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LEGAL UPDATE

November 4, 2020

To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, General Counsel *CDC*

Subject: Student Social Media – Searching, Gathering, and Maintaining Information
Memo No. 67-2020

In these days of distance learning, many Local Education Agencies (“LEAs”)¹ are considering adopting the use of a computer program to search the social media of students to gather information regarding school and student safety. For example, Bark offers a free web filtering service for schools.²

However, prior to the implementation of such a program for “educational purposes”³, Assembly Bill (“AB”) 1442, mandates the completion of various requirements along with on-going LEA responsibilities. AB 1442 is codified at Education Code § 49073.6, which is attached to this Legal Update.

“Social media” for the purpose of AB 1442 is defined as:

...an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.⁴

¹ Defined as a school district, county office of education, and charter school. Education Code § 49073.6(b). All subsequent legal citations are to the Education Code.

² <https://www.bark.us/blog/bark-free-web-filtering-schools/>.

³ Educational purposes is defined at § 49073.6(a)(1) as “...purposes that aid in instruction in the classroom or at home, or in classroom administration.”

⁴ § 49073.6(a)(2)(A). Social media does not include “...an electronic service or account used exclusively for educational purposes or primarily to facilitate creation of school-sponsored publications, such as a yearbook or pupil newspaper, under the direction or control of a school, teacher, or yearbook adviser.” § 49073.6(a)(2)(B).



Prior to Implementation

Prior to the implementation of a student social media search program, the LEA must notify students and their parents about the proposed program **and** must allow for the opportunity for public comment at a **regularly** scheduled public board meeting before the adoption of the program.⁵

On-Going LEA Responsibilities

Once the student social media search program has been implemented the LEA must do all of the following:

1. Gather or maintain only information that pertains directly to school safety or to pupil safety.
2. Provide a pupil with access to any information about the pupil gathered or maintained by the LEA that was obtained from social media, and an opportunity to correct or delete such information.
3. Destroy information gathered from social media and maintained in its records within one year after a pupil turns 18 years of age or within one year after the pupil is no longer enrolled in the LEA, whichever occurs first.
4. Notify each parent or guardian of a pupil subject to the program that the pupil's information is being gathered from social media and that any information, subject to this program and maintained in the LEAs' records with regard to the pupil, shall be destroyed in accordance with the timelines in item 3 above.⁶

Notification to Students and Parents

The notification to students and parents can be included with the Annual Parent Notice, but must include at a minimum all of the following information:

1. An explanation of the process by which a pupil or a pupil's parent or guardian may access the pupil's records for examination of the information gathered or maintained pursuant to this section.
2. An explanation of the process by which a pupil or a pupil's parent or guardian may request the removal of information or make corrections to information gathered or maintained.⁷

Requirements if LEA Contracts with a Third Party for Program

If the LEA contracts with a third party to gather information from social media on an enrolled pupil, then that contract must include all of the following:

⁵ § 49073.6(b).

⁶ § 49073.6(c).

⁷ §§ 49073.6(c)(3)(B)(i)-(ii).



1. Prohibit the third party from using the information for purposes other than to satisfy the terms of the contract.
2. Prohibit the third party from selling or sharing the information with any person or entity other than the LEA, or the pupil or his or her parent or guardian.
3. Require the third party to destroy the information immediately upon satisfying the terms of the contract.
4. Require the third party, upon notice and a reasonable opportunity to act, to destroy information pertaining to a pupil when the pupil turns 18 years of age or is no longer enrolled in the LEA, whichever occurs first.
5. The LEA shall provide notice to the third party when a pupil turns 18 years of age or is no longer enrolled in the LEA and this notice shall not be used for any other purpose.⁸

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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⁸ §§ 49073.6(c)(3)(C)(i)-(iv).

State of California

EDUCATION CODE

Section 49073.6

49073.6. (a) For purposes of this section, the following terms have the following meanings:

(1) “Educational purposes” means for purposes that aid in instruction in the classroom or at home, or in classroom administration.

(2) (A) “Social media” means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

(B) “Social media” shall not include an electronic service or account used exclusively for educational purposes or primarily to facilitate creation of school-sponsored publications, such as a yearbook or pupil newspaper, under the direction or control of a school, teacher, or yearbook adviser.

(b) Notwithstanding any other law or regulation, a school district, county office of education, or charter school that considers a program to gather or maintain in its records any information obtained from social media of any enrolled pupil shall notify pupils and their parents or guardians about the proposed program and provide an opportunity for public comment at a regularly scheduled public meeting of the governing board of the school district or county office of education, or governing body of the charter school, as applicable, before the adoption of the program. The notification required by this subdivision may be provided as part of the notification required pursuant to Section 48980.

(c) Notwithstanding Section 49062, a school district, county office of education, or charter school that adopts a program pursuant to subdivision (b) shall do all of the following:

(1) Gather or maintain only information that pertains directly to school safety or to pupil safety.

(2) Provide a pupil with access to any information about the pupil gathered or maintained by the school district, county office of education, or charter school that was obtained from social media, and an opportunity to correct or delete such information.

(3) (A) Destroy information gathered from social media and maintained in its records within one year after a pupil turns 18 years of age or within one year after the pupil is no longer enrolled in the school district, county office of education, or charter school, whichever occurs first.

(B) Notify each parent or guardian of a pupil subject to the program that the pupil’s information is being gathered from social media and that any information subject to

this section maintained in the school district's, county office of education's, or charter school's records with regard to the pupil shall be destroyed in accordance with subparagraph (A). The notification required by this subparagraph may be provided as part of the notification required pursuant to Section 48980. The notification shall include, but is not limited to, all of the following:

(i) An explanation of the process by which a pupil or a pupil's parent or guardian may access the pupil's records for examination of the information gathered or maintained pursuant to this section.

(ii) An explanation of the process by which a pupil or a pupil's parent or guardian may request the removal of information or make corrections to information gathered or maintained pursuant to this section.

(C) If the school district, county office of education, or charter school contracts with a third party to gather information from social media on an enrolled pupil, require the contract to do all of the following:

(i) Prohibit the third party from using the information for purposes other than to satisfy the terms of the contract.

(ii) Prohibit the third party from selling or sharing the information with any person or entity other than the school district, county office of education, charter school, or the pupil or his or her parent or guardian.

(iii) Require the third party to destroy the information immediately upon satisfying the terms of the contract.

(iv) Require the third party, upon notice and a reasonable opportunity to act, to destroy information pertaining to a pupil when the pupil turns 18 years of age or is no longer enrolled in the school district, county office of education, or charter school, whichever occurs first. The school district, county office of education, or charter school shall provide notice to the third party when a pupil turns 18 years of age or is no longer enrolled in the school district, county office of education, or charter school. Notice provided pursuant to this clause shall not be used for any other purpose.

(Added by Stats. 2014, Ch. 799, Sec. 1. (AB 1442) Effective January 1, 2015.)