

## Frequently Asked Questions

# TCPA Clarification FAQ

### What is TCPA and why do schools need to know about it?

The Telephone Consumer Protection Act (TCPA) was created in 1991 and is administered by the Federal Communications Commission (FCC). The rules, among other things, generally prohibit calls or SMS text messages made using automatic dialing systems or a prerecorded voice to any telephone number assigned to a mobile phone without prior express consent from the called party, unless the call is for “emergency purposes.”

TCPA covers schools, public and private. Under TCPA, consumers can sue for violations with penalties per violation (per call) of up to \$500. These can be tripled to \$1,500 if the violations are done willfully and knowingly.

### What was the most recent FCC update to TCPA rules, and when do they go into effect?

On August 4, 2016, the FCC released a declaratory ruling to clarify prior express consent under the TCPA specific to schools and utilities ([CG Docket No. 02-278](#)). The ruling went into effect immediately and is now in effect.

### What are key changes to TCPA rules affecting schools?

There are two key clarifications.

- First, the ruling clarifies calls and texts can be made to mobile phones for purposes **“closely related” to the mission of the school**, if a parent/guardian has provided a phone number to that school. In those cases, the school need not obtain additional explicit consent.

- Second, the ruling **clarifies types of calls which meet the definition of “emergency purpose”** (a situation affecting the health and safety of students and faculty), include, for example, weather closures, incidents of threats and/or imminent danger to the school due to fire, dangerous persons, health risks (e.g., toxic spills), and unexcused absences.

### What are examples of purposes “closely related” to the school mission, and how does this vary from the 2015 update?

The “closely related” language is new for school messages. Examples of purposes “closely related” to the school mission identified in the FCC ruling include notification of an upcoming teacher conference or general school activity.

However, the FCC says a local community event lacking any educational purpose or connection to official school activities falls outside this scope of “closely related.” Previously, the assumption was that express consent must be explicit for each purpose – the specific purposes would have to be identified at the time the number was provided. The ruling does suggest schools disclose the full range of all expected potential calls and messages at the time the number is collected to ensure such calls fall within the scope of the consent given. Being specific may limit the risk of later finding the purpose of a call fell outside one closely related to the school mission.

## How has the definition or examples of “emergency purposes” changed?

The definition of an emergency as a situation affecting the health and safety of students and faculty has not changed. In the ruling, the FCC indicates a weather closure could be considered an emergency, as could an incident of threat and/or imminent danger to the school, as well as an unexcused absence and an unaccounted-for child.

## Does a school need to continue getting express consent before calling or texting a mobile phone number for non-emergency purposes?

Express consent is still needed, but express consent is now considered gathered simply by the act of the parent/guardian providing the number to the school (as long as it is for purposes closely related to the school mission). For purposes not clearly related to the school mission or not explicitly identified at the time the number is collected, additional express consent for those purposes is still needed.

## Do schools need to continue providing recipients with the ability to opt-out of being contacted?

Schools must continue to honor a request to opt-out of being contacted at any time and using any reasonable method. TCPA compliance is consistent with general best practices for parent communications, including providing parents with ongoing opportunities to revoke consent (in general or for specific types of communications) and to identify their preferred, and therefore the most effective, communications channel (ideally by purpose, such as emergency, school activities, and so on).

For example, if a parent texts an opt out message or informs a teacher the parent wants to opt out, the number must be immediately blocked in the school notification system and that preference must be kept on file for future reference. It is crucial school staff on the front lines understand these policies and the importance of properly implementing them. It is also possible a parent would revoke consent for a specific method (e.g., SMS text message) and/or for a specific purpose (e.g., school events). Using embedded and automated features included in a broadcast communications tool are a best practice to more easily record, manage and act on the called party’s opt-out and preferences.

## What are school obligations if a phone number is reassigned?

Consent obtained from the original subscriber of a mobile number does not mean there is prior express consent when that number has been reassigned to another subscriber. Consent must come from the called party – that’s the person assigned to the number dialed and billed for the call or the non-subscriber customary user of a number in a family or business calling plan. When the called party changes, the school is responsible for taking steps to not contact the reassigned numbers.

The FCC ruling encourages schools to regularly update their emergency calling lists to ensure emergency-purpose calls do in fact reach the intended recipient. Services are available for tracking numbers that are disconnected and/or ported. Some notification providers integrate that data into their services to proactively identify and block such numbers.

## Where can schools get more information about TCPA and schools?

West’s Education group maintains a TCPA Resource Center ([www.schoolmessenger.com/TCPA](http://www.schoolmessenger.com/TCPA)), a web-based clearinghouse of TCPA-related materials available free of charge to all K-12 school district leadership and staff. However, this FAQ and other West TCPA resources are not intended to and do not provide legal advice. School leaders are urged to consult their legal counsel to best understand their districts’ risks and options under the law.

**This FAQ is not intended to be legal advice. Please consult your legal counsel to best understand your obligations under the TCPA.**