



LARRY KUEHN

Renegotiating School Boundaries in the Age of Social Networking

Not a day goes by without a news story about the consequences of putting something online that would have, in the past, been private. The world of online social networking has developed so rapidly that conventions and boundaries have not evolved quickly enough to help everyone, but especially students and teachers, find the zone that provides both comfort and self-protection.

School officials have a difficult time, in the new communications environment, knowing what tools they have to deal with conflicts that arise from social networking. The wide reach of online communication gives a different meaning and effect to comments that have always been a part of the life of children and adolescents.

Formerly, the physical edge of the school grounds was the primary boundary for the schools' responsibility. But what happens, now, when activities carried out entirely outside those boundaries have an impact on the school and the people who work and study there?

Teachers and school officials are constantly negotiating the new conventions and rules, often with a great deal of pain either from the impact of a particular communication or the response to it.

Cyberbullying of other students and of teachers has been the most high profile of the problems. This is covered extensively in an article by Bernie Froese-Germain elsewhere in this issue. The approaches to the problem described there suggest education and policy to bring the issues to the fore and define new boundaries.

Sometimes the responses to problems go beyond policy and school discipline and end up in the legal system. Wendy Harris, a British Columbia-based lawyer who frequently acts for school districts, recently provided an outline of some of the legal aspects

of the issues to a Vancouver meeting of Phi Delta Kappa.

Harris outlined three areas of the Canadian legal system relevant to online behavior. One, of course, is the *Charter of Rights* with

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its provisions of rights to free speech and equality rights. Another two are sections of the *Criminal Code*: Section 264 on criminal harassment and section 261.1 on uttering threats. In addition, in B.C. and elsewhere, there are provisions in Workers' Compensation that give responsibility to an employer to avoid an unsafe workplace.

Very few cases related to student discipline flowing from online communication have ended up in the courts in Canada, Harris said. The U.S., with its more litigious traditions, has had a number of cases that frame the rights of the student and of the school authorities and have some relevance, even if they do not apply directly.

One issue has been the right of the school to discipline a student for out-of-school conduct. Pre-Internet, Harris said, cases essentially came down on the side of the school not having jurisdiction over the out-of-school speech of students, except where off-school conduct has a significant and negative effect at school.

Cases in the U.S. challenging administrative discipline of students for comments on their web sites essentially follow the pattern of weighing the impact in school. Criticism of the school has not in itself been sufficient for expulsion and fear of disruption of the school must be a reasonable fear. Discipline of a student for an online parody and another for "joke obituaries," was overturned.

Harris said that in Canada there are “no reported decisions challenging a school’s authority to discipline students for content of websites...yet.”

Considerations on regulating student expression on the Internet

Harris provided a set of questions that should be considered by schools in attempting to regulate student expression:

- Is there a nexus to the school (e.g., did the student’s conduct occur at school or away from school)?
- What is the content of the speech (e.g., is it political, lewd, offensive; does it promote violence; is it a school activity)?
- Does the content impact on the school environment or reputation of staff (e.g., what is the impact on the other students or staff)?
- What is the level of disruption to the school (e.g., is it substantial or trifling)?
- Has the school tolerated similar types of speech (e.g., are there other websites containing similar comments)?

Canadian jurisprudence — teachers and administrators

While no actions against students have been reported, a significant libel case for statements on a web site was brought by some teachers in B.C. against a parent, with the support of the B.C. Teachers’ Federation (*Newman v Halstead*, B.C.S.C. 2006).

The court found that the parent put defamatory comments on the web that “depicted teachers as violent, unprofessional, incompetent, bullies and associated with pedophiles.” She put labels on teachers as bad apples, bully educators or least wanted educators.

The comments were found to be defamatory because they lowered the view of teachers in the eyes of a reasonable person and impaired their reputations. The damages ranged from \$15,000 to \$150,000 for the educators, plus \$50,000 in punitive damages. A permanent injunction was imposed on the defendant.

Another Canadian case involved a principal and superintendent who sued a parent and children’s advocate for defamation for

a “news release” on a web site (Ottawa-Carleton District School Board v. Scharf).

The news release falsely alleged that the principal and superintendent violated a court order, placed the student in an unsafe situation and were under criminal investigation. The plaintiffs were awarded \$30,000 in damages for false and defamatory content.

Regulating teacher online behavior

Social networking has created some dilemmas for teachers beyond what is being said about them on web sites or on rate-myteacher.com. The informality of social networking sites and even of email can lead to crossing a boundary in relationship to students. It’s not just that the medium disguises markers and dissolves boundaries, but also that the content is digitally saved and stored and subject to recall and redistribution.

An early Facebook case involved a school principal in British Columbia. A photo of him swimming in the nude had been posted among hundreds of photos of a family holiday. One of the parents at his school found the picture and put in a complaint to the school board. The principal was suspended. After an investigation the board determined that it was not a violation of standards sufficient to fire him and he was reinstated, with most of the parents at the school supporting him.

The B.C. College of Teachers in an article on its web site called “Facebook 101” gives advice to teachers and administrators — don’t do it. Educators “should also probably avoid making their students ‘friends’ online. Educators would never consider students to be their friends in the real world, and it’s not a good idea to do it in the virtual world either.... Breaking down the walls between a teacher’s personal and professional life can undermine a teacher’s authority and create a significant danger zone for both teacher and student” (BCCT, 2008).

The BCCT has in some cases required a teacher to take part in a workshop on boundaries to avoid other discipline.

The Elementary Teachers’ Federation of Ontario web site offers advice on electronic communications. It offers suggestions on dealing with electronic abuse of teachers, but also calls on teachers to “exercise professional caution” in their own communications. ETFO says “unprofessional responses may invite

disciplinary action by the Ontario College of Teachers or the school board.”

As a warning to members, the National Education Association in the U.S. recently reported on a number of cases of teachers being disciplined for material posted on MySpace or Facebook. An article in *NEA Today* (April 2008) quoted the advice from one of its state affiliates that online profiles “can be used as evidence in disciplinary proceedings, which could ‘affect not only a teacher’s current job but his/her teaching license’ as well.”

Too many teachers are finding educationally productive uses of the social networking tools to ignore or abandon them. Finding a balance is key.

However, “don’t do it” just doesn’t do it. Too many teachers are finding educationally productive uses of the social networking tools to ignore or abandon them. Finding a balance is key. Many of the exemplar stories from the NEA involve “offensive” and “unacceptable” photos and information on MySpace pages. Most really do fit the “what were you thinking” category. The advice the NEA eventually comes to should be common sense in the digital age: “Never put in electronic form anything that you wouldn’t want viewed by a million people, including your colleagues, students, and supervisors — and your mother.”

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One effort to provide a specifically education-related space for the video aspect of social networking is teachertube.com. To promote safety on its site, it urges viewers to identify “inappropriate” videos. To sign up to load videos or to comment on them, users have to click a box indicating that they are an educator, presumably making it a safer place for teachers than YouTube. Of course, as the famous New Yorker cartoon showing a dog at a computer screen says, “On the Internet, no one knows you are a dog.”

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Larry Kuehn is Associate Editor of *Our Schools/ Our Selves*.

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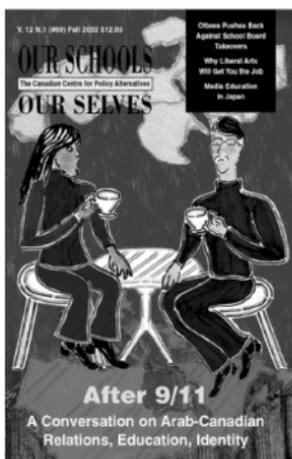
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