

Case Breakdown: Student Discipline, Digital Citizenship, and more!

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The Plan for Today

- Student Discipline Act
- Activity on school grounds vs. activity that disrupts
- Free speech, online activity, and the school response
- Cyberbullying, sexting, and student discipline

Goss v. Lopez

(U.S. 1975)

- Nine students were suspended from Columbus schools for food fight over Vietnam War
- Court ruled that there was a constitutional right to an education
- That right could not be taken away without due process
- The right to procedural due process was inherently involved when fundamental rights are removed

Student Discipline Act

Sections 79-254 to 79-294 shall be known and may be cited as the Student Discipline Act.

Purpose of the SDA

“The purpose of the Student Discipline Act is to assure the protection of all elementary and secondary school students' constitutional right to due process and fundamental fairness within the context of an orderly and effective educational process. The sanctions defined in the act shall be interpreted at all times in the light of the principles of free speech and assembly protected under the Constitution of Nebraska and the United States Constitution and in recognition of the right of every student to public education.”

Discipline Definitions

- Short-term suspension
 - Exclusion of student from attendance in all schools within system for a period not to exceed five school days.
- Long-term suspension
 - 6 to 20 school days.
- Expulsion
 - Remainder of semester; remainder of semester plus following semester; one calendar year (depends on timing and offense).

Discipline Definitions

- Mandatory reassignment means the involuntary transfer of a student to another school in connection with any disciplinary action.
- Emergency exclusion means not allowing a student to attend school due to a communicable disease or the student poses an imminent threat to others

Other Authorized Actions

- Administrators and teachers may take actions not in the SDA that are “reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process.”

Other Authorized Actions

- Includes, but not limited to:
 - Counseling of students
 - Parent conferences
 - Rearrangement of schedules
 - Keep student after regular hours to do add'l work
 - Restriction of extracurricular activity
 - Requirements that a student receive counseling
 - Psychological or psychiatric evaluation upon written consent of parent or guardian



"I didn't ask for a nuanced explanation, it's a very simple question. Is he or is he not on the naughty list?"

Jurisdiction and Authority

L-T suspension, expulsion, or mandatory reassignment only allowed when activity occurs:

- On school grounds, or school “property”
- In a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or
- At a school-sponsored activity or athletic event

Jurisdiction and Authority

- Even if the incident occurred outside school grounds, vehicles, activities, and not on any other district property:
 - Did the incident cause you to “reasonably forecast” a material and substantial disruption of school functions?
 - Did the incident actually cause a material and substantial disruption of school functions?
 - Did the incident reasonably cause another student to miss school functions or school activities?

Non-disciplinary removals...

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"I don't think it's serious. Eat some grass and come back in a few days if it's not better."

Emergency Exclusion

- If student has dangerous **communicable disease** transmissible through normal school contacts and poses an **imminent threat** to the health or safety of the school community; or
- If S's conduct presents **clear threat to physical safety of himself, herself, or others**, or is **so extremely disruptive** as to make temporary removal necessary to preserve the rights of other students to pursue an education.

Emergency Exclusion

- Limited to 5 days initially
 - Follow same procedure as short-term suspension
- Beyond 5 days
 - School board must adopt hearing procedure
 - Final determination must be made within 10 school days after initial date of exclusion
 - Follow SDA pre-hearing and hearing procedures; may modify to meet shortened time period

Short-term Suspensions

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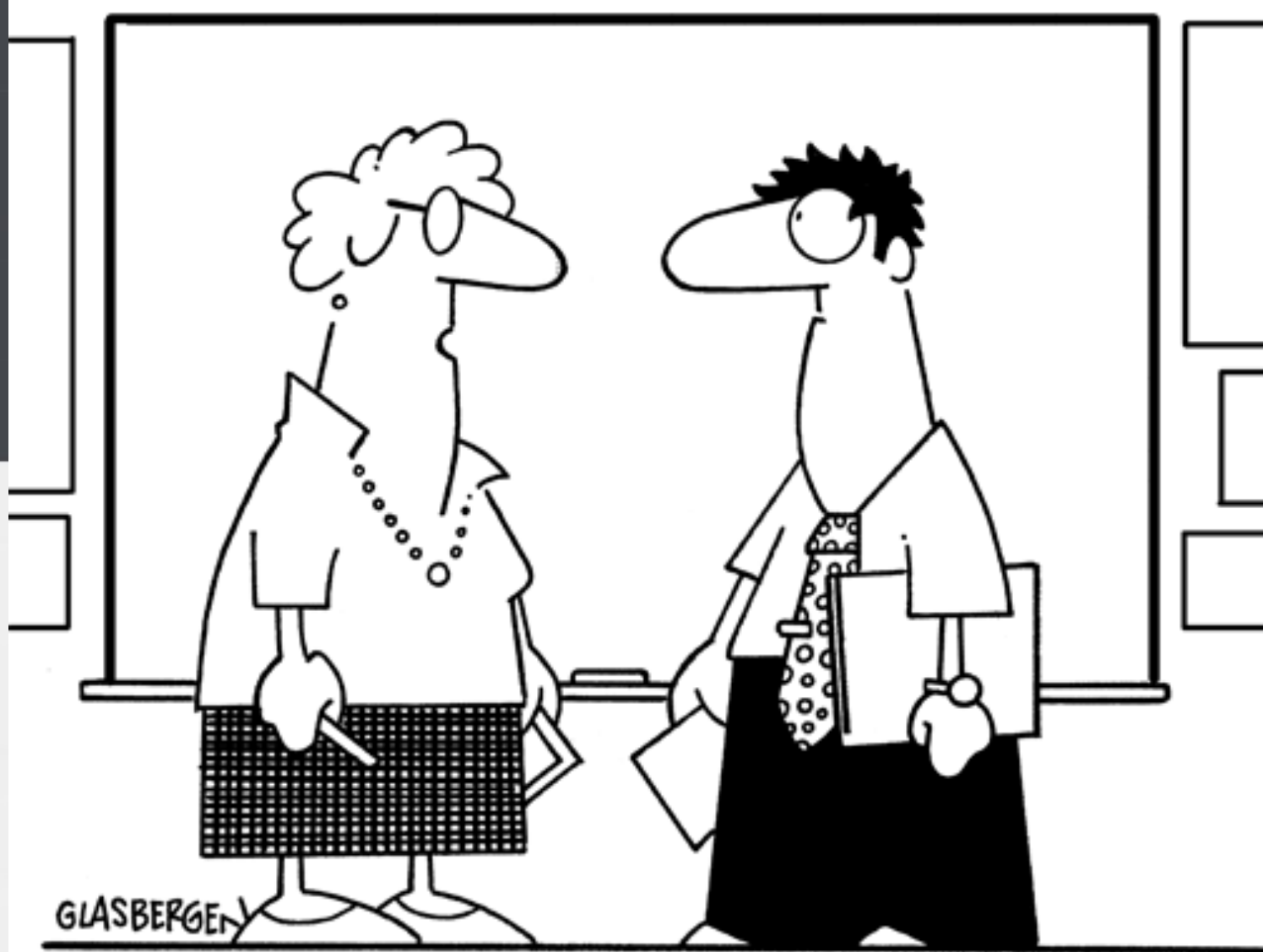


"Instead of calling my mom, how would you feel about exploring a more positive and preventive strategy."

Grounds for ST Suspensions

Principal may deny any student right to **attend school** or to take part in **any school function** for a period of up to 5 school days on following grounds:

- Conduct constituting grounds for expulsion as set out in SDA; or
- Any other violation of board's or school official's rules adopted under the SDA.



“If we passed a law to make education illegal for anyone under 21, we’d have the smartest teenagers in the world!”

Grounds for L-T, Expulsion, Mandatory Reassignment

1. Use of **violence, force, coercion, threat, intimidation**, or similar conduct in a manner that constitutes a substantial interference with school purposes.
2. Willfully causing or attempting to cause **substantial damage to property, stealing** or attempting to steal property of substantial value, or **repeated damage or theft** involving property.

Grounds for L-T, Expulsion, Mandatory Reassignment

3. Causing or attempting to cause **personal injury** to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision.

Grounds for L-T, Expulsion, Mandatory Reassignment

4. **Threatening or intimidating** any student for the purpose of or with the intent of obtaining money or anything of value from such student.

Grounds for L-T, Expulsion, Mandatory Reassignment

7. Engaging in **bullying** as defined in section 79-2,137.
10. Engaging in any other activity forbidden by the laws of the State of Nebraska **which activity constitutes a danger** to other students or interferes with school purposes.
11. A **repeated** violation of **any rules and standards validly established** pursuant to section 79-262 if such violations constitute a substantial interference with school purposes.

And now, a brief emoji break



J.S. v. Grand Island Public Schools

297 Neb. 347 (2017)

- Sunday, MS students on social media (ask.fm)
- Anonymous post #1: “Tomorrow gonna be hella fire [fire emoji] be there [school emoji]”
- AP #2: “Don’t show up to school tomorrow [gun emoji].”
- Administration contacts GIPD

J.S. v. Grand Island Public Schools

297 Neb. 347 (2017)

- Monday – extra security, school searched, 100 parent calls, 17 students checked out
- Police and school staff interview students
- JS admits to “hella fire” post
- JS did not post gun emoji
- PAL suspends JS for 15 days

J.S. v. Grand Island Public Schools

297 Neb. 347 (2017)

- Student requests hearing
 - PAL – social media posting sole reason for suspension
 - JS
 - Used cell phone at home
 - Post was about skipping school
 - “hella fire” means “good” or “cool”
 - Post was sarcasm – school would be good or cool next day and students should be there

J.S. v. Grand Island Public Schools

297 Neb. 347 (2017)

- Suspension upheld by superintendent and board
- Student appeals
- District Court affirmed
 - JS' posting was open to several interpretations, including one of violence, which prompted posting that could also be considered threatening or violent
 - Posting "set in motion a series of events that cause[d] substantial disruption" at school

And now, another brief emoji break



**Apple
vs.
Android**



J.S. v. Grand Island Public Schools

297 Neb. 347 (2017)

■ Student appeals

- JS's conduct occurred off of school grounds
- Did not occur at any school activity
- Used her own cell phone or computer
- Also couldn't use "emergency exclusion" because PAL testified JS wasn't a threat on Monday

J.S. v. Grand Island Public Schools

297 Neb. 347 (2017)

■ School

- Emergency excluded for being “extremely disruptive”, not LT suspension
- Emergency exclusion not limited to activity that occurs on school grounds

J.S. v. Grand Island Public Schools

297 Neb. 347 (2017)

- Supreme Court dismissed on procedural grounds
 - Failed to seek review in mode and manner provided by statute (VA v. service of summons and petition)

- Opening sentence of opinion:

“This case concerns a 15-day suspension of a student for a post made on a social media website from her home that, in part, caused a substantial disruption at her school.”

What if, the case hadn't been dismissed on procedural grounds?

The dishonorable Steven Williams, Robert Truhe, and Tim Malm will examine the case.

Student Online Activity



"Here's what you're going to do. You're going to give those 3 million people their credit card numbers back and you're going to say you're sorry."

Terroristic Threats: Criminal Charges vs. Student Discipline

- Neb. Rev. Stat. 28-311.01
- Terroristic Threats: “threatens to commit any crime of violence ...”
 - With the intent to terrorize another
 - With the intent of causing evacuation of a building or public place
 - In reckless disregard of the risk of causing such terror or evacuation
- Class IIIA Felony punishable by up to 3 years in prison per threat

A.N. v. Upper Perkiomen Sch. Dist., 2017 U.S. Dist. LEXIS 2017 (E.D. Pa. 01/10/17)

- Student made “mashup video” and posted to Instagram
 - Combination of “Evan” and “Pumped Up Kicks”
 - “See you next year, if you’re alive”
 - “See you next year. It is not a threat”
 - Students, parents become concerned
- PA state police contact principal at 2 a.m.
- School cancelled for the following day

A.N. v. Upper Perkiomen Sch. Dist., 2017 U.S. Dist. LEXIS 2017 (E.D. Pa. 01/10/17)

- Student not criminally charged
- School sought to expel
- Parents sued
 - No prior discipline history
 - Claimed free speech violation
- Court
 - Speech seriously disrupted school
 - Student should have known it would disrupt school

A.N. v. Upper Perkiomen Sch. Dist., 2017 U.S. Dist. LEXIS 2017 (E.D. Pa. 01/10/17)

■ Court

- “Although the student argued that the post was meant to be a joke, the student’s subjective intent was not relevant to the court’s application of Tinker. The Tinker standard also did not require the court to decide whether school officials’ characterization of the student’s speech as a threat was proper.”

Neligh-Oakdale Student Arrested For 'Columbine' Threat

BY Antelope County News | 12/20/2016

[Home](#) > [News](#) > [Featured News](#)

A Neligh-Oakdale student was arrested Monday after allegedly using Snapchat to threaten "to make Columbine look like a (expletive) joke."

According to Ofc. Kraig Nelson of the Neligh Police Department, the threat showed a picture of a toy gun and a message that stated "I'm going to make Columbine look like a 'expletive' joke." This Snapchat message was sent to a large group of students and friends of the suspect.

The Neligh Police, along with the Antelope County Sheriff's Department, received the report of the potential threat from the Neligh-Oakdale School administration.

Nelson said upon investigating the threat, a male juvenile was arrested by the Neligh Police Department for Terroristic Threats, a Class IIIA Felony. The male juvenile was taken to the Juvenile Detention Center in Madison to be held on his charges.

17-year-old Fremont student faces charges after Snapchat post



Cyberbullying

- Neb. Rev. Stat. 79-2,137
 - Bullying means any ongoing pattern of physical, verbal, or electronic abuse on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose by a school employee or his or her designee, or at school-sponsored activities or school-sponsored athletic events.
 - School districts required to have a policy, required to review annually

In re Redding (CA) School District

- Student with 504 plan hospitalized due to depression
 - Student posted a picture of herself lying in a hospital bed on Instagram
 - Students started posting/discussing hospitalized student: self-harm, drug use, absence from school
 - Comments by students continued after she returned to school

In re Redding (CA) School District

- District learns of rumors on social media
- School response
 - No attempt to identify students involved; “all off campus”
 - General steps to improve culture
 - School rally
 - Positive Action Committee
 - Reviewed school’s behavioral expectations

In re Redding (CA) School District

- OCR: School response is inadequate
 - District had legal obligation to investigate incidents of harassment on social media, and to respond in a prompt, thorough, an effective manner.
 - District should have convened a 504 meeting to determine whether, and/or to what extent bullying had affected student's educational needs



Sexting

Sexting, *v*: (a combination of sex and texting) is the act of sending sexually explicit messages or photos electronically, primarily between cell phones.



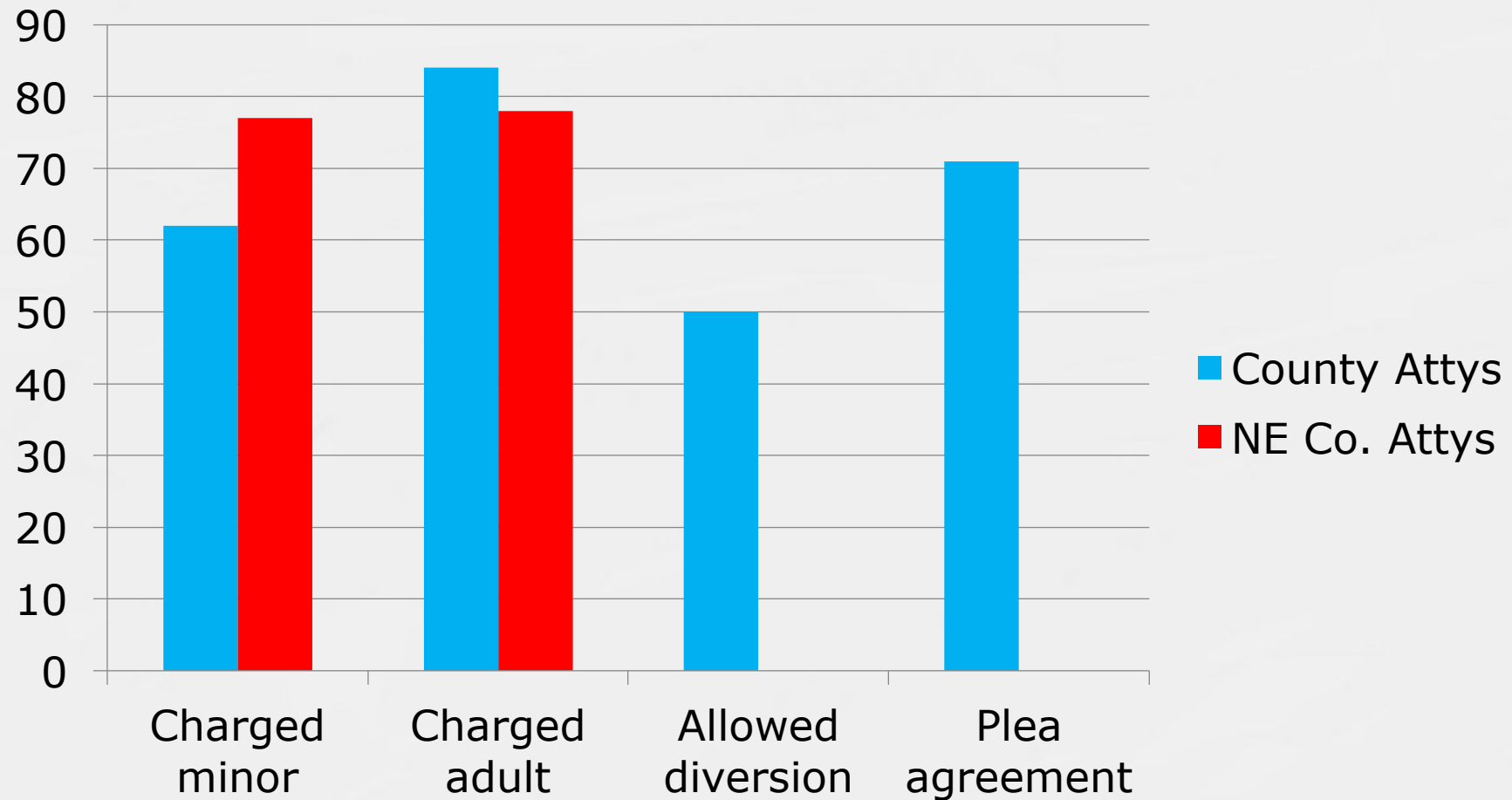
Sexting Stats

- 57% reported that they had been asked to send a sext
- 11% of teens admit they've sent pictures to strangers
- 80% of teens who have sexted are under the age of 18

Nebraska Law

- NEB. REV. STAT. 28-813 *et seq.*
- Makes sexting (images) a class IV felony for offenders **under 19**
 - Two years imprisonment
 - \$10,000 fine, or both
- Class IIA felony for **19 and up**
 - Twenty years in prison
 - Registration as a sex offender

Survey of County Attorneys



In re Juvenile John Does

(Fairfax Co. Va. 2013)

- Girls Snapchatted an inappropriate video to boy
- He took screenshots and sent to friends
- Three boys arrested at school
- Each charged with 12 counts of distribution of child pornography
- Found guilty, registered sex offenders, sentences upheld

Sexting scandal: Colorado high school faces felony investigation

By **Michael Martinez**, CNN

🕒 Updated 1:08 PM ET, Mon November 9, 2015

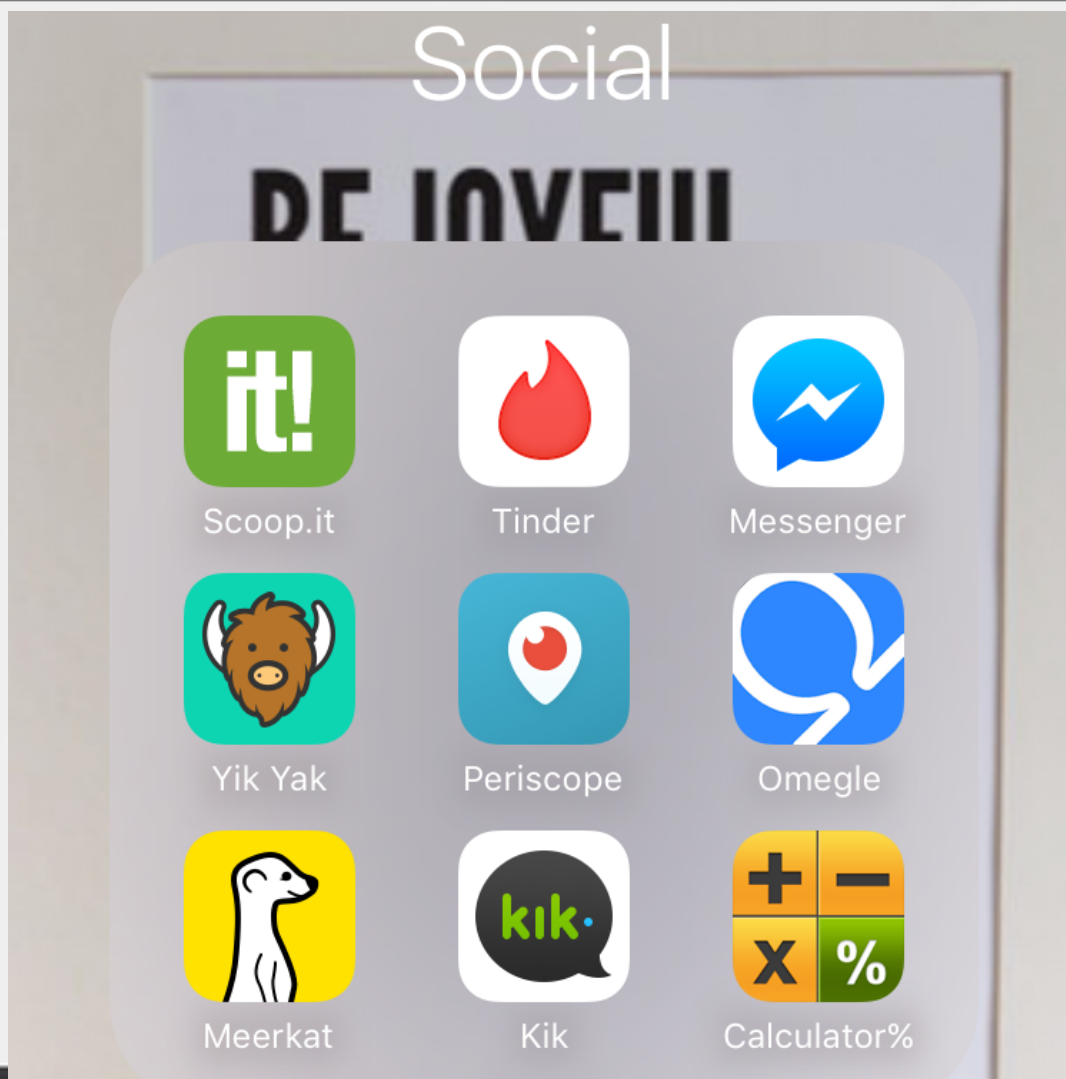


The Problem is Growing

- Cañon City, CO
 - Hundreds of students traded nude pictures
 - 400+ photographs of “over 100 kids”
 - Used “vault” apps to accrue pictures and points
 - Football players at center of scandal—
 - Cancelled last game of the year



Vault Apps



How to login.

1. Click "." button.
2. Enter your passcode
3. Click "." button again.



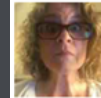
Set Passcode



Folder

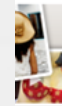


More



Album

1



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Photos & Videos

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Passwords

Child Protection and Family Safety Act

- Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:
 - Placed in a situation that endangers his or her life or physical or mental health;
 - Cruelly confined or cruelly punished;
 - Deprived of necessary food, clothing, shelter, or care;
 - Left unattended in a motor vehicle if such minor child is six years of age or younger;

Child Protection and Family Safety Act

- Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:
 - Sexually abused; or
 - Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

Child Protection and Family Safety Act

- All school employees have a duty to report child abuse and neglect to law enforcement
- Failure to report is a violation of statute, and can affect your teaching certificate

Any Questions?

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