is an effective tool with which schools can disseminate information, in 280 characters or less, to parents and students. Because Facebook is one of the most extensively utilized social media platforms and contains features including "bulletin boards, instant messaging, e-mail, and the ability to post videos and pictures" (Warnick, et al., 2016, p. 777), it is an important site for community engagement. Many youth use Instagram themselves, which makes this popular platform, for photo and video posts, a crucial space for facilitating relationships and belonging (MMS, 2022).

In terms of professional development, emerging educational trends, engaging discussions, and new tools and pedagogy can all be found on Twitter. Additionally, educators use this site to explore vendors, goods, and programs they might want to implement in

their classrooms using hashtags and searches (MMS, 2022). Facebook offers educators a space to interact with colleagues, share materials, and follow relevant firms and organizations (MMS, 2022). Schools also use Pinterest to publish their own content, such as resources for parents to assist with homework and student needs (Ascione, 2016). YouTube not only hosts thousands of videos, outlining classroom activities, product demos, and training, but also enables teachers to create their own channels, containing class materials and resources for students (Ascione, 2016).

First Amendment and Four Landmark Cases

To date, there have been no Supreme Court rulings that have explicitly responded to teachers and students on social media. Therefore, administrators must call upon more general legal precedents when responding to ethical dilemmas and creating new policies. Three cases in particular, *Pickering v. Board of Education* (1968), *Perry v. Sindermann* (1972), and *Garcetti v. Ceballos* (2006), have revealed some of the nuances related to the free speech of public employees. Even though only one of these cases involves a K-12 teacher and none of them is related to online communication, all of the outcomes contribute to the foundation upon which decisions involving social media regulation are made. An additional case, *Tinker v. Des Moines* (1969), established an important standard around protecting the safety and efficiency of K-12 student learning environments.

First, the *Pickering v. Board of Education* (1968) case has helped clarify free speech rights of public employees, in regards to the connection of the speech to the employee's official duties and to public concern. The U.S. Supreme Court ruled that public school teacher Marvin Pickering's First Amendment rights had been violated when he was fired for penning an editorial criticizing his employer in a local newspaper. The outcome of this case set a precedent for the broad nature of teachers' rights to expression, as long as they neither disrupt instructional interests nor undermine authority in a way that would negatively impact working relationships in school districts. Several years later, the notion of First Amendment Rights of public employees was refined in the *Perry v. Sindermann* (1972) case. Here, Sindermann, a professor at a junior college in Texas, was dismissed on account of his "insubordination," after having publicly criticized the school's Board of Regents. The Supreme Court determined that his First and Fourteenth Amendment Rights were violated, as his right to free speech existed independent of his non-tenure status, and he had not been offered due process before his termination.

The *Garcetti v. Ceballos* (2006) case further refined the relationship between public employees' official duties and their rights to free speech. This incident involved Garcetti, former Los Angeles District Attorney, and Ceballos, one of his employees who criticized the legitimacy of a warrant and affidavit, before facing professional consequences. The Supreme Court found that the speech in question was made in Ceballos's official capacity and therefore not protected by the First Amendment. The difference between Pickering and Ceballos is that the former was speaking as a private citizen about a public concern,

and the latter was performing public duties. This important distinction in the context of free speech contributes to the determination of whether or not First Amendment rights are guaranteed.

Finally, the *Tinker v. Des Moines* (1969) case resulted in formation of the "substantial disruption test," which is used to determine the extent to which the school's interest to maintain a favorable learning environment can limit students' access to their First Amendment Rights. In this situation, students who wore black armbands protesting American involvement in the Vietnam War were suspended from school. Once the case reached the U.S. Supreme Court, there was a majority rule that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (as cited in Schimmel et al., 2015, p.162). Because the armbands did not interrupt student productivity, the schools did not have the right to suspend the students. School leaders today can use this same evaluation technique, when monitoring social media use.

In Search of Balance

At the heart of the landmark cases described above is the need to balance teachers' rights as private citizens with their duties as public employees responsible for managing schools safely and efficiently. This is a challenging task for both K-12 administrators and court officials, as there is much unchartered territory in this unfolding online landscape. Freedom of speech is a right guaranteed in the U.S. Constitution, as outlined in the First and Fourteenth Amendments. The Supreme Court, which serves as the primary guardian of this foundational document, is very protective of this right and will only curtail it if the government provides a compelling reason to do so (Ryan, 1988; Schimmel et al., 2015). Through these four landmark cases, the Supreme Court has established some clarity for the lower courts, school leaders, teachers, and the public at large on how to balance teachers' rights and responsibilities. In situations where teachers' private lives have spilled into the public domain, the courts have largely maintained teachers' freedom of expression over the schools' need for efficiency. Rulings in favor of the schools have only been made in situations where the schools have been able to prove teachers' speech has negatively impacted their ability to operate (Schroeder, 2013).

Normally, schools do not regulate off-campus teacher activity; teachers are free to post and share what they want on their social media accounts. However, once a "nexus, or causal connection with the school environment [is discovered], [the teacher] is subject to regulation by the school" (Bathon & Brady, 2010, p. 216). For example, one teacher who posted on Facebook calling her students "chitlins in the ghetto" was eventually dismissed for her comments (Bathon & Brady, 2010, p. 214). This situation, alongside others, has spurred discussions about the lack of geographical and time boundaries around communication among school employees, parents, and students. Additionally, teachers have found that despite the availability of privacy settings, social media sites do not always guarantee protection against hackers or loopholes (Estrada, 2010). Thus, as schools work

to establish teacher guidelines, amidst firm legal clarity, teachers must consider potential risks associated with enjoying their free speech rights online.

How the Courts Decide

The courts have set out a framework to guide determinations, related to the balance between teacher rights and responsibilities. The first step involves an examination of whether school leaders' actions against a teacher are based solely on the teacher's protected speech or involve other actions or behavior. In the case of *Mt. Healthy City Board of Education v. Doyle* (1976), Doyle, a public school teacher, was fired and subsequently sued the school district. Even though he had shared internal information with a local radio station, the court ruled that the many other factors contributing to Doyle's dismissal (making obscene gestures at students, cursing students, and violently confronting another teacher) were enough by themselves to warrant his dismissal (Hudson, 2002). His First Amendment rights related to the radio were protected; however, the other issues were enough grounds for his dismissal. In other words, an employee must demonstrate that they suffered an adverse employment action as a result of making their protected expression (Younger, 2016).

After exploring whether the action taken against the teacher in question is based solely or primarily on his or her expression, the courts consider the context, or rather the public vs. private nature of the speech. If a comment is made as part of an individual's public responsibilities, it is not protected as the comment was not made as a private citizen. The First Amendment does not protect expressions that occur outside job boundaries, are based on self-interest, involve personal complaints, or injure relationships in the workplace. In the case of *Connick v. Myers* (1983), the court upheld Myers's dismissal from her assistant district attorney position in Louisiana after she had distributed a questionnaire expressing personal concerns about her transfer to colleagues. Because Myers's actions disrupted the workplace and created a burden in the workplace for her superior, Connick, the judges decided that her free speech rights had not been violated. This case established that a matter of public concern can transform into a matter of private concern, when motivated by malice or personal grievance (Schimmel et al., 2015). The *Garcetti v. Ceballos* (2006) case provides another example of the court finding the actions taken against the respondent permissible, given that he had acted in his official capacity but out of the scope of his authority (Younger, 2016).

Next, the courts examine if the expression is made in an individual's private capacity and if the expression is a matter of public concern. If an individual is speaking in a private capacity, the Pickering Balance test can be used to evaluate whether that person had inside knowledge from his or her job. If the information used emerges from the work position, the speech is not protected in that individual's capacity as a private citizen (Ryan, 1988; Younger, 2016). In the case of *Pickering v. Board of Education* (1968), the court made clear that teachers speaking on matters of public concern (social, political, legitimate

news, or issues of interest or concern to the general public) are guaranteed their Constitutional rights to do so. It also required that the state prove that the need to maintain an efficient functioning work environment outweighs teachers' free speech (Schimmel et al., 2015). To determine if the need for school efficiency outweighs the employee's right to free speech, the court applies the substantial disruption test, established in the *Tinker v. Des Moines School District* (1969) case, as well as the true threat test. Substantial disruption refers to the likelihood of the speech to disrupt the operations of the school, create a hostile working environment, create issues of safety, and diminish office loyalty and trust (Younger, 2016). The true threat test is also used to evaluate the protection of free speech. A threat, or an expression of intent to do or cause harm made with the intent to produce fear and intimidation to the target (Schimmel et al., 2015), is considered a true threat if a reasonable person would interpret the threat as a serious intent to cause harm (Hudson, 2002). In the case of *Givhan v. Western Line Consolidated School Distric*t (1979), the court ruled that the content, time, place, and manner of the speech must be taken into consideration when evaluating a threat.

Finally, if the expression is not a matter of public concern, then the courts apply the geography test. In *Hazelwood School District v. Kuhlmeier* (1988), the court upheld that schools have the right to exercise editorial rights over a school-sponsored activity, as long as it is reasonable (Schimmel et al., 2015). This same principle applies to expression on school grounds, while off campus expression is generally protected by the Constitution. Although teachers can exercise their free speech rights more liberally in the public domain than in classrooms, they are still subject to the substantial disruption test. If an issue arises off campus, the school leaders must prove there is a nexus, or connection between the teacher and his or her ability to work effectively (a substantial disruption to school's operations) (Schimmel et al., 2015). Therefore, time, place, manner, context, and consequences are all important factors in the determination of whether a school's interest outweighs a teacher's right to freedom of expression. The principles established in these landmark cases have all played roles in recent court cases related to teachers' use in social media. We will briefly discuss some of the more recent cases in the next section.

Recent Cases

Alongside the rise in teacher social media use, has come an increase in the number of related legal cases, which have created more direction from which school and court officials can make future decisions. In these cases, taking place in the early-to-mid 2000s, the courts have applied the substantial disruption test, considered if the speech was protected as a matter of public concern, and determined if the speech interfered with the teachers' ability to do their jobs. The associated outcomes have set the precedent that teachers must separate their professional roles from their personal activities, student teachers are evaluated as employees rather than as students, and schools must be able to maintain efficient operations.

First, in *Spanierman v. Hughes* (2008), Spanierman, an English teacher, who had created multiple MySpace accounts with pictures of naked men and comments about students' personal lives, believed his First and Fourteenth Amendment rights were violated when his contract was not renewed (Dennis, 2011). However, the court found Spanierman's online conduct was not appropriate for a teacher, that most of his online comments were not protected speech, and that his behavior did cause a disruption for the school (Dennis, 2011). This teacher's free speech was not protected because the substantial disruption test determined he had disturbed the learning environment, even though the interactions had taken place outside of school (a nexus between personal life and school disruption was established).

In the same year, the courts set an important precedent not just for teachers, but also for student teachers. In *Snyder v. Millersville University* (2008), Snyder, a student teacher at Millersville University working in a high school English class, uploaded posts on her MySpace page that contained grammatical errors and a picture in which she was wearing a pirate hat, holding a cup that says "drunken pirate" (Russo, 2009, p.39). Once another teacher found the post and shared it with the superintendent, Snyder was not allowed to complete her student teaching assignment, was marked down for professionalism, and ultimately did not pass student teaching or receive her degree in education (Russo, 2009). In response to her suing the university, the court found that in her student teacher role, Snyder was more of an employee than a student, so her speech was not protected, since it did not "involve a matter of public concern." (Russo, 2009, p.40) Therefore, the university was justified in withholding a degree in education and a recommendation for teacher certification from her (Russo, 2009). In this case, the courts applied the Pickering test, determining that the employee's speech about was not a matter of public concern, and set the precedent that the courts view student teachers as employees, rather than as students.

Although these two cases represent instances in which the courts favored the schools over the teachers, *Murmer v. Chesterfield County School Board United States District Court, Richmond* (2008) offers an example of a teacher prevailing. In his free time, Murmer, a high school art teacher, made paintings using his buttocks (ACLU Virginia, 2022). His colleagues discovered a recording of his TV appearance on YouTube. Even though he was wearing a mask, head towel, bathrobe, and thong swimsuit at his art demonstration in the video, he was fired from his job (ACLU Virginia, 2022). With the help of the ACLU of Virginia, he filed a lawsuit claiming his First Amendment rights were violated (ACLU Virginia, 2022) and ultimately won. The court sided in his favor, with a determination, using the geography test, that his art demonstration did not adversely impact his effectiveness as a teacher (there was no nexus between his personal and professional lives). Murmur was awarded two years' salary for his sufferings in the amount of $65,000 (ACLU Virginia, 2022; ACLU, 2008) and contributed to the precedent that a teacher can maintain private citizenship, so long as their personal acts do not impact their teaching ability and classroom environment.

The following year, the courts heard another case evaluating the relationship between teachers' social media presence and their ability to carry out professional duties. In *Richerson v. Beckon* (2009), Richerson, a curriculum specialist and instructional coach, began posting about the teachers she was coaching, other colleagues, union representatives, and employers to the degree that they could be identified by her descriptions (Richerson v. Beckon, 2009). These negative and personal posts diminished trust with the employees she mentored and disrupted her coaching abilities. When Beckon, the Director of HR, moved her back to the classroom as a teacher, Richerson argued her First Amendment rights were infringed. However, the court ruled in favor of the school district, citing her social media use as interference to her work. Again, the courts used ability to perform effectively as a barometer for judgment when contemplating an individual's First Amendment rights.

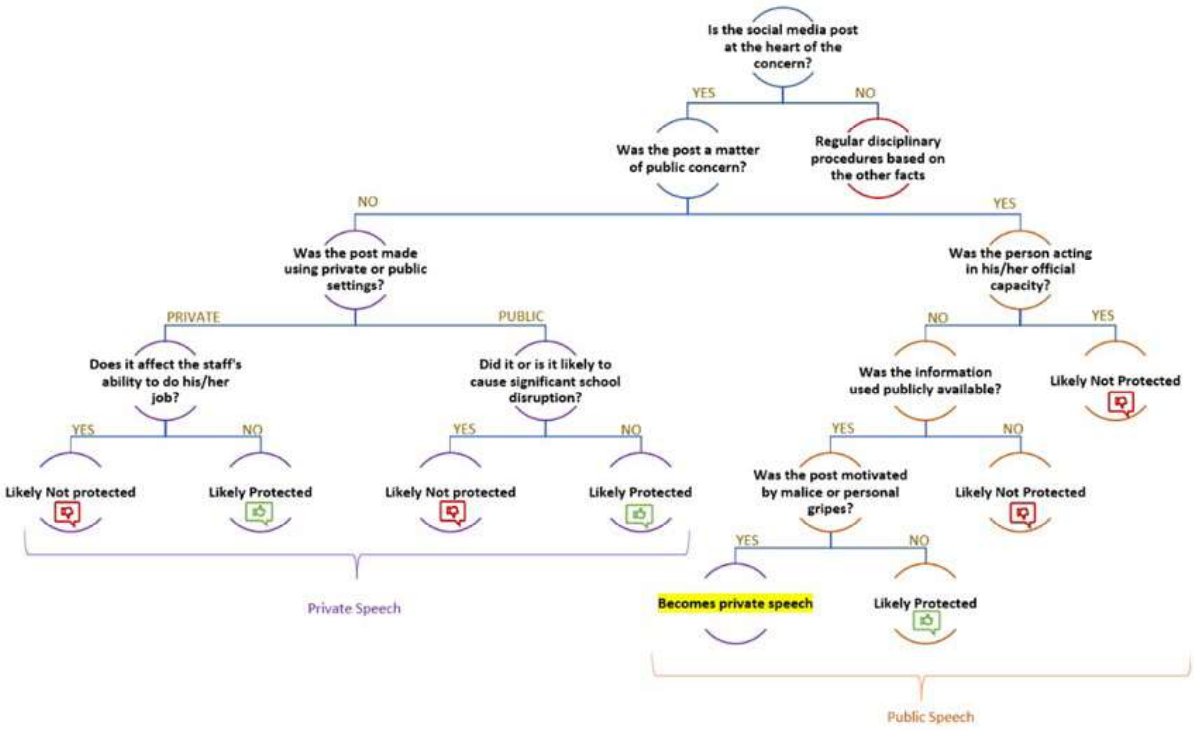
In *Payne v. Barrow* (2009), Payne, who taught high school English, was asked to resign, after a parent had reported her social media posts in which she was "holding a beer in an Irish pub" and had "used the word bitch" (O'Connor & Schmidt, 2015, p.7). Although her account was set to private, Payne did honor the principal's request for her to leave, based on her naivety and lack of understanding about her rights. Her resignation without question underlines the importance of teachers taking caution to know how they can respond in these situations. Later, the court ruled in favor of the school district because she was non-tenured (O'Connor & Schmidt, 2015).

A few years later, another teacher used harsh language, which led to an even larger disruption than one parent phone call. In *Jennifer O'Brien v. State Operated School District of the City of Paterson NJ Superior Court, Appellate Division* (2013), O'Brien, a first grade teacher, posted "I'm not a teacher I'm a warden for future criminals! They had a scared straight program in school why couldn't [I] bring [first] graders?" Her action led to one parent request to remove their child from the school, at least 12 more angry parent telephone calls, and a protest of an additional 20-25 outside of the school. Rather than honor O'Brien's belief that this was a public concern, the court found in favor of the school district and removed her from her tenured position because the ability to maintain an efficient operation of the school outweighed concerns about the students' behaviors. In this case, the substantial disruption test was applied, and the school district prevailed.

Another instance concerning job effectiveness occurred in *Shepherd v. McGee* (2013). Shepherd, a child protective services worker, posted negative comments about individuals who were receiving assistance (Holland & Knight LLP, n.d.). The court found her comments to negatively impact her effectiveness as a CPS worker and her ability to be a witness in court (Holland & Knight LLP, n.d.). Because her comments met the requirements of the substantial disruption test, the case was settled in summary judgment in favor of McGee, the manager of Human Resources, not Shepherd, the child protective services worker.

Figure 1

Framework for Assessing Social Media Posts Based Our Synthesis of Court Cases



The courts cycled back to the use of the Pickering balancing test in *Munroe v. Central Bucks School District* (2014). In this case, Munroe was a high school English teacher who posted negative comments about her students on her online blog. She posted a list of comments that she thought should be part of the automatic report card choices containing offensive language and demeaning comments, which resulted in her termination. Although she argued this infringed on her First Amendment rights, the court found in favor of the school district, thanks to the Pickering balancing test, as Munroe's blog posts were disruptive enough to upset the learning environment.

Implications

Providing a safe learning environment for all students is one of the top priorities of K-12 educators. With the rapid evolution of technology, school officials are faced with the challenge of not only monitoring teacher communication, but also evaluating its effects on student learning (Bathon & Brady, 2010). As teachers explore the boundaries of social media as a means of building rapport with students, sharing information with families, and enhancing their pedagogies, they must carefully weigh their rights as private citizens against their duties as public officials. Teachers should take into consideration past court cases, existing school and district policies, and research-based recommendations

on social media use to ensure both their Internet safety and their job security. It is the responsibility of administrators to "assist teachers in navigating these complex waters while still protecting the integrity and safety of the school" (Bathon & Brady, 2010, p. 223). Although a handful of cases have made it to the courtroom, thousands of others have been resolved within schools; therefore, the wisdom of school officials should not be discredited (Bathon & Brandy, 2010).

Recommendations

While school districts cannot completely forbid teachers from using social media, they can take steps to create and implement guidelines around appropriate behaviors. Even without U.S. Supreme Court rulings on cases on this specific topic, K-12 leaders can call upon landmark and lower court rulings as a compass for determining when to defend employees' speech and when to protect the school community. Figure 1 below provides an original guide to help leaders in the decision-making process should they have a social media issue to address. First, school leaders should provide clear social media policy guidelines and communicate to staff at all levels. In order to increase teacher awareness, it would be helpful to involve them in the creation of the policy and positive social media use advocacy groups at schools. School leaders should also offer trainings, perhaps during teacher orientation, on teachers' rights as citizens and responsibilities as employees (Russo, 2009). School districts can consider installing firewalls and limiting access to these sites from district-owned systems, and requiring employees to sign acceptable use policies (Russo, 2009).

More teacher-specific recommendations from the literature include not posting about students or venting on the Internet, being familiar with the school district's social media policy and state laws, and turning on social media privacy settings, even though privacy is not always guaranteed (O'Connor & Schmidt, 2015). Additionally, it is important to communicate professional expectations with student teachers. Practitioners and school leaders discussed strategies and valuable practices in advising teachers on how to use social media appropriately and how not to use social media which might lead to the detriment of a career. A summary of these suggestions can be found in Appendix A. More research exploring the impact of social media on teaching strategies, community relationships, learning outcomes, etc. is needed to inform the development of policies around technology use in K-12 schools.

Conclusion

The evolution of technology, and more specifically social media, has certainly presented a variety of new encounters through which all K-12 stakeholders have begun to navigate. Although there are benefits of online interactions to student learning, there are also various instances involving the misuse of technology that have resulted in the disruption of learning environments. The most severe cases have resulted in teacher discipline, or even disputes in the courts. As educators forge ahead into the 21st century, they have legal

precedent, formal research, and lived experience with which they can continue to assess and determine the role of social media in K-12 schools.

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Appendix A

Guidelines From Field Practitioners on Navigating Social Media Use as an Educator[2]

Do:

- Utilize privacy settings
- Maintain separation between your private and professional accounts
- Review old posts on your accounts
- Recognize that as an educator, you are put on a moral pedestal
- Separate yourself from your position and the division in your post and on your accounts

Do Not:

- Post negative comments about your job
- Use your professional accounts for personal reasons
- Vent on social media
- Post naked photographs
- Post about alcohol, drugs, or parties
- Connect with students and parents on personal accounts
- Interact with students on social media

And when posting:

- Consider the purpose of your actions
- Assume that everything is public
- Assume the superintendent will see all the pictures you post

[2]Guidelines are from a class. Personal communication, March 6, 2022