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August 1, 2025

OAG 25-09

Subject: What is the proper scope of Senate Bill 181?

Requested by: Representative Kimberly Holloway
Kentucky House of Representatives, District 2

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Syllabus: The text of Senate Bill 181 answers many of the questions about the proper scope of the bill's requirement that school district employees and volunteers use only a traceable communication system to communicate with students. School Boards do have some discretion as to implementation.

Opinion of the Attorney General

During the 2025 Regular Session, the Kentucky General Assembly enacted Senate Bill 181 ("SB 181"), which is titled "AN ACT relating to children."¹ The final version of the bill passed both chambers unanimously on March 28, 2025, and the Governor signed the bill on April 1, 2025. State Representative Kimberly Holloway now requests an Opinion to answer 14 questions related to the scope of SB 181, which have been grouped and consolidated as follows:

- A. To whom does SB 181's prohibition apply?*
1. Does it apply to private schools?
 2. Does it apply to substitute teachers?
 3. Does the requirement for volunteers and employees to use only traceable communications extend to students who work or volunteer for the school district?
 4. Does it apply to all students regardless of whether they have reached the age of majority?

¹ 2025 Ky. Acts ch. 149. Section 1 of the bill created a new section of the Kentucky Revised Statutes, which is now codified as KRS 160.145. Sections 2 through 8 of the bill amended various other sections of KRS Chapters 158, 161, 600, 605, and 620.

5. Does it apply to students who are outside the employee or volunteer's school district?
6. Who is included in "parent," and does that term encompass stepparents, great aunts, step-siblings, great nephews, other individuals, and/or agencies?
7. What constitutes "school-related communication"?

B. How should school districts effectuate SB 181?

8. How may a school district employee communicate with students?
9. Are schools required to accept waivers?
10. If a school district employee is required to download an application in order to communicate with a student, must the school provide a phone to that employee?
11. Is there any exception in the event of an emergency?
12. If there is a violation of SB 181, what due process is afforded to an alleged offender?

C. Does SB 181 violate free speech or religious liberty rights protected by the First Amendment?

In addition to the above inquiries from Representative Holloway, the Office received an inquiry from a public-school teacher who also serves as a pastor to a church that is within the boundaries of the school district that employs him. This teacher has written to seek clarification whether he, as pastor, is able to communicate with public school students from his school district who are also members of the church. Along the same lines, the Office also received an inquiry from an attorney representing several school districts who had concerns about the non-school related communications between teachers and students, the appropriate use of social media in the context of SB 181, and the applicability of waivers. In answering Representative Holloway's questions, the Office also attempts to answer these other related inquiries. And to inform the drafting of this Opinion, the Office also reached out to the Kentucky School Boards Association (KSBA) for input.

Background

On March 4 and 27, 2025, SB 181 was discussed in hearings of the Senate Standing Committee on Families and Children Services² and the House Standing

² See March 4, 2025, Senate Standing Committee on Families and Children meeting video, *available* at https://www.youtube.com/watch?v=_BD0Z48zitY (last visited July 7, 2025) (hereinafter "March 4 Hearing").

Committee on Families and Children Services,³ respectively. At both hearings, the sponsor of SB 181, Senator Lindsey Tichenor, explained that SB 181 aims to re-establish appropriate boundaries⁴ between children and adults in public school districts in a world that has become highly digitized and communication is essentially possible 24/7.⁵ Senator Tichenor also explained the bill would help protect the integrity of the teaching profession⁶ and stop bad actors who use electronic communications to cause harm.⁷ As KSBA says, the “spirit of the bill is . . . protecting students, encouraging more parental involvement and safeguarding school communications.”⁸ This background helps inform the answers to the questions about the bill’s scope.

To whom does SB 181’s prohibition apply?

Does SB 181 apply to private schools?

No. SB 181 requires “[e]ach local school board of education [to] designate a traceable communication system [as] the exclusive means for a school district employee or volunteer to communicate electronically with students.” KRS 160.145(2). The terms “local school board of education” and “school district” indicate that SB 181 applies only to public school districts. See KRS 160.010 (defining county school

³ See March 27, 2025, House Standing Committee on Families and Children meeting video, available at <https://www.youtube.com/watch?v=qy6gLdtHdcc> (last visited July 7, 2025) (hereinafter “March 27 Hearing”).

⁴ *Id.* at 10:56–11:02, Representative Tina Bojanowski said, “I do think this is good legislation and I think there should be professional boundaries such as this.”

⁵ March 4 Hearing, *supra* note 2, at 1:27–1:53, Senator Tichenor said, “This is a bill relating to school employee and volunteer misconduct” and it “will put in place standards that protect the education profession and the proper relationships between students and those in authority.” See also March 27 Hearing, *supra* note 3, at 26:22–26:47, Senator Mays Bledsoe said, “[Phones and devices] follow our kids home and what communications used to be in the . . . classroom about homework . . . comes home with them and they continue on those platforms and . . . now they have access to you all the time.”

⁶ *Id.* at 4:34–4:43, Senator Tichenor said that SB 181 “will put into place standards that protect the integrity of the education profession, the proper relationships between students and those in authority, [and] . . . return previous safeguards that protect children and their families.”

⁷ *Id.* at 12:36–12:59, Senator Tichenor explained the compelling government interest of SB 181, stating, “Kentucky Youth Advocates had a really interesting study that they put out with information they gathered from KDE. Seventy percent of the inappropriate communications cases . . . were from electronic communications. So I think we’re going to grab up a lot of the improper relationships that might be happening through electronic communications.” At the same hearing, at 21:31, Representative Deneen said, “The intent of the bill is spot on—it’s to protect our children from these predatory practices.”

⁸ KSBA, “Understanding Senate Bill 181 – Traceable Communications – Frequently Asked Questions (June 2025),” available at <https://filecabinet7.eschoolview.com/1365B58C-F95F-4E75-94BB-A29D9A94F1C7/6647366c-0288-4eed-8b64-6edf175d1f68.pdf> (last visited August 1, 2025).

district); KRS 160.020 (defining independent school district); KRS 160.160(1) (requiring each school district to be under the management and control of an elected board of education, and declaring each board of education to be “a body politic and corporate”). Therefore, SB 181 applies *only* to the public schools and public school teachers; it does not apply to private schools or private school teachers.

Does SB 181 apply to substitute teachers?

Yes. Within each public school district, the school district employees subject to SB 181 include “a school administrator, classified or certified employee of a school district, school volunteer, nonfaculty coach or assistant coach, student teacher, or sponsor of an extracurricular program or activity.” KRS 160.145(1)(c). Substitute teachers are certified, KRS 161.102,⁹ and paid; therefore, they are subject to SB 181 as “certified employee[s].”

Does SB 181’s requirement for volunteers and employees to use only traceable communications extend to students who work or volunteer for the school district?

Students who *volunteer* for the school district and are not yet 18 years old are likely not required to limit their communication with other students to traceable communication. While SB 181 does not discuss this topic directly, KRS 161.148(1) defines “volunteers” to mean “*adults* who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work” (emphasis added).¹⁰ “The legislature is presumed to be aware of existing laws when enacting a new statute.” *Pearce v. Univ. of Louisville*, 448 S.W.3d 746, 760 (Ky. 2014) (citation omitted). And where there is no facial conflict, the courts will “presume the legislature did not intend to create a conflict.” *Id.* Therefore, this Office assumes the requirement for volunteers to use only traceable communication systems to communicate with students does not extend to student volunteers under age 18.

While there does not appear to be a definition limiting the term “employee” to adults, such that student employees are excluded from the statute’s requirements, it is the opinion of this Office that students who work for the school district and attend a school in the district are likely not required to use only a traceable communication system when conversing with their peers. As Senator Tichenor explained in the

⁹ See also Kentucky Department of Education, *Certification Procedure Updates* (July 2024), https://www.education.ky.gov/districts/LegislativeGuidance/Documents/Certification%20Guidance%202024_508.pdf (last visited August 1, 2025).

¹⁰ See KRS 2.015 (establishing age 18 as the “age of majority for all purposes in this Commonwealth except for the purchase of alcoholic beverages and for purposes of care and treatment of children with disabilities”). Thus, an “adult” is someone who has reached 18 years of age.

hearing, SB 181 aims to re-establish appropriate boundaries between children and adults. SB 181 does not restrict communication between student peers.

Does SB 181 apply to all students regardless of whether they have reached the age of majority?

Yes. SB 181 restricts communication with *students*. KRS 160.145(1)(e)1. (defining “unauthorized electronic communication” to mean “electronic communication with a student”). Therefore, if the person is a student in the school district—regardless of age—a school district employee or volunteer may not engage in unauthorized electronic communication with him or her, except as permitted by SB 181.

Does SB 181 apply to students who are outside the employee or volunteer’s school district?

It appears from the language of the bill that communication with a student who is outside the school district employee or volunteer’s school district is not subject to SB 181. As written, KRS 160.145(2) states, “*Each* local board of education shall designate a traceable communication system to be the exclusive means for a school district employee or volunteer to communicate electronically with students” (emphasis added). The use of the word “each” implies that every local school board will have its own traceable communication system designation. While school boards may end up having very similar designations, it remains that each school board only has its own jurisdiction and its own employees and volunteers under its control. This does not mean that school boards cannot cooperate or allow for some sort of interlocal agreement that would establish the use of a shared traceable communication system, particularly if there are activities of mutual local interest, such as a sporting or academic team.

Who is included in the term “parent,” and does it include stepparents, great aunts, step-siblings, great nephews, other individuals, or agencies?

SB 181 allows a “parent” to submit written consent to allow an employee or volunteer to communicate with his or her child outside of the authorized communication system. KRS 160.145(4). It defines parent as “a parent, legal guardian, or other person or agency responsible for a student.” KRS 160.145(1)(b). Note that this definition is different from “family member,” which is a broader term that means “a parent, brother, sister, son, daughter, aunt, uncle, or grandparent.” KRS 160.145(1)(a). Therefore, the term “parent” only includes those persons who have legal authority over the student. This could be someone other than a biological parent, such as an adoptive or foster parent, and it could be a state or private agency—such as the Cabinet for Health and Family Services, in the case of a student who is in the care and custody of the Cabinet—so long as legal responsibility for the

student can be shown. But without having legal responsibility for the student, the term “parent” would not apply to grandparents or great aunts or uncles, step-siblings, great nephews and nieces, and the like.

What constitutes “school-related communication”?

The Office is construing this question as asking whether there is any exception for non-school related communication. The answer is no. SB 181 defines “traceable communication system” as a communication program or application that “[t]race[s] *all* communications sent to or by a student,” KRS 160.145(1)(d) (emphasis added), and then says that school district employees and volunteers “shall not communicate electronically with a student . . . [o]utside of the traceable communication system.” KRS 160.145(3)(a)1. Under KRS 160.145(1)(d)1., the traceable communication system is to be designated by the local board of education. An “[u]nauthorized electronic communication” is “an electronic communication with a student by a school district employee or volunteer *who is not the student’s family member* that occurs outside of a designated traceable communication system *and* without prior written parental consent” (emphasis added). KRS 160.145(1)(e)1. Because the focus of SB 181 is on the *traceable* nature of communication between students and school district employees and volunteers, the statute makes no distinction between communications that are “school-related” and those that are “non-school related.”

It is conceivable, for example, that a coach may want to text his student-athletes about a summer league (not school-sponsored), or perhaps a pastor is also a public-school teacher and wants to text congregants, including students from his school district, about Sunday school classes. These would be communications between school district employees and students, and because the law makes no distinction between school-related and non-school related communications, all such communications can only be conducted via the approved traceable communication system, unless there is a valid parental waiver.

How should school districts effectuate SB181?

How may a school district employee communicate with students?

SB 181 affords great leeway to local school boards to adopt the traceable communication system(s) that works best for their districts. *See* KRS 160.145(2). The only requirement imposed by SB 181 is that, unless an exception applies, all electronic communications with students by school district employees and volunteers *must* be traceable.

The Office understands that some employees and volunteers regularly use social media to share information about school district activities. There are varying levels of communication within social media products, such as public comments,

private groups, and direct messages. Under KRS 160.145(2), each school board must determine for itself whether such social media products satisfy the needs of the school district and the demands of SB 181 for using “traceable communications systems.” But merely using social media to publicly disseminate information—akin to posting information on a bulletin board that all can see as they walk by—would not be prohibited by SB 181. The requirements of SB 181 would only kick in if a school district employee or volunteer uses a social media platform’s direct messaging feature to communicate directly with an individual or small group of students in the district. SB 181 requires all such direct electronic communications to be via the school district’s designated traceable communication system. Thus, social media should *not* be the primary method of such communications with students, especially when more reasonable alternatives, such as the kyschools.gov email systems exist.

This does not mean school district employees and volunteers cannot use social media. A teacher exercising his or her First Amendment speech rights is free to post publicly on Facebook, and if a student happens to see that post, the teacher would not violate SB 181. Such a post is an expression by the teacher—and possibly a communication to the community at large—but it is not a direct, private communication with a student.

It is worth noting that SB 181 regulates only *electronic* communications with students. See KRS 160.145(2) (making the designated traceable communication system the “exclusive means for a school district employee or volunteer to *communicate electronically* with students” (emphasis added)). It leaves other means of communications available to employees and volunteers, such as printed materials or oral communications.

Are schools required to accept waivers?

Yes. School districts must plan to implement a process for parental waivers, which are permitted by KRS 160.145(4). SB 181 states that the waivers “[s]hall be filed in the administrative office of the student’s school,” KRS 160.145(4)(a) (emphasis added), which means that they must be accepted and tracked by the schools. See KRS 446.010(39) (“‘Shall’ is mandatory”).

If a school district employee is required to download an application to communicate with a student, must the school district provide a phone to that employee?

There is nothing in SB 181 that requires a school district to provide a phone to a school district employee. School districts have flexibility to decide what traceable communication system(s) its employees must use, see KRS 160.145(2), and so the school district may consider the cost and convenience to its employees when making that designation.

Is there any exception in the event of an emergency?

While SB 181 does not specifically provide for an exception in case of emergencies, there is no traceable communication requirement for communication between a parent and a school district employee. Thus, it is permissible for a school district employee to engage in non-traceable communications with parents under emergency circumstances or otherwise. Additionally, schools may use the waiver process permitted by KRS 160.145(4) to seek parental consent for employees and volunteers to use non-traceable communications with students in emergency situations.

If there is a violation of SB 181, what due process is afforded to an alleged offender?

The due process afforded to certified and classified employees and volunteers is set forth in KRS 160.145(6) and (7). For certified employees, an alleged violation of SB 181 would be investigated by both the Education Professional Standards Board and the school district. KRS 160.145(7)(a)2.a. Certified employees are subject to disciplinary actions under KRS 161.790, *see* KRS 160.145(6)(b)1., which provides for notice and a KRS Chapter 13B hearing. Principals and superintendents who allegedly violate SB 181 are subject to disciplinary action under KRS 156.132, which also affords them notice and a hearing. KRS 160.145(7)(b). The due process afforded to classified employees accused of violating SB 181 involves an investigation and then disciplinary action, if appropriate, under KRS 161.011(7). KRS 160.145(6)(b)2., (7)(a)2.b. Finally, if an investigation substantiates that a volunteer violated SB 181, he or she is subject to a permanent prohibition on future school and district volunteer opportunities. KRS 160.145(7)(a)2.c.

Does SB 181 violate free speech or religious liberty rights protected by the First Amendment?

It is well-established that “the right to free exercise, like other First Amendment rights, is not ‘shed . . . at the schoolhouse gate.’” *Mahmoud v. Taylor*, No. 24-297, 606 U.S. ___, 145 S.Ct. 2332, 2350 (2025) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506–07 (1969)). “Government schools, like all government institutions, may not place unconstitutional burdens on religious exercise.” *Id.* “That restriction applies equally to the States by way of the Fourteenth Amendment.” *Id.* (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)). “The Fourteenth Amendment . . . protects the citizen against the State itself and all of its creatures—Boards of Education not excepted.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

But all of this does not mean that schools are prohibited from imposing reasonable restrictions. *See, e.g., Tennessee v. Cardona*, 737 F. Supp. 3d 510, 541

(E.D. Ky. 2024) (discussing schools' compelling interest in protecting children may permit them to impose certain restrictions on speech); *see id.* (explaining that even though "teachers possess certain First Amendment protections over their in-class speech, their 'right to academic freedom is not absolute' and may be subject to limitations that ensure the effectiveness of their educational duties and the institution's mission"). At first blush, SB 181 does not prohibit any speech by an employee or volunteer of a school district; it merely directs that such speech when directed at students comply with reasonable restrictions on the channels that may be used. This sort of regulation on its face does not appear to violate the First Amendment speech or religious liberty rights of any school district employee or volunteer; rather, it recognizes the parent's interest in making decisions regarding the care, custody, and control of his or her child. *See Troxel v. Granville*, 530 U.S. 57, 66 (2000).

The Office is not aware of any alleged infringements on free speech or religious freedom caused by SB 181. Therefore, the Office declines to opine further at this time.

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