

*Md. EDUCATION Code Ann. § 26-401*

Annotated Code of Maryland  
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\*\*\* Statutes current through January 1, 2017 and all chapters of the 2016 Regular Session of the Maryland General Assembly. \*\*\*

EDUCATION  
DIVISION IV. OTHER EDUCATION PROVISIONS  
TITLE 26. PROHIBITIONS AND PENALTIES  
SUBTITLE 4. PERSONAL ELECTRONIC ACCOUNT PRIVACY PROTECTION.

Md. EDUCATION Code Ann. § 26-401 (2017)

§ 26-401. General consideration.

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Access information" means a user name, a password, log-in information, an account name, or any other security information that protects access to a personal electronic account.

(3) "Institution of postsecondary education" has the meaning stated in § 10-101(i) of this article.

(4) (i) "Personal electronic account" means an account created via an electronic medium or a service that allows users to create, share, or view user-generated content, including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, messages, electronic mail, Internet Web site profiles or locations, or any other electronic information.

(ii) "Personal electronic account" does not include an account that is opened on behalf of, or owned or provided by, an institution of postsecondary education.

(5) "Student" includes an individual who is a participant, trainee, or student in an organized course of study or training offered by an institution of postsecondary education.

(b) Postsecondary institution prohibited from requiring access to student's personal electronic account. -- Subject to subsection (c) of this section, an institution of postsecondary education may not:

(1) Require, request, suggest, or cause a student, an applicant, or a prospective student to grant access to, allow observation of, or disclose information that allows access to or observation of the individual's personal electronic account;

(2) Compel a student, an applicant, or a prospective student, as a condition of acceptance or participation in curricular or extracurricular activities, to:

(i) Add to the list of contacts associated with a personal electronic account any individual, including a coach, a teacher, an administrator, another employee of the institution of

postsecondary education, or a volunteer; or

(ii) Change the privacy settings associated with a personal electronic account;

(3) Take any action or threaten to take any action to discharge, discipline, prohibit from participating in curricular or extracurricular activities, or otherwise penalize a student as a result of the student's refusal to:

(i) Grant access to, allow observation of, or disclose any information that allows access to or observation of a personal electronic account;

(ii) Add any individual to the list of contacts associated with a personal electronic account; or

(iii) Change the privacy settings associated with a personal electronic account; or

(4) Fail or refuse to admit an applicant as a result of the applicant's refusal to:

(i) Grant access to, allow observation of, or disclose any information that allows access to or observation of a personal electronic account;

(ii) Add any individual to the list of contacts associated with a personal electronic account; or

(iii) Change the privacy settings associated with a personal electronic account.

(c) Construction. -- This section may not be construed to:

(1) Prohibit an institution of postsecondary education from requesting or requiring a student to disclose access information to allow the institution of postsecondary education to gain access to an electronic account:

(i) Opened at the institution of postsecondary education's behest; or

(ii) Provided by the institution of postsecondary education;

(2) Prohibit or restrict an institution of postsecondary education from viewing, accessing, or utilizing information about a student, an applicant, or a prospective student that:

(i) Can be obtained without access information;

(ii) Is publicly accessible; or

(iii) Is available to the institution of postsecondary education as the result of actions undertaken independently by the student;

(3) Create a duty requiring an institution of postsecondary education to search or monitor the activity of a personal electronic account;

(4) Make an institution of postsecondary education liable for failing to request or require a student, an applicant, or a prospective student to grant access to, allow observation of, or disclose information that allows access to or observation of the individual's personal electronic account;

(5) Prohibit a student, an applicant, or a prospective student from allowing an athletic coach or administrator to view the student's, applicant's, or prospective student's publicly accessible

communications; or

(6) Apply to:

(i) A suspected criminal activity investigation into the publicly accessible communications of a student, an applicant, or a prospective student that is performed by a public safety department or police agency of an institution of postsecondary education; or

(ii) An investigation, an inquiry, or a determination relating to the publicly accessible communications of a student, an applicant, or a prospective student that is conducted in accordance with the health or public safety administration assessment policy or protocol of an institution of postsecondary education.

(d) Official policy. -- Notwithstanding any other provision of this section, the governing board of an institution of postsecondary education may adopt a policy authorizing an employee of the institution of postsecondary education to request a student, in order to complete an academic or career-based activity, to create a generic personal electronic account.

(e) Civil action. --

(1) Subject to paragraph (2) of this subsection, an individual who is the subject of a violation of any provision of this section may:

(i) Bring a civil action to enjoin the violation or for damages;

(ii) Add a claim for damages to an action seeking injunctive relief; and

(iii) Recover not more than \$ 1,000 in damages plus reasonable attorney's fees and court costs.

(2) An individual may not bring an action for damages or add a claim for damages to an action seeking injunctive relief under this section until at least 60 days after making a written demand of the alleged violator for not more than \$ 1,000 that:

(i) Includes reasonable documentation of the violation; and

(ii) Is served in the manner provided for service of process in a civil action under the Maryland Rules or by certified mail to the residence or principal office or place of business of the alleged violator.

(3) An action under this subsection may be brought in the District Court for the county in which:

(i) The alleged violation occurred; or

(ii) The alleged violator resides or has a principal office or place of business.

(f) Affirmative defense. -- It is an affirmative defense to any claim under this section that the institution of postsecondary education acted to comply with the requirements of a federal or State law.

**HISTORY:** 2015, chs. 465, 466.

## Appendix 2: Peer Institution Research

Name of Institution	Policy Links	If Policy, Grievance Procedures?	Does Policy Reference SM Use In Admissions?	Does Policy Reference Classroom Use?	Does It Allow for Generic Accounts?
Indiana University	No policies	N/A	N/A	N/A	N/A
Michigan State University	No policies	N/A	N/A	N/A	N/A
Northwestern University	No policies	N/A	N/A	N/A	N/A
Ohio State University	No policies	N/A	N/A	N/A	N/A
Pennsylvania State University	Physical Therapist Assistant Student Handbook has policy covering appropriate/prohibited conduct at <a href="https://sites.psu.edu/hnpsuptahandbook/social-media-policy/">https://sites.psu.edu/hnpsuptahandbook/social-media-policy/</a>	no	no	no	no
Purdue University	<a href="http://www.purdue.edu/policies/information-technology/viic2.html">http://www.purdue.edu/policies/information-technology/viic2.html</a> - <b>only covers institution-affiliated accounts</b>	If someone feels their information has been comprised they are to report the incident to <a href="mailto:abuse@purdue.edu">abuse@purdue.edu</a> .	N/A	N/A	N/A
Rutgers University	No policies	N/A	N/A	N/A	N/A
University of California-Berkeley	System-wide policy, covers prospective and current students as well as student groups <a href="https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB1349">https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB1349</a>	No	Yes (covers prospective students)	By implication	Does not address
University of California-Los Angeles	System-wide policy, covers prospective and current students as well as student groups <a href="https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB1349">https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB1349</a>	There are grievance procedures associated with FERPA violations.	Yes (covers prospective students)	By implication	Does not address
University of Illinois-Urbana Champaign	No policies	N/A	N/A	N/A	N/A
University of Iowa	No policies	N/A	N/A	N/A	N/A
University of Kansas	Policy governing permissible social media engagement (including content) by faculty/staff: <a href="http://www.kansasregents.org/resources/PDF/About/BoardPolicyManual.pdf">http://www.kansasregents.org/resources/PDF/About/BoardPolicyManual.pdf</a>	No	No	Yes (use in context of "academic instruction within the instructor's area of expertise" is "not improper")	No
University of Michigan	No policies	N/A	N/A	N/A	N/A
University of Minnesota	No policies	N/A	N/A	N/A	N/A
University of Nebraska-Lincoln	No policies	N/A	N/A	N/A	N/A
University of North Carolina-Chapel Hill	No policies	N/A	N/A	N/A	N/A
University of Wisconsin-Madison	No policies	N/A	N/A	N/A	N/A



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Memorandum

To: Bryan Eichhorn, Chair, Senate Educational Affairs Committee

From: Adam Berger, Chair, Senate Student Affairs Committee

Date: March 3, 2017

Re: Request for Assistance with the Review of the Interim University of Maryland Policy on Student Social Media Privacy (Senate Document #16-17-23)

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I am writing on behalf of the Student Affairs Committee (SAC) to address the questions posed by the Educational Affairs Committee (EAC). The SAC reviewed the Interim Policy on Student Social Media Privacy, which it discussed at its meeting on February 24. The SAC's feedback is minimal, as it is generally supportive of the policy being made permanent. Specific observations and questions are included below. Please feel free to contact the Student Affairs Committee with any additional questions or concerns.


- Committee members (including students, faculty, and administrators) noted the potential pedagogical value of social media use in the classroom, especially given its relevance to students' personal and professional lives.
- While there are certainly situations in which the use of a personal account may be ideal (such as in career exercises that involve creating and enhancing a LinkedIn profile), the committee appreciated the stipulation that students are allowed to create a generic social media account if they prefer.
- However, some on the committee wondered whether faculty should be discouraged from permitting students to use their personal social media accounts for classroom activities at all, given potential privacy and liability concerns.
- Committee members felt that implementation of this policy should include a significant educational component directed at both students and University employees (particularly faculty members). This educational component should ensure students are equipped to be proactive in insisting on the use of a generic social media account.
- The committee also felt this policy provides an excellent opportunity to further educate students (and faculty) about the importance of carefully setting and monitoring social media privacy settings. Such a conversation can emphasize the importance of knowing precisely what is publicly available. It is important that the University clearly communicate the potential consequences of over-sharing, both for one's personal and professional life. Publicly posted information is available for anyone in the world to view.

- The committee appreciates that the policy clearly protects students from being forced to share private information with any University employee, and notes that "tracking students" is not a legitimate component of the University's educational mission.
- One committee member asked that the policy include an explicit exemption that protects students who do not want to engage with social media for religious reasons.
- One committee member also found the use of the term "election" in V.A.1 to be awkward and unnecessarily stilted/legalistic. Alternative phrasings might instead refer to "choice" or "decision."

**Appendix 4: Senate Executive Committee Charge on the Review of the Interim University of Maryland Policy on Student Social Media Privacy (Senate Document #16-17-23)**



**University Senate  
CHARGE**

<b>Date:</b>	February 1, 2017
<b>To:</b>	Bryan Eichhorn Chair, Educational Affairs Committee
<b>From:</b>	Jordan A. Goodman Chair, University Senate 
<b>Subject:</b>	Review of the Interim University of Maryland Policy on Student Social Media Privacy
<b>Senate Document #:</b>	16-17-23
<b>Deadline:</b>	May 5, 2017

The Senate Executive Committee (SEC) requests that the Educational Affairs Committee review the interim University of Maryland Policy on Student Social Media Privacy and make recommendations on whether it is appropriate or on needed revisions. Specifically, we ask that you:

1. Review the interim University of Maryland Policy on Student Social Media Privacy ([V-1.20\[A\]](#)).
2. Review [SB0210 - Institutions of Postsecondary Education - Personal Electronic Account - Privacy Protection](#), the state legislation that led to this specific policy.
3. Review similar policies and procedures on student social media privacy at peer institutions and other Big 10 institutions.
4. Consider how grievances related to violations of this policy should be handled.
5. Consult with the Associate Provost for Faculty Affairs.
6. Consult with the Associate Provost of Learning Initiatives.
7. Consult with the Senate Student Affairs Committee.
8. Consult with the University's Office of General Counsel on any proposed changes to the policy.
9. If appropriate, recommend whether the interim policy should be revised and submit recommended revisions to the interim policy for Senate consideration.

We ask that you submit your report and recommendations to the Senate Office no later than May 5, 2017. If you have any questions or need assistance, please contact Reka Montfort in the Senate Office at [301-405-5804](tel:301-405-5804) or [reka@umd.edu](mailto:reka@umd.edu).

JAG/rm