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**TESTIMONY**

**SB1014**

**AAC THE ELECTRONIC CORRESPONDENCE OF STUDENTS**

Connecticut General Assembly, Committee on Education

March 9<sup>th</sup>, 2009

Good afternoon. My name is Ray Rossomando and I am an employee of the Connecticut Education Association who works directly with teachers in 9 districts in and around the Naugatuck Valley.

I want to thank Chairman Gaffey, Chairman Fleischmann, and the honorable members of the Education Committee for providing this opportunity to testify on SB1014 AAC THE ELECTRONIC CORRESPONDENCE OF STUDENTS.

SB1014 prohibits the expulsion of students for the content of any electronic correspondence transmitted off school grounds, provided such content is not a threat to students, school personnel, or the school.

I respectfully submit this testimony today on behalf of teachers who have expressed to me their concerns about the impact of electronic technologies on the educational process in their schools.

The bill as drafted addresses the freedom of speech interests of students. To the degree that students' freedom of speech contributes to their individual expression, pursuit of curiosity, and educational growth, electronic correspondences can be productively used. However, the bill as drafted neither clearly defines what would constitute a "threat" to students, school personnel or the school nor does it enable boards of education to expel students whose speech is disruptive of the educational process. The result would leave boards with little recourse to prevent or address speech that harms the educational growth of other students.

While the underlying bill reinforces freedom of speech protections for students, it does so without addressing potential unintended consequences – such as tacitly enabling online video postings disruptive to the educational process.

The recording and distribution of classroom video is becoming a growing concern of parents, teachers, administrators, and board members. This is an issue that is frequently reported in the media and one that has raised concern in the districts I represent.

I respectfully ask the committee to consider this issue in any bill addressing the students' use of electronic devices or equipment in schools. I have attached potential statutory language on this issue for your consideration.

### **The Problem**

Surreptitious video-recordings of teachers has been an increasing concern since the advent of publicly accessible video-sharing websites such as YouTube and the ubiquity of small hand-held and cell-phone based video recording devices. Earlier this year, a Naugatuck Valley teacher was video-taped by a student during classroom instruction and the clip posted on YouTube. The October issue of NEA Today noted another videoed Connecticut teacher under the online spotlight.<sup>1</sup> Incidents of teachers being unknowingly filmed and broadcast on YouTube are increasing. As a February 8, 2007 ABC News report indicated, a YouTube search of the student-generated term “angry teacher” turns up hundreds of video clips from the classroom. Another pejorative term unfairly used by students, “crazy teacher,” turns up thousands.

It should also be noted that video-recordings in the classroom create situations whereby the privacy of other students could be compromised. Additionally, there is growing concern that video devices can be used to compromise testing and the integrity of the assessment process.

In a recent Education Week article, a teacher describes the potential for classroom teaching to be misrepresented to the detriment of the teacher.<sup>2</sup> In this article, a teacher describes an experiment he does with his students. The teacher asks students to take out their cell phones, while he rests his head on his desk for a few seconds.

The teacher then asks what people would think of his teaching, if a student had taken a picture of this brief action and posted it on YouTube. “They come up with answers like ‘lazy,’ and ‘doesn’t care.’ I say I would be judged by your peers on one second of a 45-minute class,” the teacher told the reporter.

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<sup>1</sup> See NEA Today (October, 2008) [http://www.nea.org/nea\\_today/0810/youtube.html](http://www.nea.org/nea_today/0810/youtube.html)

<sup>2</sup> “Cell phones in Classrooms Land Teachers on Online Video Sites” *Education Week* (Vol. 27 Issue 11, Pages 1-12)

Instances like this are actually happening and the impact to the teacher and the reputation of the school are put at risk. Such misrepresentations also harm the students whose teacher and school may have been stigmatized by a student's video posting and unfair characterization of the video's content.

To address these concerns, statutory protections could be instituted to protect those who are increasingly vulnerable to unwanted and unwarranted exposure driven by the growing use of surreptitious recording devices in schools.

### **The Legal Environment**

Connecticut state laws addressing video-recordings of persons do not address the classroom environment. And, the courts have generally ruled that teachers' privacy in the classroom is not protected (See: *Evens v. L.A. Unified School District* and *Roberts v. Houston Independent School District*). However, the consequences of this vulnerability negatively impact the working environment, pose risks to a teacher's professional status, and compromise the privacy of students.

Surprisingly, there are no privacy protections for students video-taped in a classroom. Federal student privacy laws such as the Family Educational Rights and Privacy Act (FERPA) treat video-tapes of students as protected records only if they are kept and maintained by the school system. Consequently, a video-recording of classroom activity leaves students vulnerable to online exposure without their (or their parent's) knowledge.

### **Statutory Context**

The state penal code restricts certain surreptitious video recordings (such as CGS 53a-189a and 53a-189b, which address voyeurism and the dissemination of voyeuristic material). There is no statute that adequately deals with the classroom environment.

CGS 10-233j addresses the possession of telecommunication devices in schools by permitting (but not requiring), local boards of education to restrict the possession of such devices. 10-233j has evolved over time as technology advanced from beepers to cell phones.

Technology has now so advanced that cell phones and other small (and potentially concealed) devices have video-recording capabilities. These devices are also relatively inexpensive and therefore becoming ever-present.

### **Draft Language**

The attached language seeks to limit the video recording devices that would be permitted to be brought into and/or used in a classroom (similar to what was done by this committee 12 years ago to limit the possession of cell phones in

class). It also addressed the dissemination of material recorded in the classroom, when such material depicts other persons – particularly students.

It attempts to prevent unwanted video recordings in classrooms, while not limiting the legitimate use of video-recording devices by students and in places outside of the classroom (e.g. basketball games, concerts, etc.).

It also recognizes that students, who can unknowingly be the subject of such video recordings, are at risk of their privacy being compromised. To resolve this concern, the proposed language would require written waivers from the student, students' parents (or legal guardians), teachers, or other persons located in a classroom, before video is taken or disseminated.

On behalf of the teachers I represent, I respectfully request that this committee consider this issue in its deliberations on the electronic correspondences by students.

Thank you.

Please see draft language proposal next page

## Potential Language

### **Sec. 10-233j. Student possession and use of telecommunication**

**devices.** (a) No student in a public school in the state shall possess or use a remotely activated paging device unless such student obtains the written permission of the school principal for such possession and use. The principal shall grant such permission only if the student or his parent or guardian establishes to the satisfaction of the principal that a reasonable basis exists for the possession and use of the device.

(b) A local or regional board of education may restrict the student possession or use of cellular mobile telephones in the schools under its jurisdiction. In determining whether to restrict such possession or use, the local or regional board of education shall consider the special needs of parents and students.

**(c) No student in a public school classroom in the state shall possess a device for recording video, or use the video recording capabilities of any device unless such device is provided to the student by the board in conjunction with school activities or such student obtains the written permission of the school principal for such possession and use.**

**(d) No student may use the video recording capabilities of any device to record another person in a classroom without the written permission of such person or such person's legal guardian.**

**(e) No student may disseminate or cause to disseminate any video recording of persons in a classroom without the written permission of the school principal and the written permission of any such person or such person's legal guardian.**

[Note: The term "classroom" is not defined in the statutes, but is frequently used. We may need to define "classroom" more specifically for the purposes of this section. One way to do this could be to define a classroom as a place where instruction is being conducted by a certified teacher (or substitute) during the school day.]