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**NAIS-TABS
LEGAL SYMPOSIUM**
 OCTOBER 18-19 PHILADELPHIA


Practical Strategies For Managing Risks With Students And Technology

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Audience Poll: Pros & Cons Of Tech

- *How many of you depend upon your electronic device(s) to do your job?*
- *How many of you spend at least 5 hours every day looking at your devices?*
- *How many of you (secretly or otherwise) want to get rid of your devices?*



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Agenda

- The Context: The Rise Of ...
 - Use Of Social Media / Electronic Devices
 - Loneliness
 - Rage On Social Media
- The Risks, Policies, Practices And Relevant Laws:
 - Electronic Relationships
 - Cyber-Bullying And Harassment
 - Sexting And Child Pornography
 - Online Student Threats
- Action Items



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Audience Poll: Show Of Hands

- Do you engage with students via ...
 - Cell phone?
 - “Text messaging”?
 - Social media?
- Does your school prohibit employees from ...
 - Giving students employee’s cell phone numbers?
 - “Texting” students?
 - Connecting with students on social media?
- Does your school allow electronic devices (laptops, tablets, smart phones, smart watches) in the classroom?
 - If so, do teachers complain?
 - If not, do students complain?

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A Loneliness Epidemic?

- In Harvard Business Review article, the “former surgeon general says there’s a ‘loneliness epidemic’ and work is partly to blame.”
 - *The Washington Post*, October 4, 2017
- “In the last 50 years, rates of loneliness have doubled in the United States.”
 - *Psychology Today*, July 12, 2018
- “We have an epidemic of loneliness. How can we fix it?”
 - George Will, *The Washington Post*, October 12, 2018

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“Why are young adults the loneliest generation in America?”

- Discussing “...the systems in play that contribute to a nationwide epidemic of quiet isolation:
 - **“the pressure to work constantly**, the sense among students that no amount of work completed is ever truly enough, and ...
 - **“and, yes, the rise of smartphone use that shunts us away from face-to-face interaction.”**
- “Constant busyness takes a toll not only on the quality of relationships, but also on the skills young adults use to forge them. ... **Friend-making skills atrophy from underuse.**”
- Rachel Simmons, Leadership Development Specialist, Smith College, writing about a study by Cigna, (*The Washington Post*, May 3, 2018)

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A Selfie With A Bullet?

Damien, a 9th grader at Key Academy, recently had a death in the family and has been struggling to keep up at school. He and a group of 15 Academy students have a running text chain where they send goofy texts and chat about school. One afternoon, while the students are joking about a test the next day, Damien sends a picture of himself holding what appears to be a bullet with the message, "I wouldn't come to school tomorrow." Jane, who was on the group text, takes a screen shot and posts it to Instagram.

Late that night, the Head of School receives a call from a parent who has seen Jane's post and is fearful of her child's safety.

What should the Head of School do?

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Acceptable Use Policy

- Applies To Behavior (And The Use Of Technology) Both On And Off Campus
- Whether On School Network Or Personal Devices
- Prohibits
 - Inappropriate Or Disrespectful Language Or Images
 - Hiding Identity Or Impersonating Others
 - Disclosure Of Confidential Information
- No Expectation Of Privacy On School Network



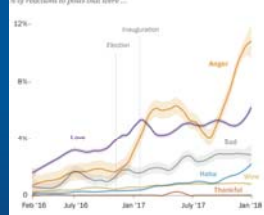
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The Rise Of Rage In Social Media Politics

- "Social media really is angrier than it used to be. This chart proves it."
- Vox, July 18, 2018

After 2016 election, angry reactions overtook love reactions from the Facebook audience



Note: The chart shows the composition of reactions to the average member's post over time as a percentage of the total, including those Likes, the most common reaction, are excluded from the graph, but included in the calculation of each reaction's share of the total. The greater angles are the 95th confidence level for the measured trends.

Source: Pew Research Center analysis of Facebook posts created by members of Congress between Feb. 29, 2016 and Dec. 31, 2017.

"Taking Sides on Facebook: How Congressional Outbreak Changed Under President Trump"

PEW RESEARCH CENTER

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Halloween On Facebook: The Day After

The Monday after Halloween, pictures are posted to Facebook of two Key Academy students in blackface and yellowface at a party. Some students are outraged, with a group taking to social media to criticize not only the offending student, but also the Academy for (allegedly) repeatedly failing to condemn racism on campus. The protesting students create a Facebook page to orchestrate a sit-in at the Head of School's office the next day.

What should the Academy do?

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Standards For Student Conduct

- Require Students To Comply With:
 - Code Of Conduct
 - Student Handbook
 - Acceptable Use Policy
- Dismissal Of Student:
 - Poor Academic Performance
 - Inappropriate Behavior
 - Violation Of Policy



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The Role Of Electronic Communications

- The "Atrophy" Of Interpersonal Skills?
- Impulsive Communications?
- Broadcasting "TMI"?
- Voicing Opinions, Seeking Support/Attention/Connection?
- Reporting Campus Climate Issues?
- Documenting Misconduct?
- Going "Viral"?



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The Scouting Report

The soccer team arrives early to campus for pre-season training. One evening after practice, the boys rank the incoming freshman girls. They connect a personal laptop to the common room TV and search for each girl's photo on social media. A few weeks later, faculty hear students using acronyms to refer to other students, and suspect they are abbreviations for breast size.

A student visits the dean after finding a publicly-accessible Google doc, entitled "Scouting Report," in which the freshman girls' physical attributes are ranked in "the lewdest of terms."

What next?

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Policies Regarding Interpersonal Student Relationships

- Commitment To Respectful And Healthy Relationships
- Sexual Intimacy And Consent
 - Definition Of Consent
 - Communicating Consent
- Prohibits Bullying, Harassment, Discrimination, Hazing, Sexual Assault And Sexual Harassment
 - Define Each
- Describe Complaint And Investigation Process
- Prohibit Retaliation Against Reporters

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State Laws Against Bullying

- Generally Prohibit Repeated Behaviors That Cause Harm, Fear Of Harm, Or A Hostile Environment; Infringe On Rights; Or Disrupts School
- Generally Applies *Anywhere* If It Creates A Hostile Environment At School
- Includes Cyber-Bullying, Which Most Commonly Occurs Via:
 - Social Media (e.g., Facebook, Instagram, Snapchat, Twitter)
 - Instant Message (On Devices, Email Services, Apps, And Social Media Messaging Features)
 - Email

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Snap Decision

Heather and Christa are in the 8th grade at Key Academy and both play field hockey. One afternoon before practice begins, Heather secretly films Christa as Christa is changing clothes. Heather chuckles to herself, and then sends the video to a few female friends on SnapChat, commenting on Christa's weight.

Other students quickly learn of the video, and start snickering at Heather. Heather, in tears, goes to the field hockey coach and reports what happened.

What should the field hockey coach do?

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Sexting And Social Media Policies

- Prohibit Use Of Devices To Send Or Create Messages, Images, Or Videos Containing Explicit Representations Or References To Sexual Conduct
 - Whether Devices Are Owned By Student Or The School
 - Whether On Or Off Campus
 - Whether Through School's Network Or External Network
- Emphasize Responsible Use Of Social Media
 - Parental Oversight Of Student's Use
- Reference Acceptable Use Policy



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Legal Framework: Child Pornography

- Illegal To Permit Anyone Under Age 18 To Be Used "In Any Visual Depiction...Of Sexually Explicit Conduct"
 - Depending On State Law, 15, 16, or 17 Year Olds Can Consent To Sex, But Cannot Consent To Being Videotaped Having Sex
- Illegal To Create, Distribute, Or Possess Such Material In Print Or Electronically
 - Laws Have Not Caught Up To Phone Cameras/Instant Messaging
- Illegal To Sell Or Distribute Adult Pornography To Minors

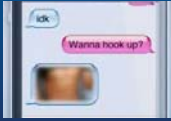


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Legal Framework: Sexting

- Showing Pornography To Minors Prohibited
 - Defined As Showing Explicit Representations Of Sexual Conduct, Sexual Excitement, Or Nudity
- Minors as Sexters
 - Some States Have Express Sexting Laws (e.g., CT, FL, NJ)
 - In Other States, Child Pornography Laws Likely Apply
- States' "Up-skirting" Laws May Apply
- What To Do If You Receive A Sext Message
 - Alert Appropriate Senior Administrator
 - Do Not Forward The Image Or Message
 - May Be Unwittingly Distributing Pornography



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Educating Students About Healthy And Respectful Relationships

- Discuss Bullying, Cyber-Bullying, Sexting, And Harassment
- Define Appropriate Interactions With Peers
- Age-Appropriate, Encourage Open Dialogue, Consider Small Groups
- Review Family Handbook Policies Regarding Behavioral Standards, Bullying Prevention And Intervention, And Use Of Technology
- Discuss The Consequences, Both Inside And Outside The School Environment, Of Inappropriate And Illegal Behavior
- Explain Social Media Risks
- Address Role Of Bystanders

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Cell Phone And Electronic Device Policy

- Prohibit Use Of Devices In School?
 - Exceptions?
- Prohibit Use Of Devices To Record Video Or Audio Without Express Permission
 - From The School
 - From The Person Recorded



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Time To Educate Educators?

- Consider Your Digital Media Footprint
- Is Anything Ever “Private”?
- Accessible To Students, Co-Workers, Administration, Parents, etc.
- You Don’t Know Who Is Watching
- Remember You Are A Role Model

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Teachers’ Social Media Posts That Have Made Headlines

- “Drinking and partying is my life. I am going to be a high school English teacher one day.”
- “I’m feeling pissed because I hate my students.”
- “She Devil” Caption On Photo Of A Student
- “That awkward moment your student asks you if you have plans Saturday night....”
- *What do you think about publicly sharing personal messages from students? Does it make a difference if the student’s name is redacted?*

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Snow Daze

A student (hopeful that the winter storm will bring with it a snow day) tweeted at the School: “close school tammarow PLEASE.” The communications director operating the School’s twitter account replied, “but then how would you learn how to spell ‘tomorrow?’ :)”

Was the communication director’s response appropriate?



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Educating Faculty About Professional Relationships

- Review Family And Employee Handbook Policies Regarding Behavioral Standards, Bullying Prevention And Intervention, And Use Of Technology
 - Prohibit “Friending” Between Faculty And Students? What About With Former Students?
- Define Appropriate Interactions With Students
- Establish Clear Boundaries
- Perception As Important As Reality
 - The Appearance Of Being Inappropriate Can Have Troubling Ramifications



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Missed Connection

Rob is a 12th grade student at Key Academy and is struggling to keep up at school academically. He has become increasingly impulsive and often skips class. Ms. Smith, who is in her fifth year at the Academy, is concerned with Rob’s well-being, and begins reaching out to him. She has found that the best way to connect is through texts, phone calls, and social media to ensure he is staying on track in attending classes.

Ms. Smith’s friend notices the connection between Ms. Smith and Rob, and speaks to Ms. Smith about it.

Any concerns?

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Missed Connection (cont’d)

Rumors of a relationship between Rob and Ms. Smith have begun to circulate around the Academy. The Division Head meets with Rob to discuss, and Rob says that he had a sexual encounter with Ms. Smith. Rob shows the Division Head nearly ninety texts from Ms. Smith, including ones that state: “can’t stop thinking about you”; “my heart is racing”; “will you call me and talk”; and a screenshot of a love song by Chris Young with a text reading “Listen to the words. You won’t like the song, but listen to the words.”


What should the Division Head do next?

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Risky Boundary Transgressions: Student/Teacher

- Mistake: Friend Instead Of Teacher? (Hero Complex?)
 - Which Employees Seem Especially At Risk?
 - Seemingly Increased Frequency Of Anxiety And Depression In Students
- Students Test Boundaries
- Teachers Need To Reinforce Boundaries
 - Resist Temptation To Appear Cool
 - Resist Desire To Be Liked By Student
 - Professional And Appropriate Faculty Attire
- Risks Of Sharing Personal Information
 - Ask: Is It In The Student's Best Interests?



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Relevant Practices, Policies And Laws

- Know And Comply With State Laws
 - Mandated Reporting: Child Abuse And Neglect
 - Sexual Consent
 - Bullying & Hazing
 - Duty To Protect From Self-Harm?
- Routinely Update Employee / Faculty Handbook
- Implement Annual Faculty Boundary Training
 - Discuss Appropriate Boundaries (e.g., Texting, Social Media, Confidential Apps)

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Anonymous Hate

As Key Academy is settling into a new school year, it comes to the Head of School's attention that the entire 11th grade class was recently sent multiple emails from a fake email account impersonating the Head of School, which contained racist, vulgar, and otherwise offensive language.

The Academy learns that a fake Facebook account has also been created to appear as if it is the Academy's account, which has been repeatedly posting hateful, bigoted language.

What should the Academy do?

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Responding To Crises

- Develop A Crisis Management Plan
- Identify Roles Of Key Administrators & Board Members
- Identify Crisis Communications Firm
- Identify Legal Counsel
- Identify Contacts At Local Authorities
- Conduct "Table Top Drills"



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Key Student Handbook Policies

- Interpersonal Student Misconduct
 - Bullying, Cyberbullying, Harassment
- Acceptable Use Of Technology
- Sexting
- Cell Phones And Electronic Devices
- Social Media
- General Code Of Conduct
- Discipline Policies



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Key Employee Handbook Policies

- Acceptable Use Of Technology
- Privacy And Monitoring Of Electronic Communications
- Social Media
- Personal Information Security Policy
- Use Of Cellular Telephones And Other Communication Devices



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Key Action Items

- Update Handbooks
- Educate Students About Bullying, Harassment, And Acceptable Use Of Technology
- Boundary Training For All Employees
- Update Crisis Management Plan / Identify Crisis Management Team
- Review School's Mission And Values
- Remember Your Moral Compass

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Questions And Answers



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