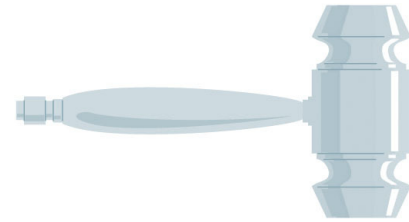


Legal Corner



By Michael I. Levin, Esq., PAESSP General Counsel

When Phones Were Phones

“Boy the way Glen Miller played, songs that made the hit parade, guys like us we had it made, those were the days!...and you knew where you were then, girls were girls and men were men, mister we could use a man like Herbert Hoover again... didn’t need no welfare states, everybody pulled his weight, gee our old LaSalle ran great, those were the days!”

~Archie Bunker’s [All in the Family] theme song — *Those Were the Days*



Not long ago, phones were phones and computers were computers -- *those were the days!* No more. Phones are computers (indeed, they’re “smart”) and computers are phones. How are school districts, principals and educators to deal with smart phones? What if a dumb kid has a smart phone? Is there any real difference between a smart phone

and an iPad or notebook? Many school districts prohibit students from having their cell phones “out” or “in view” when students are in school or in class and will readily confiscate the phone if it is out when it is not supposed to be. However, many of those same districts allow students to “bring their own device,” (“BYOD”), to have iPads, notebooks or laptops; and to have them “out.” What’s the difference between the smart phone and the notebook, iPad or laptop? By what logic is a smart phone prohibited from view, but an iPad can be out? I suggest that it is time to recognize that there is no difference and that the rules prohibiting cell phones or smart phones from being out in class must go the way of Herbert Hoover and Archie’s old LaSalle. Instead, conduct must be regulated and controlled, not the devices.¹

BYOD” -- bring your own device” -- is the latest, greatest craze. The problem is: the “devices” present a host of problems from a student and employee discipline perspective, a control perspective, a liability perspective and an enterprise risk perspective. The school safety consulting firm, National School Safety

and Security Services, opposes “policies allowing or encouraging students to have cell phones in school,”² asserting that they are disruptive to the educational environment, that they are often connected to drug and gang activity, and are easily used to call in fake bomb threats. On the other hand, the web site, Mediashift (<http://www.pbs.org/mediashift/>), presents an article titled “*Why Schools Should Stop Banning Cell Phones, and Use Them for Learning.*”³ It is reported in that article that one teacher said that her “biggest gripe is that most students have these great smart phones and barely use the device to a tenth of its potential.” So, which is it? Do we continue to ban cell phones and smart phones (or require that they be kept out of sight?) because of fear of disruption, drug dealing and gang activity; or do we embrace cell phones and smart phones, and all other such devices, in recognition of their contributions to education and their firm place in society? Kids doodle and daydream in class -- always have and always will. But there is no district policy commanding that the teacher confiscate paper and pencil of all students because of a few doodlers. Why do we need a district-wide policy and remove from the teacher the ability to reasonably control classroom behavior when a kid uses his cell phone as part of his daydreaming and doodling? School administrators and school board directors have their smart phones out during meetings and frequently check e-mail and text during such meetings and no one is confiscating their phones. Why are we treating kids differently because we can?

I suggest that it is time for BYOD, and that includes cell phones and smart phones. The conduct

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that had formed the basis for prohibiting cell phones and smart phones in the past can be regulated, but the device need not be prohibited. We don't ban pen and paper from the entire student population because one student passed a note to another student, or consummated a drug transaction on paper. Why prohibit all students from using smart phones because one or more students may send a text message in class? One Internet posting⁴ provided:

There it is in black and white: the Department of Education's support of cell phones in schools.

The National Education Technology Plan, released recently, praises Middletown Public Schools in New Jersey and Passage Middle School in Virginia for finding acceptable ways to integrate mobile phones in teaching.

Middletown Public Schools in New Jersey, for example, brought together elementary, middle and high school educators to forge an acceptable-use policy that would allow students to use personal cell phones and other computing devices in school. Students then created videos to illustrate acceptable and unacceptable uses for their peers. At Passage Middle School in Newport News, Va., a host of student and educator uses of cell phones to support learning was unleashed when the principal decided to allow the use of cell phones for instructional purposes during class.

The report adds that schools can "solve the equity issues -- concern that affluent students will have devices and others will not -- by providing mobile devices for them, just as they do with free and reduced lunch programs."

As Audrey Watters points out in ReadWriteWeb, using cell phones in classrooms gives educators another opportunity to teach digital citizenship, among other things.

Recognizing that kids are bringing their own devices to school, and that proper controls and measures must be in place, I suggest that the following rules should be considered with regard to such devices,⁵ including cell phones.



1. Recognition of Appropriate Place of Electronic Devices. Any policy pertaining to bringing electronic devices to school must recognize the rationale for the policy. I suggest that the following provision fulfills such a purpose.

In recognition of: (i) the significance of electronic devices in society, work and school; and (ii) the fact that many students have their own electronic devices that can be used for proper educational purpose, it is the policy of the school district to allow students to bring their own electronic devices to school and to use said electronic devices subject to the following rules and such rules or instructions as may be imposed by the teachers in class or study hall or for assignments.

2. Safekeeping of Electronic Devices. Electronic devices are expensive. A top-of-the-line laptop filled with software costs more than my first car. I suggest that a policy must make clear that the district has no responsibility for the safekeeping of such devices. The policy provision in this regard may be as follows:

Students shall be solely responsible for the safekeeping of any electronic device brought to school and each student who brings an electronic device to school or to a school function or activity shall assume the risk of loss, theft, damage or other injury to the electronic device.

3. Keeping Track of Electronic Devices. In recognition of the unique and robust capabilities of electronic devices, and the ability of students to wreak havoc with such devices, it is recommended that all such devices be registered. A suggested policy provision may be as follows:

- **Device Registration Statement.** Prior to bringing any electronic device to school or to a school activity, students shall register the device with the principal of the school to which the student is assigned by completing a form used by the school district for such purpose.

No student shall bring any electronic device to school or to a school function or activity that is not registered. The school district has the right to confiscate any electronic device that is brought to school and that has not been properly registered by the student and his/her parent or guardian.

- **Registration Statement Database.** The director of technology shall establish a registration statement database that shall be secure and private and that shall include maintaining a copy of each registration statement supplied by students, parents and guardians.

4. Controlling Electronic Devices. There are many reasons why technical controls of electronic devices must be recognized, used and implemented. Although not all electronic devices may have security capabilities, virtually all do. I recommend that a provision couched as follows be included in a BYOD policy:

Students must protect their electronic devices by using user names, passwords and/or PIN to open or access the device to the extent available on the device. The user name, password and/or PIN, as applicable, must be provided on the registration statement. The user name, password or PIN may not be changed unless and until notice of the change is provided to district in writing in an amended registration statement.

5. Rules of Conduct. Virtually all school districts have adopted so-called “Acceptable Use Policies” by now. Such policies contain the “do’s” and “don’ts” of what students and employees can do on the district’s computers and on the district’s network and Internet access.⁶ A BYOD policy must make it clear that those same rules apply to the student’s own device when at school. A policy provision to that effect may be as follows:

All rules and prohibitions stated in this policy that are applicable to students shall apply as applicable to the use of a student’s electronic device that is brought to school.

6. Illegal Wiretapping. Pennsylvania’s Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S.A.

§5701, *et seq.*, generally prohibits the surreptitious recording of private conversations. It is generally a crime to audio record a private conversation without permission. It is recommended that to eliminate potential legal liability from such activity, that districts prohibit use of the audio recording function of electronic devices. Such a policy provision can be couched as follows:

Students shall not use the audio recording function of any electronic device at school or at any school activity or function unless given express and specific permission in advance by: (i) a teacher or administrator; and (ii) the individuals whose voices or activities are being recorded.

7. Camera Function. Although there are no laws like the Wiretapping and Surveillance Control Act with respect to pictures or video, it is generally a good idea not to allow those functions to be used without permission. A policy provision dealing with that aspect of electronic devices is as follows:

Students shall not use the camera or video recording function of any electronic device at school or at any school activity or function unless given express and specific permission in advance by: (i) a teacher or administrator; and (ii) the individuals who are being recorded.

8. Maintaining the Right To Confiscate Devices.

Just like any other item brought to school by a student and used improperly can be confiscated, so too should electronic devices when they are used improperly. However, there are many unique problems when confiscating a laptop, iPad or smart phone that are not present when a teacher confiscates a pencil or a comic book.⁷ Provision that deals with this issue is as follows:

- **District’s Right To Confiscate Electronic Devices.** The school district has the right to confiscate any electronic device that is brought to school or to a school function or activity: (i) that is not properly registered in accordance with this policy; (ii) that is used in violation of any of the rules or prohibitions contained in this policy; or (iii) that is used or “out” or “on” in violation of any instructions or directives by any teacher, administrator or other person who is in charge of the function or activity.

- **Confiscated Electronic Devices.** Any electronic device that is confiscated in accordance with this policy shall be returned only to the student's parent or guardian and on such terms and conditions as shall be determined by the school district. As a disciplinary consequence, the school district may keep the electronic device for the balance of the school year. This disciplinary response is in addition to any other disciplinary response that may be appropriate under the circumstances.

9. Fees and Charges. Usage of electronic fees is not always free. I suggest that a policy must make it clear that the district bears no responsibility for costs, charges and fees that a student may incur when using the electronic device, including smart phones. A suggested policy provision is as follows:

Under no circumstances shall the school district be responsible at any time for any fees or charges that may be associated with an electronic device brought to school by a student, including the cost of electronic device, monthly fees or charges, access fees, telephone service charges, data fees, Internet access fees or any other similar fee. All such fees, costs and charges remain the sole responsibility of the student and/or his parent(s) or guardian(s).

Conclusion

Recognizing the place of phones and other electronic devices in educating students, it is now time to shift focus from the device and govern and control the conduct. The legal and technical rules of such control are complex, but perhaps not as complex as changing current thought about the proper place of phones in the classroom.

End Notes

¹ http://www.schoolsecurity.org/trends/cell_phones.html

² <http://www.pbs.org/mediashift/2011/08/why-schools-should-stop-banning-cell-phones-and-use-them-for-learning241.html>

³ <http://blogs.kqed.org/mindshift/2010/11/cell-phones-in-schools-get-thumbs-up-by-the-department-of-ed/>

⁴ It must be remembered that all rules governing student conduct must be included in the Code of Student Conduct. The State Board regulations provide: "Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students' rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents or guardians. Copies of the code shall also be available in each school library." 22 Pa.Code, §12.3(c).

⁵ A pet peeve of mine is that many school districts have Acceptable Use Policies that are wholly insufficient and that do not adequately define the rules of conduct. Go to http://www.paessp.org/images/stories/documents/administrator/elec_dev_usage.pdf for a listing of rules that I recommend be included in any Acceptable Use Policy. Further, it is important that the rules be contained in the Code of Conduct.

⁶ For those young principals, comic books are things that kids use to read when I was young.

⁷ It is beyond the scope of this article to address all of the issues associated with digital technology and "acceptable use." My firm has developed a comprehensive policy pertaining to all aspects of technology policy, including the operations of the technology department. In that policy we have defined terms. All defined terms are capitalized

-- that is why there are capitalized words in this appendix (http://www.paessp.org/images/stories/documents/administrator/elec_dev_usage.pdf). It ensures that the reader is aware that the word has a defined meaning.

WOW! That's Why I Became a Principal

A New Feature in the *Pennsylvania Administrator Magazine*



Pursuing a career in school administration may not be as appealing these days as it once seemed, if you believe all the negative images or controversy over issues related to our public schools. Many influences such as changing demographics, the economy and limited resources, accountability demands and the constant change of political-driven initiatives impact not only public perception but the daily operations

of our schools. Yet, despite constant changes and public scrutiny of our educational system, educators rise to the challenge of providing all children a quality program for learning and personal growth.

Effective principals take the criticisms and changes in stride as they focus on providing the best services pos-

sible for all students. Some days are harder than others to maintain the enthusiasm and stamina needed to be a school leader, but more often than not, something occurs that triggers the heart and mind, reminding us "why I became a principal."

We are seeking short, humorous or uplifting stories that relate to some telling aspect of a school administrator's work life for our new feature, "Wow! That's Why I Became a Principal." Let's share our stories to encourage, cheer and support each other...lest we forget why we followed this career path.

Articles should be no more than 350-400 words (less if you include a photo and a brief caption) and should be e-mailed to Sheri Thompson at sherit@paessp.org.

If time is your obstacle, consider contacting Sheri to set up a phone interview to 'tell your story.' Then, we will format the article for you. The deadline for submitting an article for the September issue is July 6, 2012.