



MEMBER ALERT

Automatic Dialing and Pre-Recorded Voice-Mails/Texts

At the 2015 Member “Boot Camps,” questions were raised regarding the continued propriety of using automatic dialers and recorded messages and/or automatic texts to transmit information regarding school absences, school events, principal/teacher messages of general interest, and student or booster club/PTO fundraising or other activities. As noted, these programs are coming under greater scrutiny, with recent changes and clarification of governing laws restricting the ability to use these tools. SchoolMessenger and several laws firms have thereafter issued alerts and conducted webinars to heighten awareness in this area.

I. THE LEGAL ISSUES

Automatic dialing systems, pre-recorded messages, and pre-packaged texts are governed by California and federal law, including the Telephone Consumer Protection Act (“TCPA”, 47 U.S.C. § 227), with the most restrictive law applying. To help provide guidance regarding the current legal standards, the following summary is provided:

- A. Texts are considered the equivalent of telephone calls, although often with additional legal restrictions.
- B. Landlines and wireless phones are subject to different rules, with wireless phones more restrictively protected, unless a governing law or regulation expressly treats them as the same. Thus, in the absence of the porting of a landline number to a wireless phone, the calling party is required to be aware of the difference in the receiving devices and ensure that the wireless phone restrictions are followed.
- C. For these purposes, federal law blocks any use of automatic dialing/texting to wireless telephones absent an emergency situation or express, advance consent. While an “emergency” matter is not defined under the regulations, common interpretations include a situation involving the actual or objectively reasonable belief in an imminent health or safety risk to students at or near one or more specified school locations. “Emergency” messages can be automatically transmitted to landlines and wireless telephones.
- D. Under California law, pursuant to a special exception, automatic dialing, and recorded voice announcements regarding student attendance is permitted to landlines without further procedural impediments regarding student attendance. *PUC Section 2872(d)(1)*. There is no similar exception for calls to wireless telephones or for automatic “text” messages.
- E. California *PUC Section 2872(f)* does not allow for the automatic calling/texting of non-attendance/non-emergency matters without a formal and affirmative “opt-in” process. Even though Parents/guardians are not in an “established relationship” with a “business” within the technical scope of the statute, if non-emergency/non-attendance communications directly pertaining to school/county office business are generated “at the request” of the parents or guardians through an affirmative, clearly defined opt-in process, these should be considered proper communications. *47 U.S.C § 227(b)(1)(A)(iii)*.
- F. Violations can arise from “solicitation” calls, which require special advance types of approval under California law (including the obligation to have a live person to address questions, pursuant to PUC Section 2875.5), which should result in a prohibition of any use of the District’s automatic dialing/texting resources for support of any fundraising or similar purposes where money would be expected to be donated or expended. Given privacy concerns, the absence of any direct regulatory authority, and specific limitations on solicitations pursuant to Education Code Section 51521, the District’s communication systems should never be used by non-District personnel (i.e., no booster clubs or PTOs), should not be utilized for messages regarding routine school events (dance, bake sale, etc. reminders), and are best issued only by a principal/vice-principal, never a student or volunteer to ensure full and complete legal compliance. Email or other delivery systems are more appropriate channels for such communications.
- G. There are significant penalties for violations of the governing laws, which can be pursued on a class action basis, including \$500 per call/per text penalty (which can be trebled upon a showing of knowing or purposeful violation), which can quickly lead to very large damage awards.

II. THE PRACTICAL ISSUES – DO’S AND DON’TS

- A. Student absence messages can be automatically sent to landlines and through email; however, the absence would not rise to the level of an emergency that would support the issuance of a text message.
- B. “Emergency” messages can automatically be sent to landlines, wireless phones, and email addresses.
- C. Non-emergency “principal messages” regarding important issues relating to a school site, that do not involve any type of solicitation, can be issued to email addresses. They can also be issued to landlines and/or wireless phones after implementation of a formal, affirmative “opt-in” process for such message delivery.
- D. No automatic telephonic/text messages should be issued that solicit contributions, advertise fundraising events, or that seek the purchase of goods or services. Issues involving “money” should be issued through emails or made available through websites or paper solicitations. Given increasing privacy standards under the TCPA and California law, including “do not call” and content disclosure rules and obligations for such calls, even “live call” solicitation calls (which are not governed by the more stringent “robocalling/texting laws”) create concern. Such solicitations are best avoided absent independent legal review confirming (i) the ability to use a specific group of telephone numbers, (ii) how callers must disclose themselves, (iii) approved content, and (iv) how to respond to objecting recipients.
- E. A District administrator, principal, or vice-principal can issue communications in keeping with the foregoing standards; no one else should be allowed access to the District’s systems, including email/telephones systems or email addresses/telephone numbers. Such access by non-district personnel (volunteers, booster clubs, etc.) poses a particular concern when those individuals then use email addresses and/or telephone numbers obtained through the Member for their personal businesses or business ventures (i.e., volunteer obtains general email list from the District to promote a bake sale, and then uses that list to promote her accounting business).

III. TO ENSURE BETTER PROTECTION AGAINST POTENTIAL CLAIMS -- THE YEARLY “OPT-IN PROCESS”

Existing statutes (including the TCPA and California’s PUC Codes) provide certain potential “safe harbors” against claims of improper use of automatic dialing/textings systems when the recipient has given express, advance permission to receive communications through such systems (this requires an “opt in” process; not an “opt out procedure”). Thus, to avoid potential disputes and exposures, each Member should include a new provision in its yearly student registration process (electronically or by written form), in which the parent(s)/guardian(s) affirmatively “Opt-In” to broader communication channels. The following language might be used:

The District seeks to provide parents and guardians with important information in the most timely manner appropriate to a particular circumstance: Emergency conditions involving potential health or safety communications will be sent by voice recording and text messages to your home telephone numbers and wireless device (if a wireless number is provided with your Emergency Card). We will also send a recorded voice-mail message to your home telephone regarding a student absence that has not been cleared by calling the school’s absence line prior to ____ a.m.

We also ask that you authorize us to contact you with important school information from our District and/or school staff by (a) a recorded message to home telephone number, (b) by a text message to your wireless telephone, including a potential link to a recorded voice message, and (c) by email message. For each type of authorized method of communication, please provide the following: _____ (home telephone), _____ (wireless telephone(s)), and _____ email(s). We will not share this contact information with any other party or allow it to be used for any non-District or solicitation purpose. If you do not provide this information, you will need to regularly check the school’s website for updated information.

While this type of “opt-in” process may go beyond the current requirements of the law, it is a recommended “best practice” to help avoid what can turn into costly disputes.