



SHIPMAN

Legal Issues for School Staff

Presented by: Julia V. Wilde

Clinton Public Schools
March 14, 2024

Agenda:

- Student Records and Information
 - FERPA
 - FOIA
- Acceptable Use of Computer System/Electronic Communications
- Questions?



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CONFIDENTIAL

Student Records and Information



The Family Educational Rights and Privacy Act

(“FERPA”)

- Federal law that applies to recipients of federal funds (e.g., public schools, colleges and universities)
- **Protects** the confidentiality of student education records
- **Limits disclosure** to 3rd parties without parental consent
- **Provides** parents and eligible students the **right to access and seek amendment** of the student’s education records

“Education Record”

“

...Any documented information directly relating to a student and maintained by the educational institution. May include documents, video, audio, film, photographs.

”

Education Records Include:



Student health records, including immunization records maintained by an educational agency or institution subject to FERPA



Records maintained by a school nurse

This is because these records are:

- Directly related to a student
- Maintained by the school or a party acting for the school
- Not excluded from the definition of “education records”

Education Records DO NOT Include”



Sole possession records – records created or maintained by a teacher or school employee in his or her sole possession which is not shared with anyone except for a substitute



Grades on peer-graded papers before they are collected and recorded by the teacher

Confidentiality

Personally identifiable student information

Student and Parent names and addresses

Student Social Security numbers

Student dates and places of birth

Mothers' maiden names

School districts must **maintain the confidentiality** of any **personally identifiable student information** contained in educational records.

“Personally Identifiable Student Information”

“

... Also includes information that is **linked or is linkable to a specific student** that would allow a reasonable person in the school community to identify the student with reasonable certainty.

”

Scenario:

As you walk into your classroom, you overhear two students trading insults. Before you can intervene, one jumps the other, and they begin to fight. With some effort, you separate them and call the office. They are both suspended for ten days. The parent of one of the students asks you for documents related to the discipline of the other student. She acknowledges that student records are confidential, and she suggests that you should just redact the name of the other student to comply with confidentiality obligations.

Targeted Requests

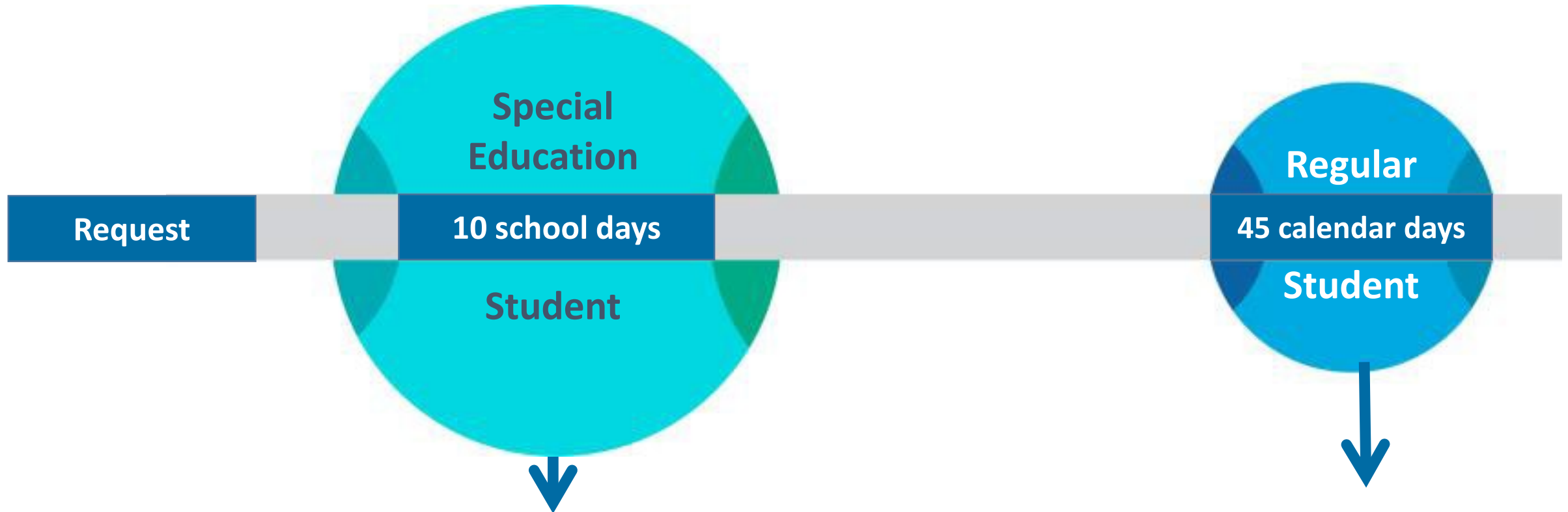


Even if the request or disclosure does not include explicit personally identifiable student information, a district **may not release information** if requested by someone who the district “**reasonably believes knows the identity of the student to whom the education record relates**”

e.g. a request for financial information related to a specific out-of-district placement

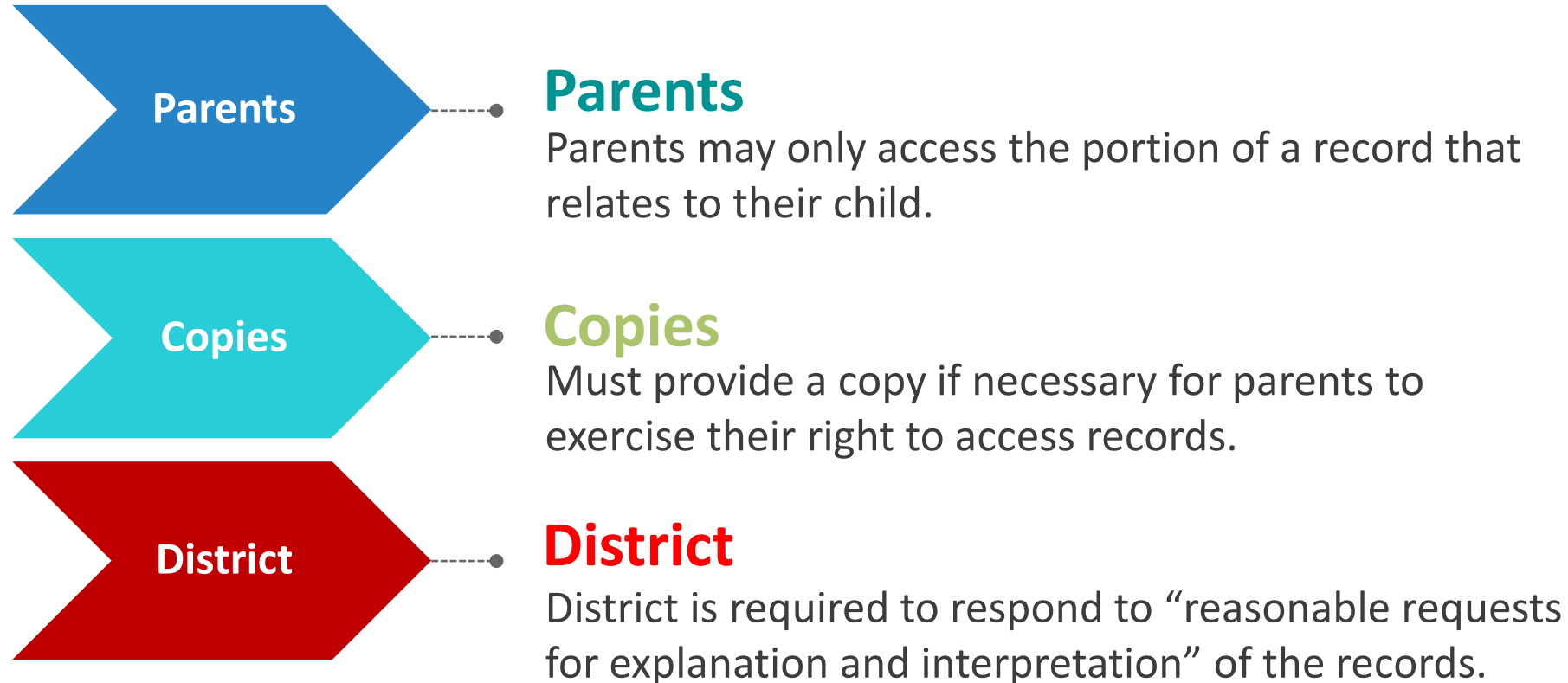
Access to Student Records

Parents/guardians (and eligible students) have the right to inspect or obtain a copy of educational records relating to the student



If request is to **inspect**, without **unnecessary delay** and before any IEP meeting, due process hearing or resolution session, but **no later than 10 school days**. If request is for a **copy**, within **ten school days**. Both requests must be **in writing**.

Rights to Access Student Records



Scenario:

A man calls your school and explains that he is the father of three children in the district, and he is moving back to CT after living out of state for several years. He asks to receive copies of all of his children's health records, to be listed as an emergency contact, and that he be notified of all visits to the nurse's office or other notices that his ex-wife (the mother of the children) receives. His ex-wife calls the district ten minutes later, saying "Don't let that %#!\$&* have anything!"

What do you do?

Rights to Access Student Records



Non-Custodial Parents:

In general, non-custodial parents have the same rights of access as custodial parents unless a school is provided with evidence of a court order or state law that specifically provides to the contrary.

Confidentiality Rights



Written Consent (can be electronic)

As a general rule, all personally identifiable information in educational records must be kept confidential unless a parent/ guardian or eligible student consents, in writing to disclosure.

Consent must:

Specify which records
to disclose

Specify
purpose of
disclosure

Identify the
recipient

Include a
signature
(written or
electronic)

Confidentiality Rights











Electronic Consent

Consent in the form of an electronic signature is valid provided:

- It identifies/authenticates a particular person as the source of consent; and
- Indicates approval of the information
- District must use reasonable methods to identify/authenticate the identity of a recipient before disclosing records

Prior Written Consent NOT Required When:

-  1. **Disclosure is to a school official**, where that person has a legitimate educational interest in the information.
-  2. **A student moves to another school district**. Records may then be sent to the receiving district (including a public charter school)
-  3. In a **health or safety emergency**
-  4. For **directory information**
-  5. In response to a **court order/subpoena**
-  6. Records have been **de-identified**
-  7. Sent to organizations **conducting studies** for, or on behalf of, educational agencies or institutions for the purpose of **developing, validating, or administering predictive tests, administering student aid programs, or improving instruction**
-  8. Sent to state and local educational authorities as part of an **audit, evaluation or compliance review of educational programs**

Prior Written Consent Not Required When:



A student moves to **another school district**. Records may then be sent to the receiving district (including a public charter school)

- “Seeks or intends to enroll”

Prior Written Consent Not Required When:



For directory information

- District must give public notice of what qualifies as directory information
- Right to opt out

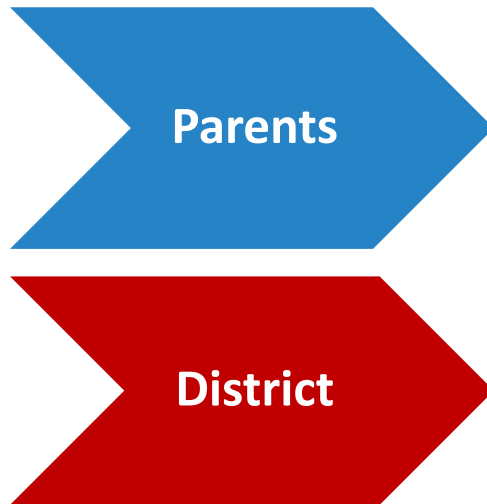
Prior Written Consent Not Required When:



In response to a **court order**
or subpoena

- However, reasonable efforts should be made to notify the parents before disclosing such records

Consent Exceptions:



Parents

Parents of an eligible student (18+ years) if the parents still claim the student as a dependent for tax purposes

Child Welfare Agency (DCF)

To representatives of a child welfare agency (DCF) if it is legally responsible for the care/protection of the student

Scenario:

You get a call from an attorney indicating that he has been appointed as the *guardian ad litem* (GAL) for one of your students. The attorney would like to schedule a time to talk to you about how the student is doing in school.

Do you agree to meet with the attorney?

Student Data Privacy

What is student data?



Any information about a student recorded on paper or electronically.



It includes data collected by **applications, software or websites**, as a result of student's use of the application, including:

- Geolocation data
- Time on task
- % of correct answers to questions

Student Data Privacy

Why should educators be concerned?



The release of a **student's personally identifiable information** could lead to **identity theft** in the future.



Many companies “mine” student data, even data that is not personally identifiable, and sell it to other entities to use for advertising and marketing purposes – essentially to figure out more efficient ways of manipulating children into getting their parents to buy them stuff.

What should educators do?

- As a general rule, we should only have access to information about students we work with and should communicate with administrators if we have access to information we don't need.
- We can also do simple things, like not leaving student records on a photocopier unattended, getting printouts or faxed documents off the printer quickly, and not leaving sensitive documents, like IEPs on our desks.
- Further, we can do more technical things like encrypting thumb drives with student data on them, avoiding mobile applications or web sites that have not been vetted by district technology staff, and deleting or shredding information we no longer need.

Scenario:

To cut down on team planning time at the middle school, the team leader has started distributing reports on students having problems to team members by email. The emails typically list a number of students, detail the specific problems and proposed solutions. The emails are sent monthly to the “team.”

Is this okay?

Documentation Tips

To reduce the likelihood that FERPA rights are violated:



Use **student initials, not names** (Note: this does not shield the information from access by parents, when requested)



Do **not** put information about **more than one student** in an email



Use the **telephone, or confer in-person** if possible

Retention of Records:

I have it...how long should I keep it?



- FERPA does not regulate retention or destruction of records
- In Connecticut, Public Records Administrator publishes the schedule – *see* Educational Records: M8 for rules
<https://ctstatelibrary.org/wp-content/uploads/2015/05/M8.pdf>

Most Educational Records:

6 years after student leaves the school district

Cumulative, Attendance and Immunization Records:

50 years after student leaves the school district

Electronic Communications



- Electronic communications in the public-school context may constitute public records under the Freedom of Information Act
- Emails may be subject to public disclosure unless exempt (personally identifiable student information, educational records under FERPA).
- This can apply to text messaging too.

FOIA



- The Freedom of Information Act (the "FOIA"), (Conn. Gen. Stat. § § 1-200 through 1-241 inclusive), represents Connecticut's commitment to open government and a strong policy in favor of public access to meetings and records.
- Subject to narrow exceptions, which are strictly construed, the FOIA mandates that the public has access to:
 - Meetings of public agencies
 - Records that are *developed and/or maintained by public agencies*

“Public Agency” or “Agency”

“

- ...Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, **board**, commission, authority or official of the state or of any city, town, borough, municipal corporation, **school district**, regional district or other district or other political subdivision of the state, including **any committee of, or created by**, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official. . . Conn. Gen. Stat. § 1-200.

”

“Public Record”

The FOIA defines “public record” broadly as follows:

“...Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostatted, photographed or recorded by any other method.
Conn. Gen. Stat. §1-200(5).”

Records

Except as otherwise provided by any federal or state law, all records maintained or kept on file by any public agency shall be public records.

- The Freedom of Information Commission has no authority to order a public agency to create records where none exist
- The FOIA does not require a public agency to conduct legal research or to respond to questions. However, “research” or searching to locate public records is always required!

Freedom of Information Act

“FOIA”



Records maintained by public agencies (including school districts), relating to the conduct of the public's business, are **public records**







FOIA provides that members of the public may **promptly** inspect public records upon request



Presumption: records **must** be disclosed, unless there's an **applicable exception**

Special Considerations for Email

-  The district must comply with all legal requirements concerning confidentiality (e.g., FERPA)
-  Emails need to be retained in accordance with appropriate records retention requirements
-  Responsibility for managing email includes: organizing emails so they can be located and used; following district records retention schedule to identify how long email messages must be kept; and retaining and deleting email as appropriate.
-  Follow the M-8 schedule for educational records, but emails that fall into the “transitory” category as defined by the state Office of the Public Record Administrator can and should be deleted regularly; district protocol is no more than *two school years* in your inbox

Scenario:

It's been a long day at school, and a parent got on your very last nerve. You've got to vent somewhere, and you do just that in a late-night text session with a colleague. It's after school and you're both using your personal cell phones. In your frustration you say some unkind things about the parent and their student. You might've called someone "delusional" or "a self-absorbed idiot." OOPS. If this parent files a FOIA request, do you have to provide the texts?

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Acceptable Use of Computer Systems/Electronic Communications

BOE Policy 4306: Employee Use of the District's Computer Systems and Electronic Communications



- Employees have no expectation of privacy in their use or the district's use of district computers/technology and systems, including but not limited to computers, internet, e-mail, voicemail, security systems, video security systems and stored files.
- The district retains control and supervision over its computer system.
- The district may monitor traffic on its computer system without prior notification to users – including use of social networking sites and blogs.

Electronic Communications



- **ANY** use of the District's network should comply with Board policies
- Work/network email and even personal communications using District devices are subject to FOIA
- Avoid using email to communicate highly sensitive, private or personal information
- Be mindful of tone, time of day

Computer Use: Caution



- No right to privacy in computer use
- Be cautious!
 - Inadvertent disclosure
- Emails and electronic documents are subject to FERPA and FOIA

Application to Social Networking

Food for thought: When does a posting violate appropriate professional boundaries?



- Friending friends who are colleagues?
- Friending friends who are parents?
- Friending parents?
- Friending students?
- Friending past graduates?

Scenario:

Allison is a popular new teacher, and her Facebook page has been a great way to get to know her students. She updates her page regularly on her personal life, and it is regularly viewed by students who have “friended” her. Allison created the page at home and updates it at home outside of work hours. Her principal, however, is old-fashioned, and has told the faculty not to use Facebook with students.

Free Speech Only Gets You So Far...

Does the conduct
violate any computer
use or other provision
of an **employment
contract, or faculty
handbook?**

Does the conduct
**“substantially or
materially interfere”**
with the employee’s job
performance or the working
relationship between the
employee and the
employer?

(Conn. Gen. Stat. § 31-51q)

Board of Ed. Policy on Social Networking

Policy No. 4308



Employees ability to communicate via social networking sites is protected by the First Amendment.

However, employees may not use social networking websites or apps in such a manner that:

1. Interferes, disrupts or undermines the effective operation of the school district;
2. is used to engage in harassing, defamatory, obscene, abusive, discriminatory, threatening or similarly inappropriate communications;
3. creates a hostile work environment;
4. breaches confidentiality obligations of school district employees; or
5. violates the law, board policies and/or other school rules and regulations

Social Media Considerations



- Is it ever okay to use social media with students or as part of your job?
 - Video of class skit; group picture?
 - See Administrative Regulation 4308
- Consider what your social media footprint looks like.
- Can what you post online ever impact your job?

Teacher Loses Job After Commenting About Students, Parents on Facebook

Teacher asked to resign after calling students "germ bags" on Facebook.



By KI MAE HEUSSNER and DALIA FAHMY

19 August 2010, 12:28 • 6 min read



Aug. 19, 2010 — -- [Facebook](#) users take note: If you want to keep your job, you're better off doing your [job-related griping offline](#).

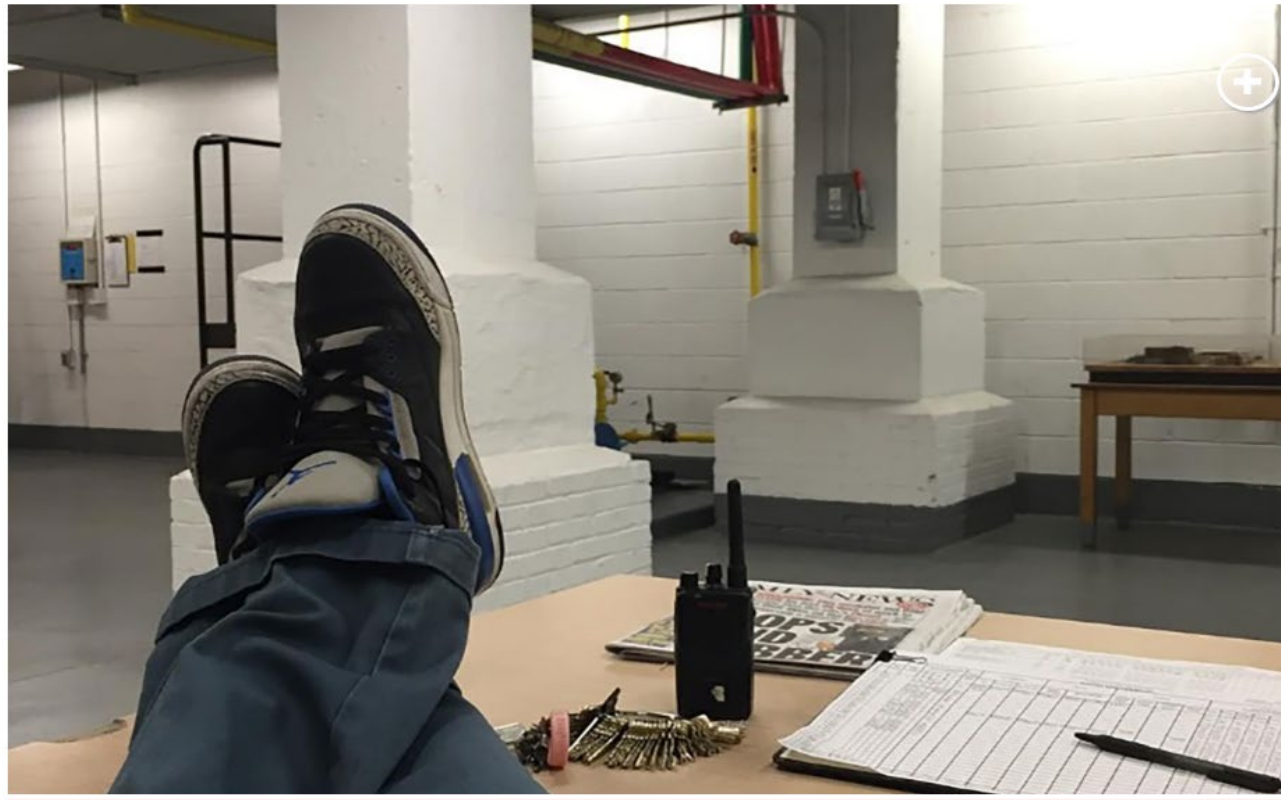
Massachusetts high school teacher June Talvitie-Siple learned the hard way that a [Facebook wall](#) is probably not the best place to spout off about the students and parents in her community.

<https://abcnews.go.com/Technology/facebook-firing-teacher-loses-job-commenting-students-parents/story?id=11437248>

Chief custodian bragged about school violations on Instagram

By **Susan Edelman** and **Dean Balsamini**

March 12, 2017 | 11:58am | Updated



Brooklyn school custodian Nick Pascale, propping up his feet for an Instagram pic, is being investigated after making light of his job online despite fire-code violations.

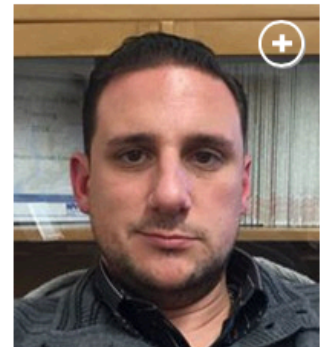
Brooklyn school custodian Nick Pascale fiddles while PS 297 could potentially burn.

FDNY inspectors slapped Pascale with six fire-code violations on March 1 — including three for storing equipment filled with combustible fuel inside the Bedford-Stuyvesant school.

It's a serious safety breach, experts said, because fumes from gasoline-powered equipment such as snow-blowers or lawn-mowers can ignite and start a fire.

But Pascale, the chief custodian responsible for fire-proofing the building, made light of the hazards by showing off the stack of citations on his Instagram page March 1 with the breezy comment, "Just one of those days."

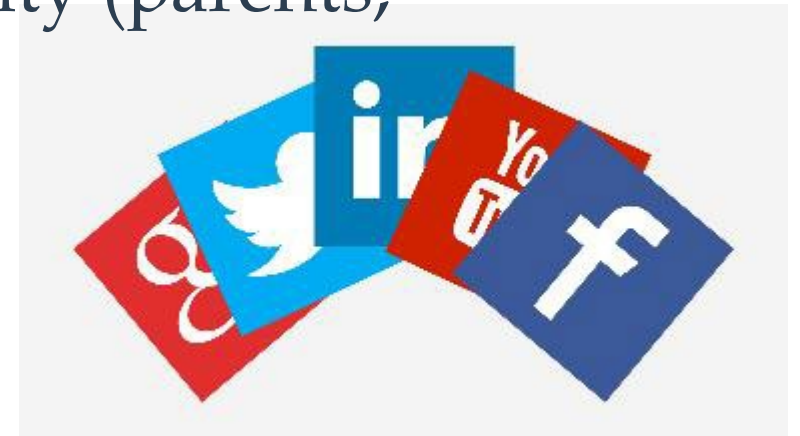
He added five hashtags including "#Custodian problems." His followers added comments such as "Yikes!," "Damn," and "That looks like a lot of violations, mr. custodian."



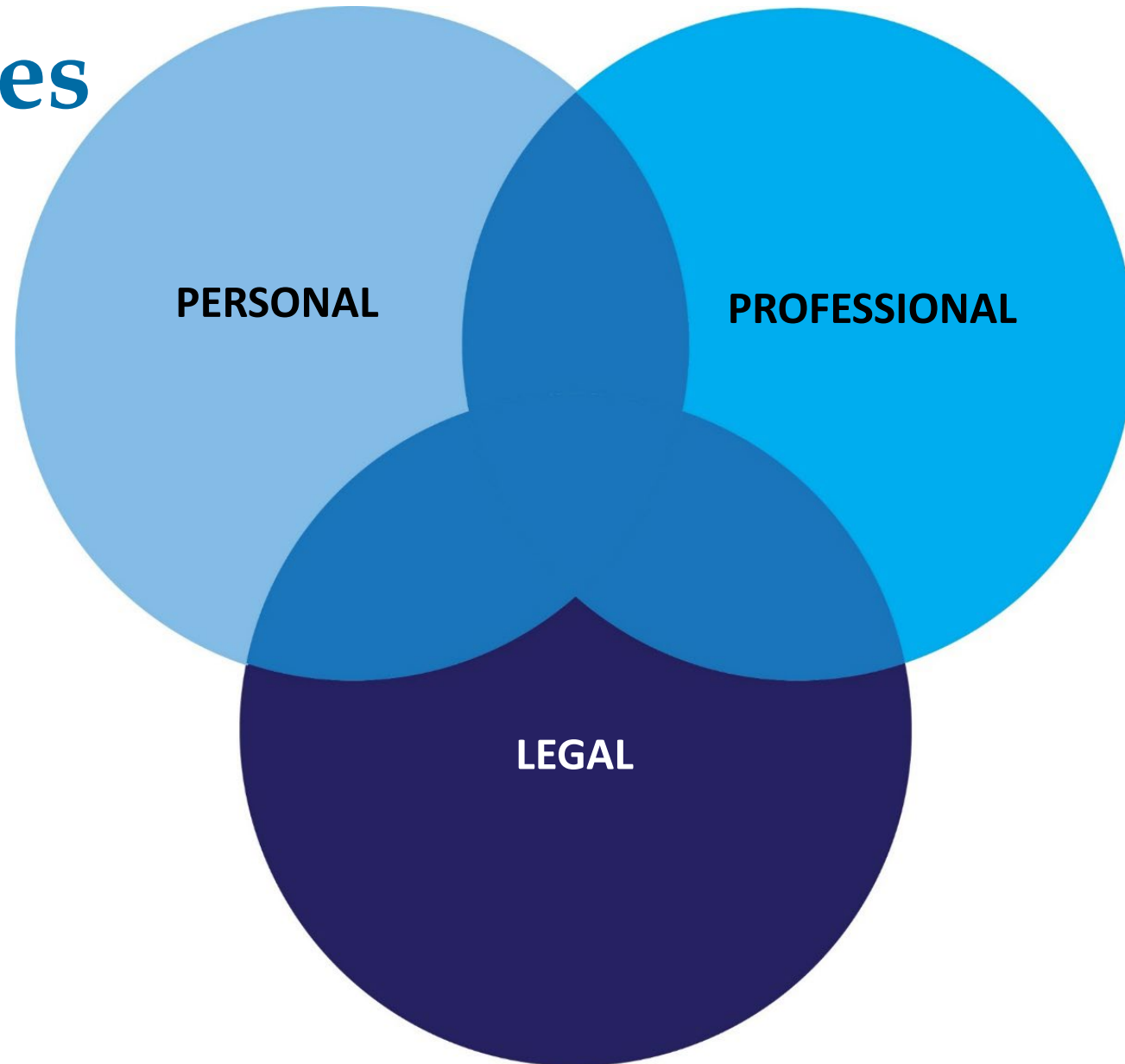
<https://nypost.com/2017/03/12/chief-custodian-bragged-about-school-violations-on-instagram/>

Social Networking

- “Private” speech may not interfere with school operation or the rights of others.
- May be disruptive if it harms goodwill/reputation of the school.
- Be cautious about referencing colleagues or other members of the school community (parents, students, etc.) without consent.
- What are “appropriate” boundaries?



Boundaries



Professional Boundaries

Physical

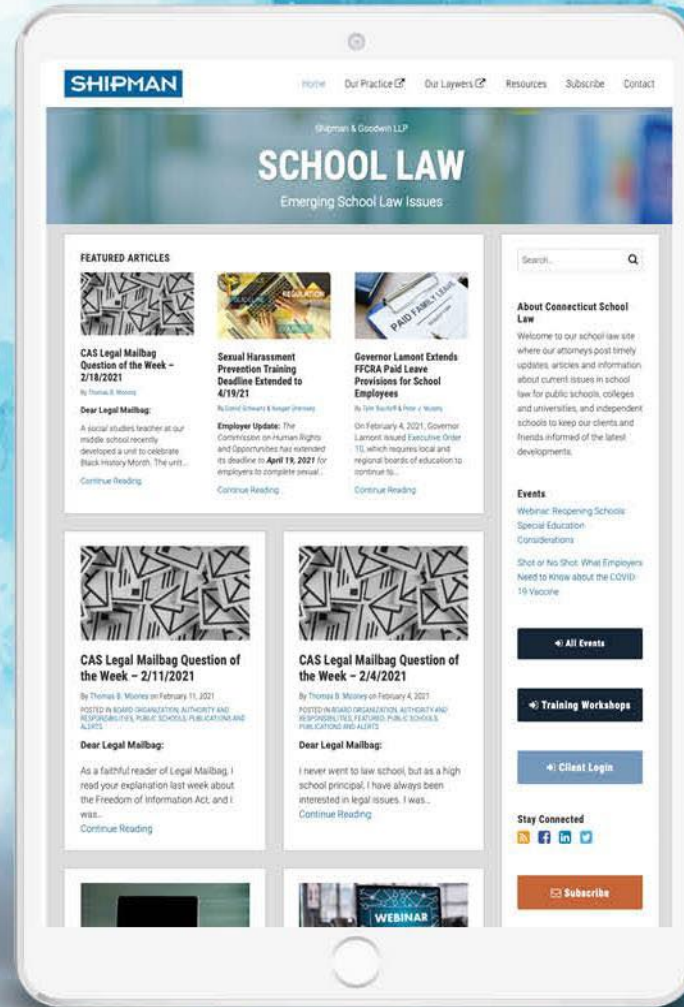
Emotional

Informational

Communication

Job Responsibilities

Legal



ctschoollaw.com

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Connect With Us:



Julia V. Wilde
Shipman & Goodwin LLP
(860) 251-5415
jwilde@goodwin.com



@ShipmanGoodwin



shipmangoodwin



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Questions?



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