



May 25, 2012

Chris Pattacini, Chair  
Manchester Board of Education  
cpattacini@manchesterct.gov  
By Electronic Mail

Re: Proposed Manchester Board of Education Social Networking Policy

Dear Mr. Pattacini,

We are writing to express concerns regarding the Social Media Policy (“policy”) being considered by the Manchester Board of Education. The proposed policy would violate the First Amendment of the United States Constitution by prohibiting school employees from engaging in protected speech. We urge you to reject this policy.

Item six in the policy’s introduction would prohibit personal use of social media that harms “the goodwill and reputation of the school district in the community.” In Pickering v. Board of Education, 391 U.S. 563 (1968), the United States Supreme Court ruled that a public school teacher could not be disciplined for criticizing a school board in a letter to a newspaper for its handling of a budget. Item six prohibits the very type of speech that was at issue in Pickering and was found by the U.S. Supreme Court to be protected.

The entire policy must be read in conjunction with the introduction, particularly including, Item six. Therefore, Item six taints the entire policy.

Item four of the Administrative Regulations, All Social Media Activity, mandates that employees use “appropriately respectful speech” in their personal social media. This mandate is unconstitutional because it restricts disrespectful speech—even when it addresses matters of public concern - whether or not it interferes with the work of the school district. This mandate runs afoul of the First Amendment protection of speech that is “vehement, caustic and sometimes unpleasantly sharp . . . .” New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964).

Finally, the requirement in item two of the Administrative Regulations, Personal Use of Social Media, that “[e]mployees must use caution in mentioning other Board of Education employees or other members of the school community” is unconstitutionally vague. It is vague despite – and indeed precisely because of – the exception for speech that “falls under applicable constitutional protections.” An average Manchester school employee will not be able to determine what speech “falls under applicable constitutional protections” when First Amendment experts – lawyers, judges, law professors – cannot agree on the subject. This

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proposed exception mirrors Professor Lawrence Tribes' textbook illustration of a vague statute: "It shall be a crime to say anything in public unless the speech is protected by the first and fourteenth amendment." Lawrence Tribe, American Constitutional Law, §§12-29, 1031 (2nd Ed. 1988).

This unconstitutional policy is intended to restrict employees' personal use of social media. If this policy is adopted, the ACLU of Connecticut will monitor its application to ensure that employees' rights are respected. We encourage the board to reject this policy.

Please do not hesitate to contact us with any questions regarding our position.

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Sincerely,

*David McGuire*  
(sgs)  
David McGuire  
Staff Attorney

Martin B. Margulies  
Cooperating Attorney

Cc: Dr. Richard Kisiel, Interim Superintendent (By Electronic Mail)  
Manchester Board of Education Members (By Electronic Mail)