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Recent Court Cases Involving the Use of Artificial Intelligence in Schools

Tasked with writing an article summarizing recent court cases concerning the use of artificial intelligence ("AI") in schools, one might be tempted to utilize an artificial intelligence source such as ChatGPT, Gemini, Copilot or one of the many other "generative AI" tools to instantly create such an article. It is easy to do. For example, this writer navigated to the ChatGPT website and directed the AI program to "write an article aimed at school principals summarizing recent court cases about the use of artificial intelligence in schools." Within seconds, ChatGPT populated the writer's computer screen with just such an original article. This is not that article. Instead, "old-fashioned" internet research and manual keyboard strokes were put to the task. But what of the school student who uses a "generative-AI" program to complete a written research assignment? And in another context, what of the student who uses an AI tool to cyberbully or embarrass other students with so-called "deepfake" images posted on social media? Such examples beg the question: Should a school district have a policy allowing or prohibiting the student use of AI, and if so, to what degree? Two recent court cases suggest that the answer to this query is yes.

The Use of AI by Students

Considering the first example, to what extent, if any, should students be permitted to use AI for completing a research assignment? It does not appear that such a related case has been ruled upon by any Pennsylvania appellate court as yet. But it is not hard to imagine that such a case or some other AI-related case could be coming soon to a court near you, or that such an incident could soon be visiting your school, if not already. Aside from research and writing assignments, AI programs can also be used for tasks such as completing math problems and creating graphic works of art, for example.

One highly publicized court case over a student's use of AI to complete a research project comes to us courtesy of the United States District Court for the District of Massachusetts. In *Dale and Jennifer Harris, as Parents of RNH v. Margaret Adams, et al.*, the parents of RNH filed a complaint and a motion for a preliminary injunction against the superintendent, school administrators, social studies teachers and the School Committee of Hingham Public Schools after their son was disciplined by being given a grade of "D" for the project, a Saturday detention and being excluded from selection for the National Honor Society (NHS) for using an AI program in connection with a "National History Day" project. The Harris' complaint alleges that RNH, and his partner in their Advanced Placement U.S. History class, "had used AI to prepare the initial outline and research for their project on Lew Alcindor, better known as Kareem Abdul-Jabbar, and his pioneering role as a civil rights activist." The complaint alleges that RNH, a Hingham High School senior, was determined to have violated a 2023-24 student handbook provision

on "Academic Integrity: Cheating and Plagiarism." The school district had no school committee policy addressing the use of AI by students. And while its student handbook did not expressly address the student use of AI, the district relied on its handbook provision as written to mete out its punishment to RNH. The Harris' lawsuit alleges that the school district violated their son's rights when it disciplined him for his use of the AI program when there was no school district policy against it. They complained that the punishment and record of an academic integrity infraction jeopardized their son's hopes of gaining admission to an elite college or university, including Stanford University, "when he otherwise had and maintained an exemplary grade point exceeding 4.0." The complaint alleges that RNH had achieved a perfect score on the ACT exam, placing him in the top ¼ of 1 percent of those taking the exam, and a score of 1,520 out of 1,600 on the SAT exam. He was also a "three-sport varsity student-athlete."

Additionally, the Harris' complaint alleges that their son's teacher conducted spot checks of their son's "work in progress" on Google Classroom during the initial segment of the project and accused him (and his partner) of cheating by using AI. In their motion for preliminary injunction, RNH's parents assert that, "At the time, the Hingham High School Student Handbook ... did not proscribe the use of artificial intelligence, nor did the Handbook have any established rules, policies or procedures for not only the use of artificial intelligence, but what any administrators, faculty or students should do when encountering its use." At the time of the incident, the Student Handbook for the 2023-24 school year included the following provision:

Academic Integrity: Cheating and Plagiarism — To cheat is to act dishonestly or unfairly in order to gain an advantage. In an academic setting, cheating consists of such acts as communicating with other student(s) by talking or writing during a test or quiz; unauthorized use of technology during an assessment; or any other such action that invalidates the result of the assessment. Plagiarism consists of the unauthorized use or close imitation of the language and thoughts of another author and the representation of them as one's own work. Plagiarism and cheating in any form are considered disciplinary matters to be addressed by the school. A teacher apprehending one or more students cheating on any graded assignment, quiz or test will record a failing grade for that assignment for each student involved. The teacher will inform the parent(s) of the incident and assistant principal who will add the information to the student's disciplinary file. The assistant principal may take further action if they deem it warranted. See Code of Discipline.

Following the incident, that provision in the Student Handbook for the 2024-2025 school year was amended as it now reads (emphases added by the writer):

Academic Integrity: Cheating and Plagiarism — To cheat is to act dishonestly or unfairly in order to gain an advantage. In an academic setting, cheating consists of such acts as communicating with other student(s) by talking or writing during a test or quiz; unauthorized use of technology, including Artificial Intelligence (AI), during an assessment; or any other such action that invalidates the result of the assessment or other assignment. Plagiarism consists of the unauthorized use or close imitation of the language and thoughts of another author, including Artificial Intelligence, and the representation of such as one's own work. Plagiarism and cheating in any form are considered disciplinary matters to be addressed by the school. A teacher apprehending one or more students cheating on any graded assignment, quiz or test will record a failing grade for that assignment for each student involved. The teacher will inform the parent(s) of the incident and assistant principal who will add the information to the student's disciplinary file. The assistant principal may take further action if they deem it warranted. See Code of Discipline.

At the time that this article was written, a review of the Hingham Public School Committee's online policies does not include a policy on the use of AI by students.

Among the items of relief sought from the court in the Harris' motion for preliminary injunction is to restore their son's letter grade for the project to a "B," to amend and change any student records detrimental to their son arising from the incident and to "order the defendants to undergo training in the use and implementation of artificial intelligence in the classroom, schools and educational environment by a duly qualified third party not employed by the district[.]" The complaint avers that the district had previously "inducted at least seven students in NHS, who had academic infractions on their record, one of which was because of the prior use of AI." In the meantime, news outlets have reported that the NHS subsequently reconsidered its position and admitted RNH into its membership.

The Hingham Public Schools defendants have filed a motion to dismiss the complaint for failure to state a legally cognizable claim and a motion to dismiss the preliminary injunction. The case continued at the time of this writing, the federal court having not yet ruled on the parties' competing pleadings. On Dec. 18, 2024, the court ordered that the school district defendants must file their response in opposition to the Harris' motion for preliminary injunction by Jan. 31, 2025, and the

Harrisses must file their reply by Feb. 14, 2025. In other words, disagreement over the propriety of a student's use of AI in the preparation of a social studies research project has become a federal case.

In the case of a Pennsylvania high school student who allegedly used AI to create sexually explicit "deepfake" images of numerous female students, that case is filed in the Lancaster County Court of Common Pleas. At the time that this article was written, the Plaintiffs' attorney has filed a writ of summons naming as plaintiffs "Mother Doe" and "Father Doe" parents in their own right and also on behalf of 11 "Jane Doe" minor daughters, as well as "Jane Does Twelve Through Forty-Six." The suit is filed against Lancaster Country Day School, its former head of school and its board president. Several news sources report that the two individual defendants have since resigned from the pre-K-12 private school. According to the news sources, the incident involved a male high school student who created AI-generated nude images of the numerous "Jane Doe" students. Such "deepfake" images, videos or audios are created by the AI-manipulation of pre-existing images or photos that make it deceptively appear that the targeted individual looks a certain way, as in this case, nude. Such AI-manipulated images can also make it appear that an individual is performing some action or stating something that they did not do or say. As per the news sources, an anonymous tipster first reported the Lancaster Country Day School incident through Pennsylvania's Office of Attorney General's *Safe2Say Something* program in November 2023. At last check, the Lancaster County Sheriff's Office had personally made service of the writ of summons on the school and on one of the two individual defendants. A writ of summons is a "bare-bones" civil court filing that may be filed to commence a lawsuit prior to the filing of a numbered paragraph, fact-laden complaint that requires the named defendants to file a response. Unless a prompt settlement occurs between the parties, the court case proceeds to full-scale litigation. In this case, the writ indicates that each of the numerous parents and female students are seeking an award of money damages against the school district and the individual defendants for negligence.

According to *USA Today* (Martin, 2024), citing local media outlets, although the incident was first reported in November 2023, school personnel did not contact police or take any mandatory reporting action until a second tipster reported the incident in May 2024. The *USA Today* account cites a local news outlet that the school district had sent parents a letter about the first incident but could find no proof that the images existed. After the second report of the incident, the school district sent a letter to the parents advising them that it now had evidence that the altered photograph images existed and that it had reported the incident to the authorities. According to a CRIMEWATCH® article attributed to the Susquehanna Regional Police Department (2024), the images reportedly appeared in a chat group between two male students on the social media platform "Discord," a gaming, voice, video and text app especially popular with teenagers and young adults. It has been reported that additional AI-manipulated photos appearing to show female students in the nude were posted between the time of the first *Safe2Say Something* report in November of 2023 and the second report in May of 2024. The CRIMEWATCH® article reported that the two male students have been charged in the juvenile justice system with numerous crimes in connection with the deepfake images, which had been created from pictures of the female students appearing their social media accounts. The article further reported:

> In addition to the criminal charges, District Attorney Heather Adams has determined that school officials were not required under the letter of the law to report the incident to ChildLine under the current definition of child abuse relating to the mandatory reporting law. While school officials are mandatory reporters under the Child Protective Services law, the criminal conduct alleged here regarding the possession and dissemination of AI child pornography does not fit within the definition of child abuse under current law. Child-on-child harm is exempted from the definition of child abuse, and the crimes charged here are not contained in an enumerated listing of offenses that must be reported regardless of whether the offense was

committed by another child. Therefore, no criminal charges will be filed against the school administration.

Changes in Pennsylvania Law

Coincidentally, Pennsylvania's Legislature recently addressed the issue of sexually explicit AI-generated images created without an individual's consent. On Oct. 29, 2024, the Legislature passed, and Gov. Shapiro signed Act 125 of 2024 (effective as of Dec. 30, 2024). Among other things, the law amends, as indicated by the addition of language in bold font, several relevant sections of the Pennsylvania Crimes Code. This includes amendments such as (only partially summarized here): to generate **"[a]n artificially generated sexual depiction of an individual"** (Section 3131 - Unlawful dissemination of intimate image); to knowingly sell, distribute, deliver, disseminate, transfer, display or exhibit to others **"child sexual abuse material or artificially generated child sexual abuse material"** (Section 6312 - Sexual abuse of children); and, to transmit **"[a]ny visual depiction: (1) that appears to authentically depict a child under 18 years of age engaged in conduct or an action or state of nudity that did not occur in reality; and (2) the production of which was substantially dependent upon technical means, including artificial intelligence** ... (Section 6321 - Transmission of sexually explicit images by minor). And in seeming recognition of the duty of mandatory reporters, Act 125 of 2024 also amends Crimes Code Section 7622 ("Duty of Internet service provider"). Pursuant to that section, "An Internet service provider shall remove or disable access to child **sexual abuse material** items residing on or accessible through its service in a manner accessible to persons located within this Commonwealth within five business days of when the Internet service provider is notified by the Attorney General pursuant to section 7628 (relating to notification procedure) that child **sexual abuse material** items reside on or are accessible through its service." The law inserts the term **"sexual abuse material"** to replace the term "pornography" where it had appeared pre-amendment in Section 7628 and several relevant Crimes Code sections. Since Crimes Code Section 6312 ("Sexual abuse of children") already has been one of the enumerated offenses covered by the Child Protective Services Act, mandated reporters as of Dec. 30, 2024, are now *expressly required by the law*, to report any knowledge or suspicion that an individual has disseminated or displayed to others, etc., **"child sexual abuse material or artificially generated child sexual abuse material."**

The U.S. Department of Education Weighs In on AI

In October 2024, the U.S. Department of Education, Office of Educational Technology ("Office of Ed Tech"), published its 74-page report, *Empowering Education Leaders: A Toolkit for Safe, Ethical, and Equitable AI Integration.* This self-described "toolkit" for educational leaders serves as a sequel to the Office of Ed Tech's May 2023 report, *Artificial Intelligence and the Future of Teaching and Learning, Insights and Recommendations* ("AI Report"). The basic premise of these reports is that AI is here to stay, and educational leaders need to be, and stay, informed. As described in *Homeroom, The Official Blog of the U.S. Department of Education*, posted on Oct. 24, 2024, the date of release of the Office of Ed Tech's 74-page report:

> [T]his toolkit is designed to help educational leaders make critical decisions about incorporating AI-enabled tools and applications into teaching and the instructional core. Through listening sessions with over 200 educators and AI subject matter experts, and at many public events in the past year, the Department heard that AI is here to stay, AI will keep changing, and safely integrating AI in educational settings will require informed leadership at multiple levels across the education system. Thus, the toolkit sets forth and expands upon the material in the AI Report, connecting broad ideas about AI to the establishment of school and district use policies that will guide its effective implementation.

In addition to the need for student handbook and formal school district policies to spell out the rules of acceptable and/or non-acceptable uses of AI for completing schoolwork assignments, educators and administrators likewise should be given express rules of conduct in the use of AI by employees. Such uses can include preparing lesson plans, grading student assignments, communicating with parents or completing employee evaluations, as but a few examples. It is this author's belief that AI is a useful tool that should be allowed by the school district, but within certain limits. An example of a provision in an employee Code of Conduct allowing employees to use AI is as follows.

1. **A.I." or "Artificial Intelligence"** means the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings. The term is frequently applied to the project of developing systems endowed with the intellectual processes characteristic of humans, such as the ability to reason, discover meaning, generalize or learn from past experience.
2. **Generally.** Except as otherwise prohibited by a supervisor or school district directive, employees may use Artificial Intelligence at their own risk to accomplish work requirements provided that the following terms and conditions are met.

3. **Specific Requirements.** Employees using Artificial Intelligence must comply with the following terms and conditions:
   a. An employee's use of Artificial Intelligence does not excuse the employee's noncompliance with any requirement of this Code of Conduct. Employees must comply with all applicable rules contained in this Code of Conduct when using Artificial Intelligence.
   b. Employees may not input or enter any of the following information into any Artificial Intelligence program, platform, software or system:
      (1) School district data.
      (2) Information or data that is protected by any Applicable Law, including the Family Education Records and Privacy Act ("FERPA"), the Americans with Disabilities Act ("the ADA"), the Individuals with Disabilities Education Act ("the IDEA"), Chapter 12 of the State Board of Education, 22 Pa. Code, Chapter 12 and the privacy protections of the Pennsylvania Constitution.
      (3) Copyrighted material or material protected by trademark, patent or trade secrets.
      (4) Any information or data from which any person may be identified.
      (5) Any recording of any school district activity, including recordings of meetings, classrooms, assemblies and plays.
      (6) Any summary of any school district activity, including recordings of meetings, classrooms, assemblies and plays.
      (7) Any information or data the disclosure of which violates the rights of any person or entity, including the school district.
      (8) Any photograph or picture of the interior or exterior of any school building or facility, or part of any school building or facility, in the school district.
      (9) Any plans, drawings or specifications concerning any school building or facility of the school district.
      (10) Any school district records that are exempt from disclosure under Pennsylvania's Right-to-Know Act, 65 P.S. § 67.708.
      (11) Any photograph or picture of any student, employee, parent of any student, contractor, visitor or official of the school district; or
      (12) Any photograph or picture of any bus or other vehicle of the school district.
4. The employee is fully responsible for the accuracy, suitability, quality and appropriateness of any product developed by the employee that is based, in whole or in part, on Artificial Intelligence. **WARNING:** EMPLOYEES ARE WARNED THAT THE OUTPUT, PRODUCT OR INFORMATION PRODUCED BY ARTIFICIAL INTELLIGENCE MAY BE INACCURATE, UNSUITABLE, OF POOR QUALITY, OFFENSIVE OR OTHERWISE INAPPROPRIATE. IN ADDITION, ARTIFICIAL INTELLIGENCE MAY PRODUCE OUTPUT, PRODUCT OR INFORMATION THAT IS IN VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS OF ANOTHER OR IN VIOLATION OF RULES IN THIS CODE OF CONDUCT. ANY EMPLOYEE UTILIZING ARTIFICIAL INTELLIGENCE IS FULLY RESPONSIBLE FOR ANY INACCURATE, UNSUITABLE, INAPPROPRIATE, OFFENSIVE OR POOR-QUALITY PRODUCT PRODUCED IN WHOLE OR PART BY ARTIFICIAL INTELLIGENCE AND USED BY THE EMPLOYEE AT OR FOR WORK.
5. Any work product used by any employee that is based in whole or in part on Artificial Intelligence, shall be deemed to be the work product of the employee as if the work product was original to or created by the employee in whole.
6. Failure of an employee to comply with any of these terms and conditions may subject the employee to discipline, including discharge, and is considered to be egregious misconduct as defined in this Code of Conduct.

Given the already substantial number of generative AI programs in use and the wide variety of applications that have been utilized on a daily basis, school districts will undoubtedly encounter novel situations and questions as a result of such use, whether by students or employees. For this reason, and as the real-life examples and new law discussed above should caution, school districts need to have clear policies to guide the conduct of students and employees in both the use, and the discovery of use, of AI. ■

REFERENCES:

Martin, S. (21, Nov. 2024). *A Pennsylvania boy used AI to make nude images of female students. Was it illegal? USA Today.* https://www.usatoday.com/story/news/nation/2024/1½1/pennsylvania-parents-nude-photos-artificial-intelligence/76474857007/

Susquehanna Regional Police Department. (5, Dec. 2024). *2 juveniles charged in connection to AI-generated images of Lancaster Country Day School students; DA determines school officials were not legally required to report AI incidents.* CRIMEWATCH®. https://lancaster.crimewatchpa.com/susquehannaregionalpd/41059/cases/2-juveniles-charged-connection-ai-generated-images-lancaster-country-day-school-students

United States Department of Education (USDOE). (2023, May). *Artificial Intelligence and the Future of Teaching and Learning.* Office of Educational Technology. https://www.ed.gov/sites/ed/files/documents/ai-report/ai-report.pdf

United States Department of Education (USDOE). (2024, October). *Empowering Education Leaders: A Toolkit for Safe, Ethical, and Equitable AI Integration.* Office of Educational Technology. https://tech.ed.gov/education-leaders-ai-toolkit/

United States Department of Education. (24, Oct. 2024.). *Homeroom: The Official Blog of the U.S. Department of Education.* https://blog.ed.gov/