

# **Bring Your Own Technology and 1-to-1 Policies:**

## ***A Discussion***

**Warren I. Grody**

**Bricker & Eckler LLP**

**Columbus · Cleveland · Cincinnati-Dayton**

**[www.bricker.com](http://www.bricker.com)**



# Look at Present Policies and Practices

- AUP
- Student Discipline Policies
- Student Handbooks
- Wireless Communication Devices Policy
- Records Retention Policy and Schedules

# Equity

- Right to free education
- What about families who can't afford devices?
- *R.C. 3329.06* – Free textbooks and electronic textbooks

# Discipline and Expectation of Privacy

- When can we seize the device?
- When can we search the devices?

# Discipline and Expectation of Privacy

- Criminal Standard – “Probable Cause”
- Schools – *Reasonableness Standard*
  - Reasonable in its inception.
  - Reasonable in its scope.

# Discipline and Expectation of Privacy

- Ohio Supreme Court on cell phones:  
*State v. Smith, 124 Ohio St.3d 163 (2009)*
  - Defendant has a reasonable expectation of privacy in a modern cell phone.
  - This is a criminal case.

# Discipline and Expectation of Privacy

- How long do we keep the device?
  - Do you hold it until discipline is complete?
  - Do you hold it until the parents come to pick it up?

# Discipline and Expectation of Privacy

– Do you have to give it to law enforcement?

- Child pornography laws
- Evidence of abuse
- Evidence of a felony



# Discipline and Expectation of Privacy

- When is there a nexus that allows discipline?
  - Substantial disruption test
  - How is test applied in a social media world?

# Liability Issues

- Expanded use of school's system may raise expectation of school intervention
- Sovereign Immunity – Chapter 2744
  - Provides broad but not absolute immunity

# Sovereign Immunity – Chapter 2744

1. Three tier analysis
  - a. Immunity
  - b. Five exceptions
  - c. Statutory defenses

# Sovereign Immunity – Chapter 2744

2. Provision of system of education is a *governmental function*.
3. Negligence in performing a proprietary function.
4. Liability expressly imposed by law.

# Records Retention Issues

- How are we going to capture all the public records?
  - *R.C. 149.351*
    - Illegal destruction of records
    - Civil forfeiture and attorney fees- cap of \$10,000 on each for a single request

# Security of Information

- Stolen devices
- Use by unauthorized users
- Infection from additional devices
- What steps should be taken?

# Questions?

