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# WHY CAN'T WE BE "FRIENDS"? STUDENT- TEACHER RELATIONSHIPS IN THE FACEBOOK AGE

*by* LYNSEY STEWART

In 2007, the Associated Press ("AP") launched a groundbreaking seven-month investigation into sexual abuse by teachers.<sup>1</sup> The investigation revealed that, between 2001 and 2005, more than 2,500 educators nationwide had their teaching credentials revoked, denied, surrendered or sanctioned following allegations of sexual misconduct.<sup>2</sup> Of those teachers sanctioned for sexual misconduct, the victims in at least 1,801 of the cases were young people, and more than 80 percent of those were students.<sup>3</sup>

Understandably, these startling statistics caused widespread concern among parents, but they also got the attention of school boards and state legislators.<sup>4</sup> While many of the instances of sexual abuse involved physical contact between the teacher and the student, other instances involved verbal harassment or on-line contact.<sup>5</sup>

For example, a 56-year-old teacher in Illinois was recently found guilty on sexual abuse and assault charges involving a 17-year-old female student with whom he had exchanged more than 700 text messages.<sup>6</sup> More recently, in Sacramento, a 37-year-old high school band director pleaded guilty to sexual misconduct stemming from his relationship with a 16-year-old female student, which involved more than 1,200 private messages sent to her Facebook account.<sup>7</sup>

Reports of this type of teacher conduct have caused school districts nationwide to examine their teacher-student communication policies.<sup>8</sup> However, two states – Louisiana and Missouri – decided the issue warranted legislative action.

#### DOCUMENTATION AND DISSUASION: THE LOUISIANA APPROACH

Implemented on Nov. 15, 2009, the Louisiana law attempts to curb potentially inappropriate relationships between teachers and students by placing restrictions on electronic interactions.<sup>9</sup> Under the new law, all teacher-student electronic communications must have a strictly educational purpose and must be channeled through school-provided means (such as school email accounts).<sup>10</sup>

The law also contains a provision requiring teachers to maintain records and report any electronic communications made with students using non-school-provided means, including text messages and messages sent via personal email accounts or social networking sites.<sup>11</sup>

While the law does not forbid the use of personal electronic devices, it requires documentation when electronic means are used to communicate directly with students.<sup>12</sup> One of the hopes for the law is that the hassle of documentation will eventually dissuade educators from contacting students using personal

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electronic devices.<sup>13</sup> In accordance with this policy, employees who do not submit the proper documentation may be fired.<sup>14</sup>



#### NO "FRIENDING" IN MISSOURI

Even more recently, Missouri made headlines when the Legislature passed Senate Bill 54, known as the Amy Hestir Student Protection Act.<sup>15</sup> Named for a student who was molested by her junior high teacher, the stated purpose of the law is to protect students from sexual abuse.<sup>16</sup> However, one of the law's methods for achieving that objective has sparked both national and local debate.<sup>17</sup>

The law was drafted in response to the AP investigation, which determined that 87 Missouri teachers had their licenses revoked between 2001 and 2005 because of "sexual misconduct," much of which involved exchanging explicit or inappropriate online messages with students.<sup>18</sup> The law required school districts to promulgate new policies barring teachers from using websites to gain "exclusive access" with current or former students who remain minors.<sup>19</sup>

While the law ultimately left the task of defining "exclusive access" and "appropriate use" of electronic and social media up to the school districts, in general the law held that any contact on Facebook or other social media sites must be done in public, prohibiting all forms of private messaging.<sup>20</sup>

This so-called “Ban on Facebook”<sup>21</sup> sparked diverse reactions from teachers across the state. While some teachers were supportive of the law and of clear demarcations between teacher and student, other teachers had more mixed reactions.<sup>22</sup>

When asked about his thoughts on the law, former teacher and Missouri resident Adrian Allen commented, “Limiting all electronic communication between students and teachers feels out of step with reality. When used appropriately, social media is a useful way to communicate with students.”<sup>23</sup>

Like Allen, other teachers have expressed that Facebook can serve legitimate educational purposes.<sup>24</sup> Some also view Facebook’s online forum as a space where students may feel more comfortable confiding in a teacher or asking for help.<sup>25</sup>

In an interview with National Public Radio, Missouri State Rep. Chris Kelly, one of the sponsors of SB54, stated that the bill does not completely ban teachers from communicating with students on Facebook or other social media sites, but bans only private communication.<sup>26</sup>

“I want the parents and the schools to be able to see the communication,” said Kelly.<sup>27</sup> While Kelly asserted that the bill’s intention was not to stifle the relationship between students and teachers, he also commented that if something is of importance, the Internet is not the appropriate place for that conversation.<sup>28</sup>

#### DOES THE MISSOURI LAW GO TOO FAR?

Following passage of the law, the Missouri State Teachers Association (“MSTA”) filed a lawsuit claiming that the law unconstitutionally violated teachers’ First Amendment rights to freedom of speech and freedom of association, in addition to being overly vague.<sup>29</sup> The Circuit Court agreed with the MSTA, finding that the statute would have a “chilling effect on speech.”<sup>30</sup>

Consequently, the court entered a preliminary injunction enjoining the state from implementing the portion of SB54 pertaining to teacher-student communication.<sup>31</sup> The court noted that the “breadth of the prohibition is stagger-

ing” and found that if the MSTA proceeded with the case on the merits, it would likely succeed.<sup>32</sup>

Following the injunction, Missouri Gov. Jay Nixon called for a repeal of the law, stating, “In a digital world, we must recognize that social media can be an important tool for teaching and learning.”<sup>33</sup>

In response, the Missouri Senate Education Committee unanimously passed Senate Bill 1, a bill that repealed the electronic media provision of SB54.<sup>34</sup> In its place, it issued a mandate that all school districts write and put in place their own social media policies by March 1, 2012.<sup>35</sup> The Legislature passed the bill, and on Oct. 21, 2011, Nixon signed SB1 into law.<sup>36</sup>

Under the revised law, Missouri now joins the majority of the country by placing the responsibility to design an appropriate teacher-student communication policy on the individual school districts.<sup>37</sup> To some, however, this is where the responsibility has always belonged.

As Dr. Candace Thompson, assistant superintendent of School District 21 in Wheeling, Ill., stated, “I agree that it is important to have a policy addressing these types of issue, not only to protect our staff but also to protect our students.”<sup>38</sup>

However, she felt that these policies were most appropriate when designed by school leaders at the district level rather than by the state legislature.<sup>39</sup>

#### MORE QUESTIONS THAN ANSWERS

While many feel that the task of designing electronic teacher-student communication policies is now properly in the hands of school officials, others are concerned that school districts lack the guidance to construct these policies.<sup>40</sup> Following repeal of the law, Missouri State Rep. Jay Barnes questioned whether this approach would prompt school boards to adopt unconstitutional policies.<sup>41</sup>

“What I’m afraid that we’re doing is we’re taking one big unconstitutional law and we’re telling 529 different school districts to act to adopt a policy,” Barnes said.<sup>42</sup> “Some of them are going to adopt constitutional policies. But some of them probably aren’t.”<sup>43</sup>

Echoing these concerns, the MSTA warns districts that while school boards can write their policies broadly, “that doesn’t mean the policy would withstand a challenge in the courts if it violates First Amendment rights.”<sup>44</sup> To address this concern, the MSTA announced, “We will work with individual districts and teachers to make sure that all district policies continue to give teachers their First Amendment rights, while at the same time allowing for proper use of technology.”<sup>45</sup>

The Louisiana law, which requires teachers to record and report all electronic communications with students, may serve as an example for Missouri school districts looking to balance the need to protect students with the need to protect teachers’ First Amendment rights. However, in an age where online communication is often the primary means of communication, finding the appropriate balance will likely be an ongoing task.

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#### NOTES

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