

**HB**

**285**

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# ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

## MEMORANDUM

**Date:** February 8, 2016  
**To:** Representative Keller, Chair  
House Education Committee  
**From:** Rep. Josephson  
**Re:** Hearing Request for House Bill 285

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Representative Keller:

I respectfully request a hearing in the House Education Committee for House Bill 285 relating to protecting privacy interests of students in social media.

HB 285 creates new statute that would protect a student's private social media information from school and university employees and provides a student a cause of action for any damage caused by a demand for or intrusion into this protected realm.

Attached is the requested sponsor statement, copy of the bill, sectional analysis and supporting materials. I would be happy to prepare any other necessary documents or provide additional information. The departments will prepare fiscal notes when the bill is scheduled for a hearing. As this legislation will have statewide impact, I suggest that hearings be teleconferenced to all LIO's. I can provide a witness list prior to a hearing. Feel free to contact me anytime. Thank you for your consideration.

Best regards,

A handwritten signature in cursive script that reads "Andy Josephson".

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## Sponsor Statement

### **House Bill 285: Social Media Privacy in Schools**

House Bill 285 aims to protect privacy interests in social media accounts against intrusions by schools and universities. Students today use social media to communicate their ideas to a selective audience the way students a generation ago used to communicate via telephone, photo albums, and personal correspondences. For a school to require a student to reveal his or her most private realm of personal life, such as family photos, letters to friends, or conversations with acquaintances, would have been an abhorrent invasion of privacy prior to the digitization of these communications and today, merely because these interactions are online should not afford them less protection under the law.

The state of Alaska has historically valued privacy more than federal law as evidenced by Article I, Section 22 of the state Constitution and pursuant jurisprudence. This social media privacy law embodies Alaska's stringent privacy protection and extends its provisions to guarding against intrusions by public and private schools and universities into the private social media accounts of students.

Around the country, stories of school officials demanding social media log-in credentials and adversely affecting students for refusal or account content have emerged in the news with alarming frequency. In response to public concern, sixteen states and the District of Columbia so far have introduced legislation to prohibit school employees and employers (the subject of this bill's sister legislation) from demanding the disclosure of private social media information.

House Bill 285 mirrors this initiative and provides a civil cause of action and remedies for students aggrieved by social media privacy infringements. Further, it carves out exceptions for inadvertent discovery of private social media content by school employees and for interactions between friends and family members who are in a school or university setting.

I invite you to discuss this legislation with me further and appreciate your support.

# ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

## Sectional Analysis: House Bill 285

### **“An Act relating to social media privacy of students”**

**Section 1:** 1) Prohibits education programs and employees of education programs from requesting, requiring, coercing, or compelling students to share content and access to private social media accounts, and protects the students from punishment or discipline for refusing to comply with a prohibited request, requirement, or attempt to coerce or compel the student; 2) protects education programs from criminal and civil liability for inadvertently receiving information that can be used to access a student’s personal social media account, and requires education programs to dispose of the information without sharing it or using it to access the account; 3) clarifies that the provisions established by this bill section do not prohibit an education program from accessing publicly available information about a student; 4) allows education programs, in certain circumstances, to request or require a student to share certain information reported to the education program when it is necessary to comply with a law, or investigate a report of harassment or bullying; and 5) provides that an education program or employee who violates a provision of the bill is liable for damages in a civil action.

**Section 2:** Makes sec. 1 of the bill applicable to private schools

**Section 3:** Requires postsecondary educational institutions to adopt policies consistent with sec. 1 of the bill to protect student and prospective student privacy

**Section 4:** Provides for an immediate effective date.

BUSINESS MAR 6 2012, 7:13 AM ET

## Govt. agencies, colleges demand applicants' Facebook passwords

by BOB SULLIVAN

If you think privacy settings on your Facebook and Twitter accounts guarantee future employers or schools can't see your private posts, guess again.

Employers and colleges find the treasure-trove of personal information hiding behind password-protected accounts and privacy walls just too tempting, and some are demanding full access from job applicants and student athletes.

In Maryland, job seekers applying to the state's Department of Corrections have been asked during interviews to log into their accounts and let an interviewer watch while the potential employee clicks through wall posts, friends, photos and anything else that might be found behind the privacy wall.

Student-athletes in colleges around the country also are finding out they can no longer maintain privacy in Facebook communications because schools are requiring them to "friend" a coach or compliance officer, giving that person access to their "friends-only" posts. Schools are also turning to social media monitoring companies with names like UDilligence and Varsity Monitor for software packages that automate the task. The programs offer a "reputation scoreboard" to coaches and send "threat level" warnings about individual athletes to compliance officers.

A recent revision in the handbook at the University of North Carolina is typical:

"Each team must identify at least one coach or administrator who is responsible for having access to and regularly monitoring the content of team members' social networking sites and postings," it reads. "The athletics department also reserves the right to have other staff members monitor athletes' posts."

All this scrutiny is too much for Bradley Shear, a Washington D.C.-lawyer who says both schools and employers are violating the First Amendment with demands for access to otherwise private social media content.

"I can't believe some people think it's OK to do this," he said. "Maybe it's OK if you live in a totalitarian regime, but we still have a Constitution to protect us. It's not a far leap from reading people's Facebook posts to reading their email. ... As a society, where are we going to draw the line?"

Aside from the free speech concerns, Shear also thinks colleges take on unnecessary liability when they aggressively monitor student posts.

"What if the University of Virginia had been monitoring accounts in the Yeardley Love case and missed signals that something was going to happen?" he said, referring to a notorious campus murder. "What about the liability the school might have?"

Shear has gotten the attention of Maryland state legislators, who have proposed two separate bills aimed at banning social media access by schools and potential employers. The ACLU is aggressively supporting the bills.

"This is an invasion of privacy. People have so much personal information on their pages now. A person can treat it almost like a diary," said Goemann, the Maryland ACLU legislative director. "And (interviewers and schools) are also invading other people's privacy. They get access to that individual's posts and all their friends. There is a lot of private information there."

Maryland's Department of Corrections policy first came to light last year, when corrections officer Robert Collins complained to the ACLU that he was forced to surrender his Facebook user name and password during an interview. The state agency suspended the policy for 45 days, and eventually settled on the "shoulder-surfing" substitute.

"My fellow officers and I should not have to allow the government to view our personal Facebook posts and those of our friends just to keep our jobs," Collins said to the ACLU at the time.

Agency spokesman Rick Binetti confirmed the new policy, but wouldn't comment on it or the proposed law which may ban it.

It's easy to see why an agency that hires prison guards would want to sneak a peek at potential employees' private online lives. Goemann said that prisons are trying to avoid hiring guards with potential gang ties -- the agency told the ACLU it had reviewed 2,689 applicants via social media, and denied employment to seven because of items found on their pages.

"All seven of these individuals' social media applications contained pictures of them showing verified gang signs (signs commonly known to law enforcement which are utilized by gangs)," the Department of Corrections told the ACLU in response to questions it asked about the program. It stressed the voluntary nature of social media inspection, noting that five of the 80 employees hired in the last three hiring cycles didn't provide access.

For student athletes, though, the access isn't voluntary. No access, no sports.

"They're saying to students if you want to play, you have to friend a coach. That's very troubling," said Shear, the D.C. lawyer. "A good analogy for this, in the offline world, would it be acceptable for schools to require athletes to bug their off-campus apartments? Does a school have a right to know who all your friends are?"

There have been many high-profile embarrassing moments born of the toxic combination of student-athletes and Twitter. North Carolina defensive lineman Marvin Austin tweeted about expensive purchases on his account two years ago, then became subject of an NCAA investigation about improper conduct with a player agent. The incident led, in part, to the school's aforementioned aggressive social media policy.

So it's not surprising that many schools want to keep a careful eye on what students are posting online.

But avoiding an uncomfortable moment is not a good enough reason to squash free speech, Spear says. Plenty of settled case law in the U.S. sides with students' rights to express themselves publicly, he said, including numerous cases involving student newspapers. Public displays of protest are also protected: A landmark 1969 Supreme Court decision known as *Tinker vs. the Des Moines School District* said school officials couldn't prevent students from wearing armbands protesting the Vietnam War as long as they weren't inciting violence.

Colleges have legitimate concerns about the things students post on social media accounts, but they should "deal with that issue the way they deal with everything else. They should educate," Shear said.

"Schools are in the business of educating, not spying," he added. "We don't hire private investigators to follow students wherever they go. If students say stupid things online, they should educate them ... not engage in prior restraint."

Goemann also noted that the rush to social media monitoring raises an often overlooked legal concern: It's against Facebook's Terms of Service.

"You will not share your password ... let anyone else access your account or do anything else that might jeopardize the security of your account," the site says in its policies.

Frederic Wolens, a Facebook spokesman, wouldn't comment on the Maryland legislative proposals, but he said many of these school and employer policies appear to violate the site's terms.

"Under our terms, only the holder of the email address and password is considered the Facebook account owner. We also prohibit anyone from soliciting the login information or accessing an account belonging to someone else," he said in a statement to msnbc.com. Wolens said Facebook has yet to take a position on collegiate social media monitoring.

Social media monitoring on colleges, while spreading quickly among athletic departments, seems to be limited to athletes at the moment. There's nothing stopping schools from applying the same policies to other students, however. And Shear says he's heard from college applicants that interviewers have requested Facebook or Twitter login information during in-person screenings.

The practice seems less common among employers, but scattered incidents are gaining attention from state lawmakers. The blog Tecca.com last year showed what it said was an image of an application for a clerical job with a North Carolina police department that included the following question:

"Do you have any web page accounts such as Facebook, Myspace, etc.? If so, list your username and password."

And the state of Illinois has followed Maryland's lead and is considering similar legislation to ban social media password demands by employers.

But Shear says a patchwork of state laws isn't good enough when the stakes are this high.

"We need a federal law dealing with this," he said. "After 9/11, we have a culture where some people think it's OK for the government to be this involved in our lives, that it's OK to turn everything over to the government. But it's not. We still have privacy rights in this country, and we still have a Constitution."

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LOCAL

## ACLU wins settlement for sixth-grader's Facebook posting

ACLU sued Minnewaska school after sixth-grader was forced to give up password.

By Curt Brown Star Tribune | MARCH 25, 2014 — 11:24PM

Riley Stratton remembers all too well the day Minnewaska school officials brought her into a room, with a police officer present, and demanded she cough up access to her Facebook account.

"I was in tears," the 15-year-old said Tuesday. "I was embarrassed when they made me give over my password."

In this latest free-speech legal clash between schools and students over murky rules governing social media privacy, Minnewaska Area Schools agreed to pay \$70,000 in damages and rewrite its policies to limit how intrusive the school can be when searching a student's e-mails and social media accounts created off school grounds.

The federal court settlement comes just after Rogers High School senior Reid Sagehorn, a 17-year-old honor student and football captain, was suspended for seven weeks for a two-word Internet posting in a case that created a community uproar.

"A lot of schools, like the folks at Minnewaska, think that just because it's easier to know what kids are saying off campus through social media somehow means the rules have changed, and you can punish them for what they say off campus," said attorney Wallace Hilke, who helped lead Riley's case from the Minnesota branch of the American Civil Liberties Union.

Riley was 13, in sixth grade, when she posted on Facebook two years ago that she hated a school hall monitor because she was mean. After school officials called her in and leveled an in-school suspension for what she said on social media, she went back on Facebook and asked who snitched.

"I was a little mad at whoever turned me in 'cause it was outside school when it happened," Riley said in a telephone interview from her central Minnesota home in Glenwood.

### School defends action

After a parent complained about her Facebook chat with her son that was of a sexual nature, the school called her in and demanded her password as a deputy sheriff looked on. When she complied, they navigated her Facebook page in front of her.

"They punished her for doing exactly what kids have done for 100 years — complaining to her friends about teachers and administrators," Hilke said. "She wasn't spreading lies or inciting them to engage in bad behavior, she was just expressing her personal feelings."

Minnewaska Superintendent Greg Schmidt, whose district admitted no liability in the settlement, says the case teeters on a fine line over when schools can play a parenting role to combat things such as cyberbullying.

"Some people think schools go too far and I get that," Schmidt said. "But we want to make kids aware that their actions outside school can be detrimental."

He wasn't in charge at the time, taking over in July, but he was involved in the settlement and said: "The school's intent wasn't to be mean or bully this student, but to really remedy someone getting off track a little."

Riley's mother, Sandra Stratton, said she wasn't informed or invited to sit in when officials "interrogated" her daughter.

She did say the school called that morning to discuss the parent's complaint about the sex-talk message with her son.



(http://stmedia.startribune.com/images/ows\_1395796.jpg)



(http://stmedia.startribune.com/images/ows\_1395796)

Riley Stratton, 15, posted on her page that she didn't like a hall monitor.

"They never once told me they were going to bring her into the room and demand her Facebook password," Sandra said. "I'm hoping schools kind of leave these things alone so parents can punish their own kids for things that happen off school grounds."

As part of the settlement, Minnewaska school policies now address electronic devices for the first time.

The new rules say electronic records and passwords created off-campus can only be searched if there's a reasonable suspicion they will uncover violations of school rules. Enhanced teacher training was also part of the settlement.

"Kids' use of social media is the family's business," Hilke said, "not the school's business unless it's a case of cyberbullying or poses a substantial threat to school activities."

Riley, who now uses an alias on Facebook, has since left the Minnewaska schools for home schooling.

She said she made the switch because the dispute "was so embarrassing and I didn't want to go to any other school anymore."