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A.F. Ringold  
(1931-2021)

## In this issue:

1 The Rules of Etiquette on School District Social Media Accounts

4 Tips for Maintaining Order in IEP Meetings

6 RFR News

## THE RULES OF ETIQUETTE ON SCHOOL DISTRICT SOCIAL MEDIA ACCOUNTS

by Adam T. Heavin

### The Garnier Case

The Ninth Circuit Court of Appeals recently heard a case pertaining to a First Amendment claim in the context of social media accounts operated by members of a board of education: *Garnier v. O'Connor-Ratcliff & T.J. Zane*. The case is now pending before the U.S. Supreme Court, which heard oral arguments on October 31, 2023. The case will undoubtedly have significant implications for school districts, and individuals acting in their official capacity, seeking to moderate the content of posts made by members of the public.

In *Garnier*, two school board members created their own social media accounts, first as a tool to promote their campaigns and then, after their

elections, as a tool for updating and getting feedback from their constituents. Private citizens were permitted, and even encouraged, to interact with the social media posts, including commenting, liking or disliking posts, responding to polls, etc. The Garniers frequented the board members' social media accounts and were highly critical of them and the school district. Their criticism came in the form of negative comments on board member posts, disliking posts, and even copying and pasting the same lengthy critical comments on every post made by the board members. The comments were in no way threatening, but they were highly critical and repetitive in nature.

Initially, the school board members would simply delete the negative comments from

their pages. Later, they blocked the Garniers altogether. The Garniers sued, claiming that the board members violated the First Amendment by blocking them from their social media accounts. It is important to note that these social media accounts were solely operated by the individual board members, not by the school district.

Nonetheless, the Ninth Circuit concluded that the board members were “acting under color of state law” in their official governmental capacity because they identified themselves as board members of the district and because their posts largely consisted of content related to their official positions. The Ninth Circuit also found that the interactive portions of their accounts constituted “designated public fora,” a legal term which implies certain constitutional protections for speech. A designated public forum is created, intentionally or otherwise, when a government official or entity opens a forum for public discussion without limiting the people/groups that may use the forum or the topics that may be discussed. If a forum is limited by group or topic, it becomes a “limited public forum.” This distinction is important because a designated public forum, unlike a limited public forum, is subject to higher scrutiny in the First Amend-

ment analysis when restrictions are imposed on speech.

### Practical Recommendations by the Ninth Circuit

In *Garnier*, the Ninth Circuit explained that the school board members could have taken extra precautions to avoid First Amendment violations. The board members argued that their decision to delete comments and subsequently block the Garniers was purely intended to prevent disruptions and distractions on their accounts. The Ninth Circuit found, however, that there were less restrictive means for accomplishing these goals.

The primary example of “less restrictive means” given by the Ninth Circuit was the implementation of “rules of etiquette” for members of the public interacting with the social media accounts. The court explained that the board members could have posted rules of etiquette on their social media accounts, clearly delineating the rules for members of the public seeking to engage with the account. Rules of etiquette could include restrictions such as “no explicit language or content,” “no threatening or abusive comments or content,” “no repetitive ‘spamming’ of posts,” etc. With such restrictions in place, the fo-

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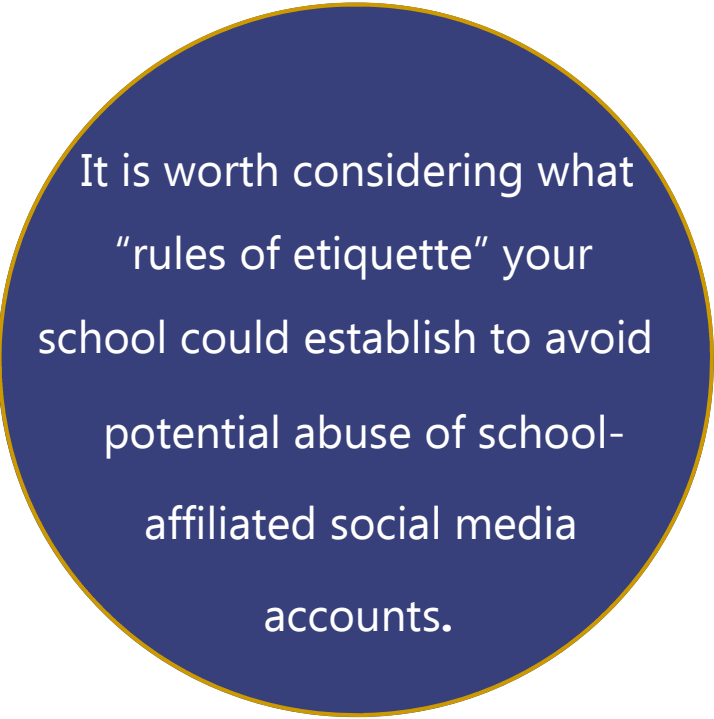
rum would be more likely to be construed as a “limited public forum” rather than a “designated public forum”—the former being subject to less scrutiny under the First Amendment. The board members also would have been in a more favorable legal position had they deleted the Garniers’ posts because they violated clearly established written rules of etiquette. The subsequent blocking of the Garniers might have been justified as well if they repeatedly violated the accounts’ rules of etiquette.

### Conclusion

While a First Amendment analysis is inherently fact intensive, and the U.S. Supreme Court may eventually disagree with the Ninth Circuit’s holding, the *Garnier* opinion is nonetheless helpful because it provides a practical method by which school districts and governmental officials can reduce their likelihood of incurring liability under the First Amendment. Going forward, it is worth considering what “rules of etiquette” your school and/or officials could establish to avoid potential abuse of school-affiliated social media accounts by members of the public, while also reducing the risk of costly First Amendment litigation. As always, you should consult with your school’s attorney when considering this issue because some “rules of etiquette” that may initially seem reasonable might have a “chilling” effect on speech, and a variety of other considerations

should be taken into account to avoid legal pitfalls. Of course, school districts may also consider doing away with social media altogether, or simply eliminating the public comment sections of their social media, but implementation of rules of etiquette may be a more palatable option for districts that do not want to take such drastic measures.

*If you would like assistance in refining your school district’s social media practices, your RFR attorneys are here to help. Your RFR attorney can provide advice and guidance to help you craft policies and practices that comply with this and other applicable law.*



It is worth considering what “rules of etiquette” your school could establish to avoid potential abuse of school-affiliated social media accounts.

# TIPS FOR MAINTAINING ORDER IN IEP MEETINGS

By Alison A. Parker

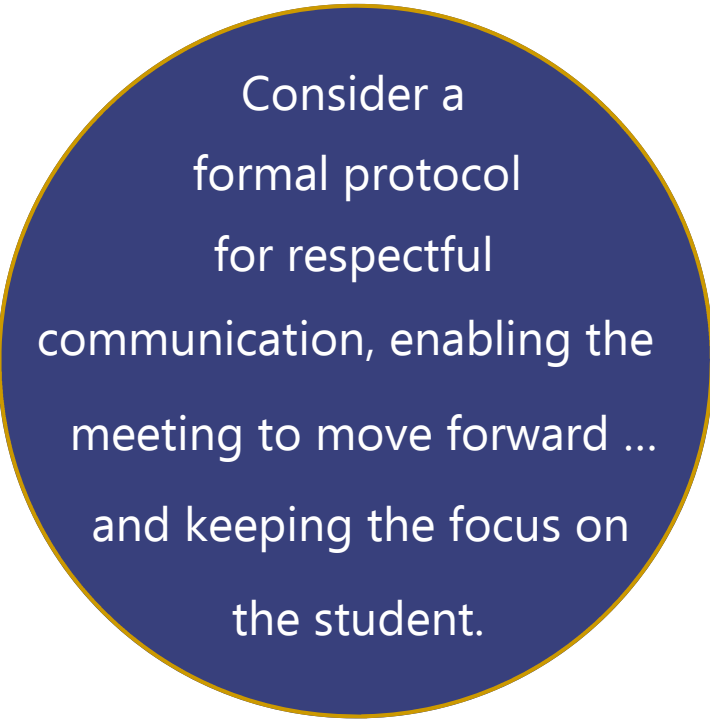
The United States Supreme Court has stated, "The core of the [IDEA]...is the cooperative process that it establishes between parents and schools." *Schaffer v. Weast*, 546 U.S. 49 (2005). IEP team meetings can, however, become emotionally charged, and what parents and a school district feel is the most appropriate way to provide a free and appropriate public education to the student may differ. Occasionally, school districts are faced with raised voices and abusive and/or threatening language that hinders the IEP meeting process. As such, districts may want to consider developing a formal protocol for IEP team meetings that emphasizes respectful communication, enables the

meeting to move forward in a productive manner, and keeps the IEP team's focus on the student.

Two of the biggest challenges faced in IEP meetings relate to the quality of conversation had by the IEP team and the effort to stay on topic and move the meeting forward. To that end, school districts may want to consider implementing a protocol that includes some or all of the following suggestions:

**Drafting and providing an agenda** at the beginning of the meeting will help set expectations regarding issues that need to be addressed by the team. Additionally, including a separate agenda item for any questions from parents may alleviate concerns parents may have that their questions will not be addressed. If there are time limitations for any IEP team members, make that known at the outset of the meeting, and ensure everyone understands that the meeting will be reconvened at a mutually agreeable time if the IEP team does not fully cover all topics that need to be addressed.

Regarding conduct at the meeting, school districts may want to consider **establishing written rules for communication** that include requirements that speech be respectful and school-appropriate, that individuals do not talk over or interrupt each other, and that individuals honor any time limitations so that the meeting can progress. Any



Consider a formal protocol for respectful communication, enabling the meeting to move forward ... and keeping the focus on the student.

rules developed by a school district should also emphasize respect for the opinions and ideas of others and the importance of a willingness to engage in open discussion amongst IEP team members, with everyone willing to listen and consider each other's input. One reason meaningful parental participation is critical under the IDEA is that parents can provide additional information regarding the student that assists the IEP team in developing an appropriate IEP. Thus, it is important to give parents a full opportunity to present concerns and discuss the issues being addressed in the meeting. However, it is equally important that parents provide the school district members of the IEP team the opportunity to present their perspectives and input in the IEP process. Keep a list of issues raised that may be outside the scope of the current meeting that that team can either return to and discuss at the end of the meeting or schedule a later meeting to address.

The school district should **ensure that any meeting rules it develops are communicated to each person invited to an IEP meeting prior to the meeting.** Additionally, school district members of the IEP team should receive and review the rules prior to the meeting. The rules should also be verbally reviewed at the commencement of the meeting, and it should be made clear that failure to comply with the rules may result in the meeting being adjourned and rescheduled. Should disrup-

tive conduct become a problem, the individual may be reminded of the rules and consequences. However, if efforts to redirect the conversation are unsuccessful, and the meeting is no longer productive, it may be necessary to terminate the meeting and reschedule. The hope is, however, with clear rules and expectations for the meeting, that all participants are able to provide input in an orderly and beneficial manner, resulting in less conflict and more efficient meetings.



*If you have questions about the development of rules and procedures for IEP meetings, your RFR attorneys are here to advise you and help you develop appropriate protocols.*



## Adam T. Heavin

Adam is a native of Tulsa, Oklahoma and was admitted to the Oklahoma bar in 2022. He received his undergraduate degree from Oral Roberts University, where he was a Whole Person Scholarship recipient and a Division One soccer player. He attended law school at the University of Tulsa College of Law, where he served as the Editor-In-Chief of the Tulsa Law Review and graduated with highest honors.



## Alison A. Parker

Alison advises and represents educational institutions on issues of special education and general education and provides contract assistance as well as litigation support. In addition to education law, Alison provides litigation support in a variety of areas, with an emphasis in research and writing in complex litigation.



Tulsa Office:  
525 S. Main, Suite 700  
Tulsa, Oklahoma 74103  
Phone: 918.585.9211  
Fax: 918.583.5617  
Toll Free: 800.767.5291



Oklahoma City Office:  
3030 NW Expressway  
Suite 200  
Oklahoma City, OK 73112  
Phone: 405.521.0202

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