

Students

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The Digital Limits of 'In Loco Parentis'

Colleges avert gaze from students' posts on social-network sites

By SARA LIPKA

Being rowdy and impulsive is a time-honored tradition among college students. Documenting that behavior online is a recent phenomenon that still vexes administrators.

They know what to do with a drunken student. But what about a Facebook photo of a seemingly drunken student?

Some colleges have reacted with strict discipline. Two years ago, officials at Millersville University of Pennsylvania discovered a picture on MySpace of Stacy Snyder, in a pirate hat, drinking from a yellow plastic cup. With no judicial hearing, the alumna says, they deemed her unfit to be a schoolteacher, denied her an education degree, and awarded her one in English instead.

Ms. Snyder sued Millersville, saying it had violated her free-speech and due-process rights. The lawsuit is still pending, but it has attracted the attention of college administrators and lawyers across the country. And along with similar cases, it has already influenced the way they think about student discipline and the Internet.

When social-networking sites first became popular, many colleges and universities watched them closely. Since then, a consensus has emerged that **institutions should not actively monitor the sites or react hastily to information they discover.** Such practices run counter to sound educational philosophies, officials say, and make colleges vulnerable to lawsuits.

But institutions also cannot ignore sites like Facebook and MySpace. Administrators have a responsibility to investigate if they learn of online evidence that a student may have violated their college's conduct code, or of postings that may be offenses themselves. Social-networking sites have become a mainstay of campus social life, and colleges are trying to treat what happens online no differently from what may occur in the dining hall or on the quad.

It's not as if the popular Web sites offer new information about student behavior, Thomas A. Workman, an assistant professor of communication studies at the University of Houston-Downtown, told a roomful of administrators at a recent conference on law and higher education.

Numerous studies have found, for example, that students engage in high-risk drinking, Mr. Workman said. "You didn't need Facebook to tell you that."

Calling Off Patrols


But Facebook does more than tell. It shows an array of offenses — drinking and drugs, hazing, harassment, racism — in a colorful medley of photos and posts.

Early discoveries of such material panicked some administrators. Anyone might see it, they reasoned, and feel threatened — or associate the behavior with their colleges.

Campus judicial officers across the country hashed out the issue on their e-mail list, says Gary Dickstein, president of the national Association for Student Judicial Affairs.

"The overriding question was: Do you actively search social networking sites for violations of your code?" says Mr. Dickstein, who is also assistant vice president for student affairs and director of student judicial services at Wright State University, in Dayton, Ohio.

The short answer: No.

As the novelty of social-networking sites wore off, some of the panic about them subsided. So many students were posting so much material online that administrators realized they could not possibly scour all of it — nor should they. 

"We don't do random, unannounced sweeps of dorm rooms," says Beth E. Cate, associate university counsel at Indiana University at Bloomington. "From a principled standpoint," she says, "we don't try to intrude on what people are doing in their private lives."

Also, if colleges actively monitored Web sites like Facebook and MySpace, they would set an expectation — and a legal duty — to do so effectively and consistently, Ms. Cate and other lawyers say. Disciplining one student and not another, or missing a post that upset someone, would expose colleges to litigation.

Facebook Evidence


Many institutions, however, have no qualms about using Facebook and MySpace in open investigations — judicial or criminal. Campus police from Pennsylvania State University to the University of California at Davis treat the social-networking sites as repositories of information that can assist them in gathering evidence.

And administrators realize they cannot ignore reports of misconduct online. Even if they do not actively monitor social-networking sites, a disturbing post brought to their attention puts them on notice to respond. If they don't, they may be found negligent in court.

Reports of online misconduct are common in the judicial-affairs office at Ohio State University. "A student will come in and say, Hey, so-and-so is threatening me on Facebook," says Michael C. Chapman, a hearing officer there.

He typically contacts the possible offender and asks to meet with him or her. "We follow the same process we would with any other alleged violation of the code of conduct," says Mr. Chapman, a master's student who is researching the use of online social networks in student disciplinary cases.

Alleged violations offline usually come with more than raw material. A judicial-affairs office may get, for example, a police report or a resident adviser's incident report. But with photos of potential misconduct, a judicial officer must carefully establish the same facts that initial report would.

Shawn McGuirk has been presented with several photos of students drinking or wielding guns. But a photo is not always what it seems, says Mr. McGuirk, director of student conduct, mediation, and education at Fitchburg State College, in Massachusetts. Students may exaggerate their behavior online to impress or entertain their peers. 

When Mr. McGuirk gets a photo, he tries to determine when and where it was taken, if it was staged or digitally altered, and if the subject or someone else posted it online. A discussion with the subject helps him decide if an actual violation of the conduct code occurred.

Online threats are more clear cut. Recently Mr. McGuirk looked into harassing Facebook posts a student printed out and turned over to him. He discussed the inappropriate behavior with the guilty party, but it continued, so he disciplined the student. He handled that case, he says, much as he did another in which a different student had reported a classmate following her around the campus.

"It's important to try to be as consistent as possible," says Mr. McGuirk. Whether online or in person, serious threats to someone's safety merit immediate action, he says. "There are times that you just can't wait."

But those threats must be severe and pervasive for a college to discipline a student for online conduct, says Sandra K. Schuster, general counsel of Sinclair Community College and an assistant attorney general of Ohio. For example, if a student posts racial slurs against a certain group, she says, "It's ugly and it's egregious ... but it is protected speech."

Colleges can denounce it, but they should not discipline students for it, she says. "They lose in court every time."

Under FIRE

The Foundation for Individual Rights in Education lambastes many of the colleges it believes too readily punish their students. The watchdog group is supporting Ms. Snyder against Millersville, as it did Justin Park against Johns Hopkins University.

Johns Hopkins suspended Mr. Park for one year in connection with a racially themed "Halloween in the Hood" party he had advertised on Facebook. The student did not sue the university, but amid a fierce publicity campaign by FIRE, he appealed his suspension, which was reduced (to a penalty neither he nor Johns Hopkins disclosed).

The group has called attention to many institutions — including Cowley College, in Kansas; Syracuse University; and the University of Central Florida — for disciplining students for online conduct it argues is legally protected.

"What I hope will happen is universities are going to be a little bit more sensible about how and when they try to punish students," says Greg Lukianoff, president of FIRE.

Whether its campaigns were a factor or not, colleges are approaching Facebook with more discretion now than they were a few years ago, administrators say.

"There were examples of things not to do," says Mr. Dickstein, of the judicial-affairs association.

But some student groups still warrant extra scrutiny, student-affairs officers and lawyers agree. Resident advisers, for example, are employees of a college and may be held to stricter standards of behavior. The same applies to athletes and to students with discretionary appointments, such as to honor councils. Their coaches or supervisors may reserve the right to examine their online profiles and ask them to remove offensive material, or revoke their special privileges.

At religious colleges and military academies, policies often prohibit what is known as "conduct unbecoming." By that standard, a questionable photo itself, with no corroborating evidence, could be grounds for discipline.

Old Rules

Whatever standards colleges adopt, they should be made clear to students, administrators say. Several colleges have borrowed an engaging primer, "Thoughts on Facebook," from Tracy Mitrano, director of information-technology policy at Cornell University. She tells students that their online activity will not be monitored but that they may be held accountable for it. Mainly she encourages them to apply good judgment: "What you wouldn't put on a poster on your dorm-room door you might want to think two or three times about posting online."

Many students have gotten the message, college officials say. They have become savvier about the photos and messages they post and about how they adjust their privacy settings. For some students, though, that lesson has been harder learned.

In all cases, colleges should worry less about the medium and more about students' behavior, says Steven J. McDonald, general counsel for the Rhode Island School of Design.

"Forget about the Internet," he says. "The rules that we've had in place, in some cases for hundreds of years, still work pretty darn well."

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