

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader

Senate Bill 904

(Senators Waugh and Miller)

Education, Health, and Environmental Affairs

Ways and Means

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Public Schools – Social Media Use by Educators

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This bill requires the State Board of Education to develop a model policy for public schools regarding the use of social media by educators. Each local school system must establish a policy regarding the use of social media by educators based on the State board's model policy and provide training that relates to its policy on social media for teachers, administrators, staff, students, parents, guardians, and volunteers. The bill does not apply to the use of internal school networks and systems for official school purposes such as grade reporting. **The bill takes effect July 1, 2018.**

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Fiscal Summary

**State Effect:** The Maryland State Department of Education (MSDE) can develop the model policy using existing resources. Revenues are not affected.

**Local Effect:** Local school systems can establish and implement local policies using existing resources. It is assumed that the required training can be in the form of handouts or otherwise communicated using existing resources.

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

#### *Model Policy*

The model policy must protect student privacy and educator integrity and allow safe and appropriate communication among educators and with students, parents, guardians; promotion of school activities; and use of social media by educators in the classroom and in connection with school-related activities. The model policy developed must include guidelines that address specified topics including the use and publishing of student names, images, and work products; and the intersection of personal and professional personas.

#### *Local School Systems*

An educator *may opt* to use social media in the classroom or in connection with school-related activities in accordance with the local school system's social media policy. A school system, student, parent, or guardian may *not compel* an educator to use social media in the classroom or in connection with school-related activities.

An educator who opts to use social media in the classroom or in connection with school-related activities must (1) indicate on the form provided by the local school system the individual's consent to the social media policy; (2) establish a professional account that is separate from any personal account and used exclusively for school-related activities; and (3) communicate on social media with or about a student only through the professional account used exclusively for school-related activities.

An educator may not publish any work product or image of a student on a *personal* social media account.

A student or, if the student is a minor, the student's parent or guardian may consent to the use of social media in the classroom or in connection with school-related activities in accordance with the local school system's social media policy. However, a local school system, an educator, or any other school employee may *not compel* a student, parent, or guardian to consent to the use of social media in the classroom or in connection with school-related activities.

A student, parent, or guardian who consents to the use of social media in the classroom or in connection with school-related activities in accordance with the social media policy must indicate the individual's consent on the form provided by the local school system.

**Current Law/Background:** The growing use of social media in daily lives has raised new questions of professional ethics for teachers. Guidance can help teachers avoid the common social media pitfalls and make them aware of the tools to separate their public and private lives. On the other hand, when developing social media policies, states and local school systems need to be sure they comply with freedom of speech granted by the First Amendment of the U.S. Constitution and employment rights afforded teachers. In Maryland, there are no laws governing social media use by educators; however, there are federal and State laws governing student data privacy.

Chapter 413 of 2015 – Student Data Privacy Act – requires an operator of specified websites, online services, online applications, and mobile applications designed primarily for a preK-12 public school purpose operating in accordance with a contract to (1) protect covered information from unauthorized access, destruction, use, modification, or disclosure; (2) implement and maintain reasonable security procedures and practices to protect covered information; and (3) delete covered information upon request of the public school or local school system. In addition, an operator may not knowingly (1) engage in targeted advertising based on the data collected through the website, online service, or application; (2) except in furtherance of a preK-12 school purpose, use information to make a profile about a student; (3) sell a student’s information, except as provided; or (4) disclose covered information, except as detailed in the bill. Operators may use aggregated or de-identified information under certain circumstances. Chapter 413 does not apply to general audience websites, online services, online applications, or mobile applications, even if a login is created.

At the federal level, the Family Educational Rights and Privacy Act (FERPA) and the Children’s Online Privacy Protection Act (COPPA) govern the privacy of student data when educational institutions engage cloud service providers.

FERPA generally prohibits the disclosure by schools that receive federal education funding of personally identifiable information from a student’s education records, unless the educational institution has obtained signed and dated written consent from a parent or eligible student or one of FERPA’s exceptions applies. Educational institutions are bound by FERPA to protect the privacy of student and family information. In addition, MSDE follows guidelines specified by the Maryland Department of Information Technology’s Information Security Policy.

COPPA governs operators of websites and online services that are directed to children younger than age 13 and operators of general audience websites or online services that have actual knowledge that a user is younger than age 13. Notably, the Federal Trade Commission has clarified that if an educational institution contracts with a cloud service provider that uses the students’ data for advertising or marketing purposes, then COPPA is triggered.

According to the Code of Maryland Regulations, individual student records maintained by teachers or other school personnel under certain provisions are to be confidential in nature, and access to these records may be granted only for the purpose of serving legitimate and recognized educational ends. Individual student records, with the exception of records that are designated as permanent and with other exceptions provided by law, must be destroyed when they are no longer able to serve legitimate and recognized educational ends.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Department of Education; Department of Legislative Services

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