

NAIS LEGAL ADVISORY

Independent School Automated Calls and Texts: Can You Keep Sending Them?

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Automated calls and text messages are a part of our modern, 24/7, connected lifestyle and an efficient communication tool for schools. However, automated messages can also be unwanted, and year after year they are a top source of consumer complaints received by the Federal Communications Commission (FCC). Years ago the agency announced regulations relating particularly to landlines and the implementation of the do-not-call list. Recently, the FCC also issued some clarifications to the rules that govern the practice of sending cell phone messages to parents and others in your school community. This advisory provides background and recent updates concerning the law in this area, as well as best practices for schools to ensure both compliance and effective communication.

What is the Telephone Consumer Protection Act?

The Telephone Consumer Protection Act (TCPA) was enacted in 1991 to combat calling practices that threaten consumer privacy and public safety, and is enforced by the FCC. Broadly speaking, the TCPA prohibits certain types of “robocalls” and automated messages, unless the caller or sender gets prior permission from the recipient. Individual consumers can recover \$500-\$1,500 per violation of this law, and the FCC can fine violators up to \$16,000 per incident. Specifically, the law prohibits two categories of calls/messages:

- Telemarketing calls that are made using an “artificial or prerecorded voice” to residential phones without prior express consent; and
- Nonemergency calls using an autodialer or artificial/prerecorded voice to wireless phone numbers without prior express consent. This prohibition covers both calls and text messages and is applicable to independent schools.

Why does this law apply to schools? It sounds like it refers more to telemarketers or businesses.

While telemarketers and businesses fall under this law, schools do, too! For example, schools may send many types of prerecorded calls and messages, such as notices of school closure due to inclement weather, safety threat alerts, reminders of school activities, notifications regarding parent-teacher conferences, and much more. Any of these communications that are sent via autotransmission cell phones fall under this law.

Does the TCPA apply to messages sent to students, as well as parents/guardians? What about emails?

Yes, the TCPA applies to calls and text messages sent to the cell phones of students, as well as parents/guardians. While other laws may cover email communications, the TCPA only applies to automated calls and text messages.

Does this mean I must get prior express consent for all messages? What if there is an emergency?

There is an emergency exception to the requirement to obtain prior express consent. An emergency is considered an event that affects the health and safety of students and faculty. While the FCC has not provided a definitive list of events that would qualify as an emergency, it has confirmed that events such as weather closures, fire, health risks, threats (such as dangerous persons), and unexcused absences (i.e., an unaccounted for student) fall under the emergency umbrella.

So what is new?

Blackboard, a company that provides automated call, text message, and email services to schools to communicate with their communities, asked the FCC to clarify how these rules apply to schools and the variety of messages they may send. Blackboard argued that there is a difference between commercial calls from telemarketers and other businesses and those from schools. Therefore, Blackboard asked the FCC to declare that all automated informational messages sent by an educational entity (school or a contracting company) fall under the emergency exception and not require prior consent.

Did the FCC agree with Blackboard's proposition?

Not entirely. The FCC did confirm that schools can send autodialed/automated calls and text messages to cell phones in the case of an emergency without getting prior permission. However, the FCC declined to classify all autodialed/automated calls or texts sent by a school as emergency messages. The rationale here is that notifications about events, such as parent-teacher conferences or general school activities, are not related to health or safety.

At the same time, the FCC reiterated that these nonemergency calls and messages are still legal if a school obtains prior consent. The good news is that most schools likely already take this step during registration when asking for a contact number, which a parent/guardian provides. Until this recent FCC clarification, there was no bright-line test dictating what schools must do to ensure consent for these messages and how broadly schools could consider that consent.

Thankfully, the FCC provided some edification on this issue as well by clarifying that when individuals provide their phone number to a school, they are providing consent to be contacted with messages that are “closely related to the educational mission of the school or to official school activities,” unless otherwise noted. Examples of messages that are closely related to a school’s mission or official school activities include reminders of events, such as parent-teacher conferences, back to school nights, and other official events, and surveys that request input on school-related issues. Still, the FCC recommends that schools disclose the types of calls and messages parents/guardians can expect to receive when they provide the school with their cell phone number to assure necessary and informed consent.

Lastly, schools do need to be aware of calls or messages that may not be closely related to the mission of the school or its activities. While the FCC did not provide many examples, it indicated that messages about programs, such as local community events that just happen to be hosted at

the school, may not be considered “closely related” and may not fall under consent that has been previously given.

What practices should I consider to stay in compliance with the law and get important messages out to my school community?

- 1) Even though prior permission is not required for emergency calls and texts, schools should regularly update their emergency call/message lists to make sure that such messages reach the appropriate person. This ensures that the list is up-to-date and individuals know the school will communicate using the call lists. This also protects the privacy of students and families in the event that any communications contain individual information.
- 2) Schools should create and regularly review a comprehensive disclosure list of the types of messages that a parent, guardian, or other emergency contact might receive, and review them to ensure that they relate to the educational mission or activities of the school.
- 3) Schools should provide a consent form that states that all communications using autocalling or texting will be related to the school’s educational mission or school activities, and include examples. Consent should be affirmative, as opposed to using an opt-out method. This permission can be obtained through forms at the start of the school year and need only be collected once per number, provided the school does not need further consent to expand its range of communications. Schools must remember to obtain consent from students and their parents for any student phones that may also receive these messages.
- 4) Think about the types of messages you send to your school community. If you are considering sending a message not closely related to your educational mission or official school activities (and it is not covered by a previous disclosure and consent), you should not assume you have consent merely because these individuals have provided their cell phone number. Rather, you should consider obtaining additional consent relevant to the circumstances.
- 5) Be prepared to honor requests from those who no longer wish to receive nonemergency calls or texts from the school, and act promptly to remove them from your lists.