Plug information leaks in e-mails

Staff e-mail about safety issues that contain personally identifiable student information or questions about district compliance can come back to haunt schools.

The Family Education Rights Privacy Act allows the sharing of student information to prevent a safety emergency.

However, administrators should remind staff during in-service training that when they send an e-mail, they are creating written documentation, said Patrick Andriano, with Reed Smith LLP in Richmond, Va. E-mail can wind up in the student's file or be used as evidence in a state complaint or school hearing, he said.

By training staff to use wise e-mail etiquette, you can avoid misunderstandings, protect relationships with parents and students, and avoid costly litigation.

"Many staff members think their computer is a private computer for their use in the school setting and are surprised to learn otherwise," said Susan Freedman, an attorney with Shipman & Goodwin LLP in Hartford, Conn.

Share with staff the following tips on how to comply with FERPA and follow good e-mail etiquette:

1. Do not substitute e-mail for written reports. Most districts require staff and parents to file written reports of suspected bullying, for example. E-mailing bullying reports to a supervisor is insufficient, Freedman said.

2. Do not e-mail sensitive information reported by students. Remember, "e-mail does not provide any context," Freedman said. A misunderstanding can inhibit students' "willingness to confide in staff in the future on more serious matters," she said.

3. Administrators should address chronic non-emergency e-mailers by phone. Alert an administrator if a parent sends multiple non-emergency e-mails daily and expects immediate staff responses, Freedman said. Collect the parent's e-mails so the administrator can discuss them during a communication plan she develops with the parent, such as a 20-minute weekly teleconference. Show a parent the school is responsive, but avoid costly mistakes, she said.

4. Do not use e-mail as substitute for prior written notice. Review with staff when prior written notice is required by law, Freedman said. For example, staff may mistakenly e-mail a parent of a student with a disability to confirm a request made in a phone conversation and state what the district proposes or refuses without consideration by the individualized education program team.

5. Leave out personally identifiable student information in e-mail. Train staff to know what information is considered personally identifiable under FERPA and to avoid including it in e-mail. Personally identifiable information includes students' names, names of family members, addresses, Social Security numbers or student numbers, and lists of personal characteristics. 34 CFR 99.3. Increasingly, parent's attorneys are targeting any school e-mails related to a student when requesting education records, Freedman said. Often, staff discuss a student or a parent informally, assuming the e-mail is confidential. If the student's name is mentioned, the e-mail becomes part of the student's educational record and is subject to disclosure. To avoid creating an educational record, teachers should talk face-to-face talk about a student.

6. Avoid discussing questions or concerns by e-mail. "Even a seemingly simple inquiry can create the impression, real or perceived, that the district has failed to comply with the law," Andriano said. For example, after a problem, staff may exchange e-mails about a student's progress or the district's response. Such documents can be used as evidence to substantiate a legal claim, he said.

7. Avoid detailing concerns on computers. Instead, share details with a supervisor so that they can be addressed in confidence.

8. Think before replying by e-mail. If a parent's e-mail comes across as critical, arrange a phone call or meeting. Give both parties an opportunity to "clearly get their points across and answer each others' questions," Freedman said.

9. Verify e-mail recipients. Check to see who was copied on e-mail you receive, Freedman said. If you criticize a parent or student who was copied in the e-mail you received and hit "Reply all," it can be an embarrassing mistake, she said.

10. Proofread e-mails. Rereading e-mails helps you cut personally identifiable information or suggestions of noncompliance.

Visit Susan Freedman at Shipman Goodwin at www.shipmangoodwin.com *and Patrick Andriano at Reed Smith LLP at* www.reedsmith.com. ■