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New Law Addresses Right to Access Students' Social Network Accounts

On January 1, 2014, the Illinois Right to Privacy in the School Setting Act, Public Act 09-0129, will go into effect. The Act addresses school officials' ability to obtain access to the "pages" of students' social network accounts. The new law covers both public elementary and secondary school districts, as well as nonpublic schools "recognized by the State Board of Education." It also applies to post-secondary institutions.

Once the Act takes effect, elementary and secondary schools must notify students and parents that they may "request or *require*" a student to surrender a "password or other related account information" in order for school officials to access "the student's account or profile on a social networking site if the school has reasonable cause to believe that the student's account on a social networking website contains evidence that the student has violated a published disciplinary rule or

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policy." (Emphasis added.) This notice must be published in the elementary or secondary school's disciplinary rules, policies, or handbook or be communicated to the parents and students "by similar means."

Under the Act, a "social networking website" is defined as an Internet-based service which "allows individuals to 1) construct a public or semi-public profile within a bounded system created by the service; 2) create a list of other users with whom they share a connection within the system; and 3) view and navigate their list of connections and those made by others within the system." FaceBook and Twitter are two very popular examples of social networking websites covered by the Act. E-mail is not included in the definition of a "social networking website."

School districts and joint agreements should comply with the Act. That said, we believe that the Act raises constitutional concerns that should be fully considered before deciding to seek access to a student's social network account or profile. The Act does not define what constitutes a student's "semi-public profile". This, in turn, raises the question of exactly what content of a student's social networking profile may be accessed. This is of critical importance because last year, one

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federal court held that students have a reasonable expectation of privacy in their ***private*** social networking accounts/profiles, and that a search of a ***private*** profile may violate a student's right to be free of an unreasonable search in violation of the Fourth Amendment to the U. S. Constitution. The same federal court determined that school officials may be held liable for violating a student's freedom of expression under the First Amendment to the U. S. Constitution for punishing a student who engaged in out-of-school postings that did not contain threats of violence, pose a safety risk, or cause a substantial disruption to the educational environment.

Again, school districts should amend their student discipline policy and procedures as contemplated by the Act, and publish the amendment in their student-parent handbook. However, school districts and joint agreements should proceed with caution in this area once the Act takes effect. Before actually requesting or requiring access to a student's social network account, all relevant circumstances would need to be evaluated in light of applicable constitutional standards. If you have any questions or concerns about how your school district or joint agreement will implement the Act, please contact our attorneys at our

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