

Can You Hear Me Now? Student Cell Phone Use in Schools

*School Client Conference
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Agenda

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- Statewide Ban?
- Cell Phones: Key Concerns for Schools
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- Cell Phones: To Ban or Not To Ban?
 - Policies/procedures
 - Practical Considerations
- Questions?



“In this digital age, every elementary, middle, and high school student should have a clear, consistent, and research-informed policy to guide the use of phones and personal devices in schools.”

- U.S. Secretary of Education Miguel Cardona



Introduction

- Cell Phone Use Policies
- Benefits of Adopting a Cell Phone Use Policy:
 - Minimizes behavior issues
 - Improves focus and student engagement
 - Enhances student educational outcomes
 - Improves mental health
- U.S. Department of Education and New York State Education Department support cell phone use policies in schools.



Statewide Ban?

- On May 31, 2024, a bill was introduced to the Senate's Education Committee that, if passed, would regulate cell phone use in schools statewide:
 - Clarifies types of prohibited devices as well as when and how the device(s) may be used on school property.
 - Provides exceptions for devices used during implementation of an individualized education plan (IEP) and if a licensed physician determines that use of the device is necessary for a student's overall well-being.
- Anticipate more updates in 2025; but, until then, Gov. Hochul is encouraging school districts to implement their own policies.
 - Note: As of September 2024, six states have banned or restricted cell phone use in schools: Florida, Indiana, Louisiana, South Carolina, California, and Ohio.



Cell Phones: Key Concerns for Schools



Relevant Legal Authority

- Relevant Statutes and Regulations
 - New York Education Law § 3214
 - Short term vs. Long term suspensions
 - Investigations
 - Due Process Rights
 - Notice
 - Superintendent's Hearing
 - 8 N.Y.C.R.R. § 100.2(1)



Disciplinary Consequences

- Schools must adopt an appropriate disciplinary penalty that is proportionate to the severity of the offense involved.
 - Legal Standard: “whether the penalty is shocking to the conscience or one’s sense of fairness to warrant substitution of the commissioner of education’s judgment for that of the school board.” -*Appeal of D.B.*, 63 Ed Dept Rep, Dec. No. 18,838 (2024).



Student Discipline

- In *Appeal of A.R. and R.R.*, the Commissioner of Education dismissed the Parents' appeal of a student who had been suspended for using his cell phone to "generate a fictitious text conversation that appeared to confirm that a bomb threat would be carried out the following day. [The student] distributed a copy of the text conversation [to] Twitter, [to] convince other [District] students not to come to school the following day."
 - Holding: Parents failed to prove that the principal's determination to suspend student for five days was arbitrary and capricious.
 - Principal's notice was sufficient.



Student Discipline

- In *Appeal of D.W.*, a student received a one-day out of school suspension for using her personal cell phone to record a security guard breaking up an altercation between two students.
 - Student appealed arguing that the suspension procedure was flawed, and the penalty was excessive.
 - Commissioner sustained the appeal for insufficient notice.
 - HS Principal “issued” the one-day suspension on the day the student took the video (Friday), and the suspension was served on Monday. No time for informal conference and no immediate danger.

Is it lawful to search a student's cell phone?



- The Fourth Amendment prohibits *unreasonable* searches and seizures.
 - A student's right to be free from a search is limited in a public-school setting and related school-sponsored activities.
 - Legality of a search by a school official is determined by balancing a school's need to maintain discipline in the classroom and on school grounds against a student's legitimate expectation of privacy.
 - A search will be valid if it was based on "reasonable suspicion."
 - Was the search justified at its inception?
 - Was the scope of the search, as actually conducted, reasonably related to the circumstances that justified it?

Is it lawful to search a student's cell phone?

- In *Piechowicz v. Lancaster Central School District*, the court held that the school district did not violate a deceased student's Fourth Amendment rights when the principal searched the student's cell phone which contained nude photos of another student. 2022 WL 22782841 (Jan. 18, 2022).
 - Search of the student's cell phone was justified at its inception based on the complaint of a female student that the offending student was sharing a photo of her backside with other students.
 - Scope of the search was limited. Student was questioned and his cell phone searched only to the extent necessary to investigate the female student's complaint.



Exercise Caution when Conducting Searches

- Do you have reasonable suspicion?
- Is the search justified at its inception?
- Is the scope of the search related to the objectives of the search?
- Proceed with caution and, if necessary, involve law enforcement (particularly if you believe there to be a real safety threat).
- Resist the urge to go on a fishing expedition!
- Ensure at least one other administrator or staff member is present during any search.
- Request the student's consent when/where possible.

“Sexting,” Cyber-bullying, Social Media and Mental Health Concerns



- Relevant Legal Authority
 - New York Penal Law §1125(1) – the dissemination of or attempt to disseminate obscene materials to minors.
 - Title VI of the Civil Rights Act – prohibits discrimination and harassment that creates a hostile environment by conduct that is sufficiently severe, pervasive, or persistent enough to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.
 - Title IX – prohibits discrimination on the basis of sex.
 - New York State Human Rights Law – prohibits educational institutions from permitting the harassment of any student.

“Sexting,” Cyber-bullying, Social Media and Mental Health Concerns



- Relevant Legal Authority
 - Dignity for All Students Act (DASA) – seeks to “afford all students in public schools an environment free of discrimination and harassment,” to “foster civility” and “prevent and prohibit conduct inconsistent with a school’s educational mission.”
 - Generally, prohibits harassment and bullying by students (or employees) on school property or at a school function, based on actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex.

“Sexting,” Cyber-bullying, Social Media and Mental Health Concerns



- Dignity for All Students Act (DASA)
 - Harassment and bullying under DASA refer to the creation of a hostile environment by conduct or by threats, intimidation, or abuse including cyber bullying, that:
 - Has or would have the effect of unreasonably and substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional or physical well-being, or
 - Reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or

“Sexting,” Cyber-bullying, Social Media and Mental Health Concerns



- Dignity for All Students Act (DASA)
 - Harassment and bullying under DASA refer to the creation of a hostile environment by conduct or by threats, intimidation, or abuse including cyber bullying, that:
 - Reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or
 - Occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidates or abuse might reach school property. Threats, intimidation and abuse may be verbal and non-verbal actions.

“Sexting,” Cyber-bullying, Social Media and Mental Health Concerns

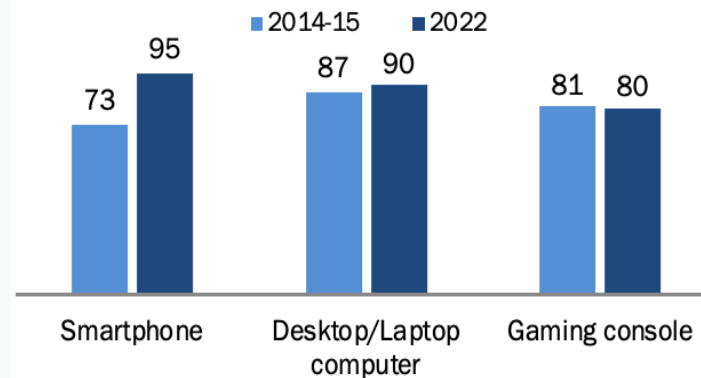


- U.S. Department of Education launched support for youth mental health and regulation of cell phone use in schools.
- According to U.S. Departments of Education and Health and Human services, social media use among students is a major public health challenge.
 - Children who spend more than 3 hours a day on social media face double the risk of mental health problems including symptoms of depression and anxiety.
 - Schools with cell phone bans/restrictions report that students are less anxious, less distracted, and more sociable which all contributed to less discipline.

“Sexting,” Cyber-bullying, Social Media and Mental Health Concerns

Nearly all teens in 2022 have access to a smartphone, up from 73% in 2014-15

% of U.S. teens who say they have access to the following devices



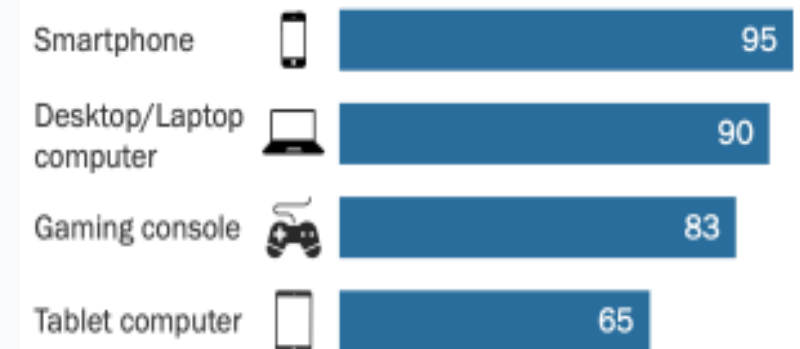
Note: Teens refer to those ages 13 to 17. Those who did not give an answer are not shown. The 2022 question wording further clarified access at home.

Source: Survey conducted April 14-May 4, 2022. “Teens, Social Media and Technology 2022”

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Nearly all teens in the U.S. have access to a smartphone

% of U.S. teens ages 13 to 17 who say they have access to the following devices at home



Note: Those who did not give an answer are not shown.

Source: Survey of U.S. teens conducted Sept. 26-Oct. 23, 2023.

“Teens, Social Media and Technology 2023”

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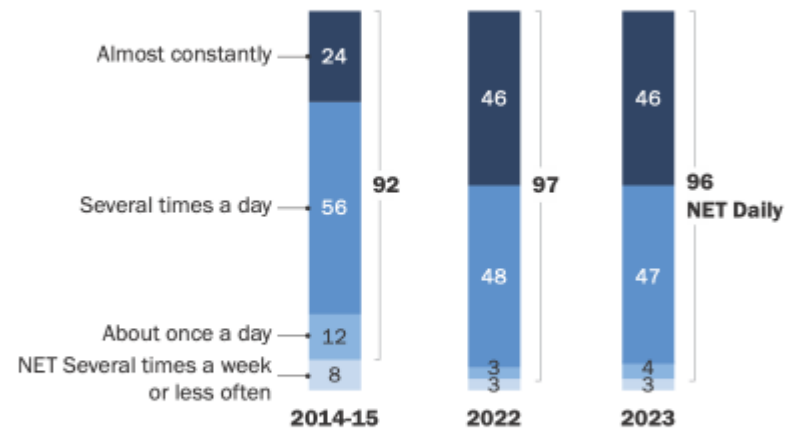
“Up to 95% of young people aged 13-17 report using a social media platform. Nearly two thirds of teenagers report using social media every day and one third report using social media ‘almost constantly.’”

- U.S. Department of Health and Human Services

“Sexting,” Cyber-bullying, Social Media and Mental Health Concerns

The share of teens who say they are online ‘almost constantly’ has roughly doubled since 2014-2015

% of U.S. teens ages 13 to 17 who say they use the internet ...



Note: Figures may not add up to NET values due to rounding. Those who did not give an answer are not shown.

Source: Survey of U.S. teens conducted Sept. 26-Oct. 23, 2023.
“Teens, Social Media and Technology 2023”

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“Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gates.”

- *Tinker v. Des Moines Indep. Cmt. Sch. Dist.* 393 U.S. 503 (1969).



Student Speech and Cell Phone Use

- Generally, school officials cannot prevent students from expressing their personal, political, or religious views or opinions on school premises, or discipline students for doing so.
- However, schools may take action if a student's speech/expression of views would "materially and substantially interfere[] with the requirements of appropriate discipline in the operation of the school or impinge on the rights of other students." *Tinker*, 393 U.S. 503 (1969).

Restrictions on Student Speech



- The U.S. Supreme Court has deemed the following speech may be restricted, even in the absence of any evidence of a material or substantial disruption:
 - Vulgar, lewd, or indecent speech. *Bethel Sch. Dist. V. Fraser*, 487 U.S. 675 (1986).
 - Right to editorial control over school newspaper. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)
 - Promoting illegal drug use. *Morse v. Frederick*, 551 U.S. 393 (2007).
- Some federal courts have used Supreme Court precedent to apply to other speech:
 - Threat of mass school violence. *Ponce v. Socorro Indep. Sch. Dist.*, 526 F.3d 419 (5th Cir. 2007).

Social Media and Off Campus Speech

- In *Mahonoy Area Sch. Dist. v. B.L.*, the Supreme Court held that the school district violated the First Amendment when it disciplined a student for transmitting a message through Snapchat outside of school hours and off-campus that included vulgar language and gestures criticizing both the school and its cheer team. 594 U.S. 180 (2021).
 - Significant factors in the Court's determination include that the student's speech did not amount to fighting words, was not obscene, did not identify the school or any community member directly, and the speech was transmitted through the student's personal cell phone to that student's personal group of friends on Snapchat.

Social Media and Off Campus Speech

- In *Mahonoy Area Sch. Dist. v. B.L.*, the Supreme Court provided examples of off-campus speech that may be regulated:
 - Serious or severe bullying or harassment targeting specific individuals;
 - Threats aimed at teachers or other students;
 - The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participating in other online school activities;
 - Breaches of school security devices, including material maintained within school computers.



Cell Phones & “AI”

- Disciplinary concerns:
 - Cheating,
 - Plagiarism,
 - Creating inappropriate pictures or photos of students and teachers,
 - Perpetuates bullying and distractions.

- Academic concerns:
 - Lack of critical thinking,
 - Misinformation,
 - Accessibility and equity.

To Ban or Not to Ban: Practical Considerations



- What type of policy works for your school?
 - Consider developing a committee/sub-committee.
- Is there a plan or procedure in place for parents and caregivers to contact students in the event of an emergency?
- Any exceptions for use of cell phones in schools?
- How will the school store cell phones during the school day?
- What is the cost for storage, if any, and who will bear the cost?
- How will the policy be enforced?
- Will educators be trained on the policy?
- How will the policy be communicated to students and families?



To Ban or Not to Ban: Practical Considerations

- There is no “one-size-fits-all” policy or approach to monitoring or regulating cell phone use in schools.
- Develop policy based on your District or School-wide goals.
- Ensure policy is carefully drafted and that discipline aligns with the misconduct.
- Educate your school community and be transparent. “Buy-in” is key!

Questions?



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