

Personnel Primer

What Board Members Should Keep in Mind about HR

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Scenario 1: Social Media

- ▶ check twitter, insta, facebook... GOOGLE?
 - ▶ ___% of employers check
 - ▶ 30%
 - ▶ 50%
 - ▶ 70%
 - ▶ 90%
 - ▶ **2018 study: 70%**
 - ▶ Finding content that resulted in “no hire”
 - ▶ < 50%
 - ▶ > 50%
 - ▶ **2018 study: 57%**

August 9, 2018 study by Career Builder
<https://www.prnewswire.com/news-releases/more-than-half-of-employers-have-found-content-on-social-media-that-caused-them-not-to-hire-a-candidate-according-to-recent-careerbuilder-survey-300694437.html>

Scenario 1: Social Media

- ▶ What are they looking for?
 - ▶ Too frequent posting (i.e., during work hours)
 - ▶ Provocative/inappropriate postings
 - ▶ Drug/alcohol use
 - ▶ Misrepresentation about qualifications
 - ▶ Discriminatory content
- ▶ What else might you find?
 - ▶ Good communication skills
 - ▶ Verification of qualifications/credentials
 - ▶ Professional image
 - ▶ Reflections of creativity

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<https://www.prnewswire.com/news-releases/more-than-half-of-employers-have-found-content-on-social-media-that-caused-them-not-to-hire-a-candidate-according-to-recent-careerbuilder-survey-300694437.html>

Scenario 1: Applicants

▶ Risks

- ▶ Cover photo shows female subject with her three young children and her profile says “single”
 - ▶ Compare to male subject with similar cover photo (single dad with his three young children)
- ▶ Cover photo shows female subject is pregnant
- ▶ Profile/photos suggest subject is in wheelchair (or is a cancer survivor, or has MS)
- ▶ Profile shows subject was the keynote speaker/award winner at a conference on Creationism and is replete with Bible quotes
- ▶ Profile indicates subject wears a headwrap that is related to ethnicity or religion

Gaskell v. Univ. of Ky., No. 9-244, 2010 U.S. Dist. LEXIS 124572 (E.D. Ky. Nov. 23, 2010)

Scenario 1: Employees

- ▶ Rant about _____
 - ▶ Transgender rights
 - ▶ Dispute with colleague or supervisor
 - ▶ Critical of salary/pay from the School Board
 - ▶ Critical of art or music budget from School Board
 - ▶ Budget as approved by appropriating body
 - ▶ School closure due to pandemic
 - ▶ Discipline decision
 - ▶ Employee's own child
 - ▶ The employee's personal experience returning merchandise at Lowes
- ▶ Religious content
- ▶ Alcohol consumption
- ▶ Drug use
- ▶ Profanity
- ▶ Second business/job



COMPARE: *Bennett v. Metropolitan Gov't of Nashville*, 383 F. Supp. 2d 790 (M.D. Tenn. 2019);
Zuniga v. Yeary, No. 18-434, 2020 U.S. Dist. LEXIS 49202 (W.D. Tex. Mar. 20, 2020)

WITH *Grutzmacher v. Howard Cnty.*, 851 F.3d 332 (4th Cir. 2017)

Social Media: BMP

- ▶ Division-wide, consistent policy/practice
- ▶ One (non-decision maker) conducts the review/search
 - ▶ Internal: HR level, not building (?)
 - ▶ External: Fair Credit Reporting Act applies
- ▶ Define/limit scope of search

Scenario 2: Biology Teacher

- ▶ Year 25
- ▶ Parent complaints:
 - ▶ Hostility to students' use of (approved/required) internet app resources
 - ▶ Classroom management problems

Scenario 2: Addressing performance concerns

- ▶ Do you:
 - ▶ Ask to review employee's personnel file
 - ▶ Demand implementation of a Plan for Improvement
 - ▶ Visit the classroom
 - ▶ Insist on dismissal
 - ▶ Report the concern
 - ▶ To principal
 - ▶ In public meeting (when the list to approve contracts is presented)
 - ▶ To superintendent



Scenario 2: Facebook Posts

- ▶ Mid-May, the teacher takes off 2 personal days to attend a conference
 - ▶ Posts on facebook/twitter how pleased she is to be the keynote speaker at the U.S. Science Teachers for Creationism in Louisiana
 - ▶ Shares the content of her speech, which focuses in large part on *Edwards v. Aguillard*, and her opinions, compelled by her religious beliefs, about why the decision is wrong and should be reversed
 - ▶ Facebook
 - ▶ Her Division teacher webpage
 - ▶ Parents complain, come to SB meeting
- ▶ What now??
- ▶ What if the post is political in nature but veiled (or overtly) racist?
 - ▶ Suppose the post is buried in the feed of some stranger who is not a constituent of your division?



Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988) vs. *Gaskell, Grutzmacher*

Scenario 3: 5th grade Teacher Sue

- ▶ Year 15
- ▶ Successful, well-liked by colleagues, students, parents
- ▶ Fill-in Principal, PTA faculty rep, many leadership roles

Scenario 3: Complaints

- ▶ Frustrations/questions because Sue
 - ▶ Is off every Monday and Tuesday through the first semester
 - ▶ Inconsistencies in instruction
 - ▶ Frequently leaves the room and the AP comes in for 10-15 minutes at a time
 - ▶ Resigned from PTA, leadership roles, fill-in principal duties

Scenario 3: How to Respond

- ▶ Do you:
 - ▶ Report at the Board meeting
 - ▶ Ask the employee directly what is going on
 - ▶ Ask the principal what is going on
 - ▶ Tell the superintendent/ask what is going on
 - ▶ Ask HR what is going on
 - ▶ Forward the parents' concerns to HR/Superintendent as an FYI

Scenario 4: Nonrenewal

- ▶ Year 4
- ▶ CTE (welding) teacher
 - ▶ Parent complaints: frequent (and lengthy) tardies, students unattended in welding/equipment shop
 - ▶ Community complaints: few students prepared for certification exams; employers complaining about quality of graduates

Scenario 4: Nonrenewal

- ▶ Administration provides notice of nonrenewal
 - ▶ State law allows nonrenewal without cause... Va. Code § 22.1-305
- ▶ Coach calls you: before you can tell him to talk with administration
 - ▶ He says the tardies are because “I’ve been seeing my doctor and we are working on some thyroid issues that he and I think are making me so tired and unable to get out of bed.”
 - ▶ Or, “my wife left me.”
 - ▶ ... “and I’ve been really depressed”
 - ▶ Or, “I just need to do better about drinking every night.”

Americans with Disabilities Act
42 U.S.C. §§ 12111-12117

Scenario 5: DUI

- ▶ Teacher/Coach arrested, July 5, for DUI
 - ▶ What do you do? What can you do?
 - ▶ What if the arrest was blasted all over the local papers and parents expressed concern?
 - ▶ What if the arrest was on his way to or from an open gym?

Scenario 5: Notoriety

...and additional information

- ▶ As a result of the notoriety/press coverage of the DUI, 12 people show up at the SB meeting's public comment session
 - ▶ 10 express support for the employee
 - ▶ 2 recount some vague claims of harassment by the employee of female students
 - ▶ Victim + victim's brother allege the employee used DMs on various social media (mainly snapchat) to send hundreds of messages daily to victim for a period of 6 months, 2 years ago when she was a senior and into her college years.
 - ▶ A few other young girls stand up and cheer #metoo when victim finishes her statement

- ▶ What now?

20 U.S.C. § 1681

Franklin v. Gwinnett County Schools, 503 U.S. 60 (1992)

Gebser v. Lago Vista Sch. Dist., 524 U.S. 274 (1998)

Davis v. Monroe Co. Bd. of Educ., 526 U.S. 29 (1999)

34 C.F.R. §§ 106.1 *et seq.*

Scenario 6: Hatfields/McCoys

- ▶ Joann (school nurse) resigned, but sends an email to the entire Board a few months later
 - ▶ “harassment” complaint against Custodian Donnie, recounts 12 incidents of slights, improper conduct
 - ▶ Running lawn mower/weed-eater/leaf blower near her car and “covering it with dust”
 - ▶ Failing to empty her trash – which has medical waste – daily
 - ▶ Getting into her “snack stash” and eating things

Scenario 6: Follow-through

- ▶ Central Office/HR says
 - ▶ “She quit months ago”
 - ▶ “Neither is subordinate to the other”
 - ▶ “most of all: everyone **knows** they hate each other and there is NO way this is “about sex” (it’s about Donnie dating her daughter, possibly fathering the daughter’s child, and then breaking it off).
- ▶ What do you do?

42 U.S.C. §§ 2000e *et seq.*

Salmons v. Commer. Driver Servs., No. 19-532, 2019

U.S. Dist. LEXIS 215823 (W.D. Va. Dec. 13, 2019)

Scenario 7: Becky Complains

- ▶ Employee Becky takes to facebook/twitter:
 - ▶ “You know, I never liked my boss Mandi. She’s a mealy mouthed mouthpiece for The Man and never really listens to employees.”
 - ▶ Many people (including many employees and parents) pile on this social media post.
 - ▶ “Division has just instructed me to ‘be more feminine.’ Where y’all at, my tomboys? Let’s show ‘em how \$7!& gets done in this town.”
 - ▶ This evokes hundreds of likes and a series of comments including the likes of “where do I need to show up?!?”
 - ▶ “I’ve asked my employer multiple times to call me Beck, which is my preferred name, and they continue to refuse this request.”

Scenario 7: Backstory on Beck

- ▶ Biologically female, but identifies and/or presents as male
- ▶ Strong personality/poor communication skills
- ▶ She gets things done

U.S. Const. amend. 1; *Garcetti v. Ceballos*, 547 U.S. 410 (2006)
42 U.S.C. § 2000e; *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998)
Senate Bill 686 (2020)

Questions?

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