

Using Caution in Cyberspace

*Guidelines for Addressing
Malicious Communications*

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A student impersonates you using your name, image, or likeness on the Internet, so what can you do?

A student takes your identity and creates a fake profile on an Internet social networking site such as MySpace.com. It may be a harmless prank, but it might not be. What if, pretending to be you, the student links the profile to an escort service, a strip club, a pornography site or—worse—a site promoting the acceptability of adults having sex with minors? What if, using the site, the student sends harassing or sexually suggestive e-mails to other students or staff at your school? Parents, students or peers begin to complain to the school about you and the next thing you know you are having to explain conduct that isn't yours or, worse yet, you are suspended pending an investigation. What are you going to do?

First, you shouldn't panic! You need to be proactive about such a profile but don't overreact to it. You should contact your local UniServ representative for assistance. There is always the chance school officials might come after you. This step is a must if your district threatens you or takes any negative employment action against you regarding a student's fake profile about you.

Second, if you discover a student has created a profile for or about you, without your permission, contact the website on which the fake profile appears. Most social Internet sites now have procedures for educators to report and request removal of fake profiles. You should take the following steps:

- 📧 Promptly notify MySpace.com (or other website, as applicable) that someone has created an imposter profile about you.
 - ✓ MySpace.com has created a special form just for teachers and faculty members to report this type of abuse. Check under MySpace's FAQ section.
 - ✓ Also, review MySpace's *The Official School Administrator's Guide to Understanding MySpace and Resolving Social Networking Issues* online by typing the following in your web browser:
<http://www.nsba.org/SecondaryMenu/COSA/Search/AIICOSAdocuments/MyspaceAdministratorsGuide.aspx>.
- 📧 Request that the profile be immediately removed and that you receive confirmation when it is removed.
- 📧 Keep a copy of the form you filled out and submitted to the network and the time and date you submitted it.
- 📧 Monitor the situation to make certain MySpace.com responds and removes the profile quickly. If a response is not received in a timely fashion contact them again and complain.

Third, inform the school administration about the fake profile and who could have created it. Find out if the district has a policy against a student impersonating a teacher or staff member and what the consequence is if they do it. If they don't have a policy ask why not and when they might create such a policy. Also try to find out what the district would do or has done when teachers or staff have brought incidents of fake identification to its attention. You may be tempted to investigate who created the profile yourself, but try to avoid that temptation. Instead, you should let the administration handle any investigation. If the district finds that a student created the fake profile, the student may be disciplined in accordance with district policy or the student code of conduct.

You should, however, be aware that the district may be limited in its discipline of an involved student if the conduct occurred off school district property, unless the material contained in the profile constitutes a true

threat to you or when the expression creates a material and substantial disruption of school activities. This limitation is related to the student's First Amendment rights under the United States Constitution and the school district's lack of authority to reach beyond the school house gates in order to discipline students except under limited circumstances. The First Amendment does not prohibit school officials from censoring student expression when it occurs within a school-sponsored context and when the venue for expression has not been opened up as a public forum, if school officials can demonstrate that their actions are "reasonably related to legitimate pedagogical concerns." But if school censorship has "no valid educational purpose," the First Amendment will prohibit it.¹ Thus, school districts may be able to censor student speech and discipline for speech-related offenses that occur on school grounds and at school-sponsored events, but off school grounds they are limited in what they can do.

Fourth, you may want to consider contacting local law enforcement officials to file a criminal complaint, for a couple of reasons. Depending on the content of the profile, the creator of the profile may have committed a crime such as identity theft, stalking, fraud, or criminal libel. Also, MySpace won't help identify the culprit without a subpoena, which may require the involvement of the local prosecutor or the police. However, recognize that law enforcement or the local prosecutor may not believe the content of the profile rises to the level of a crime or, if it is a crime, it may not be a high priority for law enforcement officials, but at least you will have covered your bases.

Nevada has criminal statutes prohibiting the following:

Criminal libel under NRS 200.510 et. seq.;

Prohibiting "[O]btaining and using personal identifying information of another person to harm or impersonate person, to obtain certain nonpublic records or for other unlawful purpose;" under NRS 205.463; and,

"Unlawful acts involving electronic mail or transmission of other data, information, images, programs, signals or sounds to computer, system or network" under NRS 205.492.

Whether a student could be prosecuted under one of these criminal statutes for his or her behavior would be up to law enforcement agencies and the county district attorneys.

Fifth, if you know who the student is who created the site, tell him or her to stop it, to remove the profile, that their actions are not welcome, and to leave you alone. Do it in writing and keep a copy of it. If you must

do it in person, have a witness present when you confront the student, if possible. Let the district know that you are taking this step. If you take this step and the student continues his or her activity, you then would be able to claim that the profile was unwelcome to you and that unwelcomeness was conveyed to the student.

Finally, in aggravated cases, you may be able to pursue a defamation lawsuit against the creator of the fake profile. Under Nevada law, "libel" is a defamatory statement expressed by printing, writing, signs, pictures, or the like, which either blackens the memory of a deceased person, or impeaches the honesty, integrity, virtue, or reputation of a living person and exposes him or her to public hatred, contempt, or ridicule. The general elements of a defamation claim in Nevada require a plaintiff to prove: "(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence unless the person being defamed is a public official or public figure, and then "actual malice" has to be shown by clear and convincing evidence which is a higher standard of evidence; and, (4) actual or presumed damages."² A defamatory statement is a false statement of fact that "would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt." Statements that are "exaggeration or generalization that could be interpreted by a reasonable person as 'mere rhetorical hyperbole'" are not defamatory.

There are two categories of public figures: "General public figures are those individuals who 'achieve such pervasive fame or notoriety that [they] become a public figure for all purposes and in all contexts'"; "Limited public figures are individuals who have only achieved fame or notoriety based on their role in a particular public issue."³ Typically a teacher would not be a public figure but could become a "limited public figure" in some situations.

It is important to keep in mind, however, that the truth is a defense to a libel action. You would not have a case of libel if the statements made about you on a fake profile are true, even if they may be embarrassing to you.

¹ *Bethel School District v. Fraser* 478 U.S. 675 (1986); *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

² *Pegasus v. Reno Newspapers, Inc.*, 118 Nev 706 at 715-718, 57 P. 3d 82 at 90 (2002). Actual malice has been defined as "knowledge that it [the statement] was false or with reckless disregard of whether it was false or not." Reckless disregard means "that the publisher of the statement acted with a 'high degree of awareness of . . . [the] probable falsity' of the statement or had serious doubts as to the publication's truth." *Id.*, at 719.

³ *Id.*, 118 Nev at 718-720 (2002).

Avoid Becoming a Target

The Internet is a great tool for you and your students to use, but it can also be a dangerous place. Identity theft, cyberstalking, cyberbullying, sexual predators, and the loss of inhibitions regarding community morals and ethics are some of the dangers.

Being proactive is the best offense. Don't make yourself a target or, at least, try to make yourself the smallest target possible. There are steps you can take, that may make it more difficult for a student to steal your identity and create a fake profile about you or use the Internet in other ways against you.⁴ There are limitations to these steps' effectiveness, however, because if a student is really motivated, he or she will probably find a way to create a fake profile about you or use the Internet against you no matter what steps you take. Your making it harder for them to be successful may just discourage the effort, so consider following these tips:

- 🚫 Don't create a profile on a social network.
- 🚫 If you do create a profile or already have one on a social network, try to be savvy and thoughtful about your Internet postings because they may come back to haunt you in a negative way or impact your employment. Remember—
 - ✓ Nothing is really private on the Internet. While many sites allow you to limit access to your profile to your "friends," those limitations can be gotten around by savvy net users.
 - ✓ Assume that anyone can view your profile no matter how many security measures you may have in place or that may have been promised to you by the network.
 - ✓ There are no "take backs" online even when material is deleted. It is very easy for material to be copied, saved, and forwarded so it can continue to exist in cyberspace.
 - ✓ A good rule of thumb is do not post anything that you would be embarrassed for your supervisor or, better yet, your grandmother (who for purposes of this example is conservative and straight laced) to read.
- 🚫 Do not post pictures that might be easily manipulated. In addition, it is a good idea to keep track of the pictures you do post in case you ever need to prove that the photo was modified.
- 🚫 Tell your friends to be mindful that, as a teacher or person who works for a public school district, you are more likely to be held to a higher standard of conduct than the average person and that material posted on the Internet that might not create concern in other types of employment, may create a controversy in regard to your employment. An example would be: A friend posting a comment to your profile about bar hopping or wild sex you had.

⁴ NSEA published an article in its newsletter, *Perspectives*, Back to School 2008, edition entitled Online? Stay in Bounds! An Advisory for Pre-K-12 Members, on page 9 which contains helpful information for educators about being and using online computer services.

- 🔒 Keep student/teacher boundaries in mind.
 - ✓ Just as you are mindful of setting appropriate student/teacher boundaries in the classroom, those boundaries must also be respected in cyberspace.
 - ✓ Do not add students to your “friends” list.
 - ✓ Do not post comments to students' profiles even if they are innocent in nature. Posting on a student's profile could motivate allegations of misconduct, which can lead to parent complaints or negative employment actions including reprimands, suspension, or termination.
 - ✓ If a student contacts you through one of these network sites, you should not respond in kind. Rather, explain to the student later that it is inappropriate for you to communicate with him or her in that manner. If the student persists in contacting you via your profile, tell your administrator.
- 🔒 Find out what your district's policy is on use of e-mail with students and comply with that policy.
 - ✓ Don't provide students with your personal e-mail address.
 - ✓ Don't send e-mail to students from your home computer.
 - ✓ Instead, if you have school e-mail, provide that address to your students but first:
 - ⓘ Find out if your school or the district has an Acceptable Use Policy for use of district computers, the Internet and electronic mail usage by students. An agreement should have to be signed by the students and their parent or legal guardian before direct access to Internet or teacher directed electronic mail will be allowed.
 - ⓘ If your district does not have an Acceptable Use Policy, get your association to work with them on such a policy. Until a policy is created by the district or your school, consider creating your own classroom rules on use of e-mail vis-à-vis communication between you and your students and require it to be signed by the student and his parent or guardian.
 - ⓘ An Acceptable Use Policy Agreement should apprise students and parents that students will be held accountable for violations of the Agreement and advise them that disciplinary action may be taken if a violation occurs.
 - ⓘ Before providing the student with your school e-mail make certain the district has a signed agreement for that student. Then if a student abuse occurs, the district will be in a better position to discipline the student for violation of its policy.
- 🔒 Keep e-mail sent to students from you professional and related to school assignments or school activities.
 - ✓ Do not use school district computers to surf the Internet except for sites specifically related to educational purposes.
 - ✓ If you have the opportunity in your classes to discuss a code of conduct for use of the Internet and electronic mail with your students, use it to encourage responsible behavior.

For more information call 800-248-6732, ext. 5020



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