Statement on Right to Privacy in the School Setting Act (Illinois Public Act 098-0129)
by Frank D. LoMonte, Executive Director of the Student Press Law Center

Reprinted from an email on January 23, 2015

It's unfortunate that what started out as a well-intentioned law to limit the ability of schools to pry into students' off-campus personal lives is now being spun as a license for greater snooping. It is quite doubtful that the courts would find a search as intrusive as logging into a social-media account to be constitutional based on suspicion of violating school rules, since school rules are so open-ended. Coming to school in a skirt that's too short or being five minutes late to class is a violation of a school rule. Would we really tolerate the principal reading a student's private messages to see whether she was on Facebook during the five minutes she wasn't in class?

Last year, the Supreme Court ruled that police can't help themselves to the contents of a cellphone without a search warrant, even after they make an arrest and are taking the cellphone owner into custody. In that case, ***Riley***, the Court recognized that a cellphone contains huge amounts of highly personal information well beyond what a briefcase or backpack or other physical space could contain, so a search of a phone is a greater intrusion than a search of a briefcase or backpack and is going to require greater justification. That is true of social media as well. Many people use social media to carry on one-to-one conversations about intimate personal subjects that are none of the government's business, and the ability to log into someone's non-public Facebook, Twitter or Instagram account gives a school access to all of those personal messages, which might include conversations with family members that have nothing to do with school.

While the same Fourth Amendment rules don't apply on campus, students do have some level of Fourth Amendment protection and school searches can certainly go too far. The Supreme Court said in its 2009 ***Redding*** ruling that a school violated a student's Fourth Amendment rights by strip-searching her to look for drugs without a warrant. What the Court said in that case -- that a school can't invade a student's personal privacy without strong justification to believe that the student poses a danger to the safety of others on campus.

A federal judge in Minnesota has already ruled against a school in a case involving a demand that a student log into her social-media page so her principal could respond to a complaint about comments she made during an off-campus Facebook chat on personal time.
http://www.splc.org/article/2012/09/judge-wont-dismiss-lawsuit-accusing-minnesota-school-of-demanding-sixth-graders-facebook-password

Regardless of what Illinois law says, the Constitution overrides state statutes, and a school cannot depend on Illinois law to validate a search that is unconstitutional under federal law.

The courts have been pretty protective of students' First Amendment rights when they speak off campus, especially when they are criticizing school employees, who are government officials. In a case decided by a federal appeals court in Louisiana last month, a student won his First Amendment challenge after he was suspended for sharing a homemade rap video on Facebook in which he accused school coaches of inappropriate behavior with students.

It might be constitutional to enforce a rule allowing for searches of social-media pages in cases involving a physical threat to the safety of the campus, but certainly not based on just the violation of a school rule, which might be something as minor as smoking a cigarette or parking in a no-parking space. The risk is that a school can almost always say that someone is suspected of violating a school rule and then use that opportunity to go fishing through private messages. I assume that the Illinois legislature will recognize this mistake and correct the law to clarify that schools cannot demand social-media passwords for something as minor as the violation of a school policy.

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