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Cyber-Bullying and the Law: How Schools Can Protect Their Students and Create a Safer Environment

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At Issue: The legal landscape of cyber-bullying and schools is complex and deals with the precarious relationship between the First Amendment and state statutory laws. The gray area lies in what a school can do to discipline the offender, verses what the school must do to protect the victim.

State Laws

The issues with respect to what schools must do to protect cyber-bullying victims are largely dependent on the statutory and common law of a particular state. While various laws addressing cyber-bullying are on the books in almost every state, no single uniform

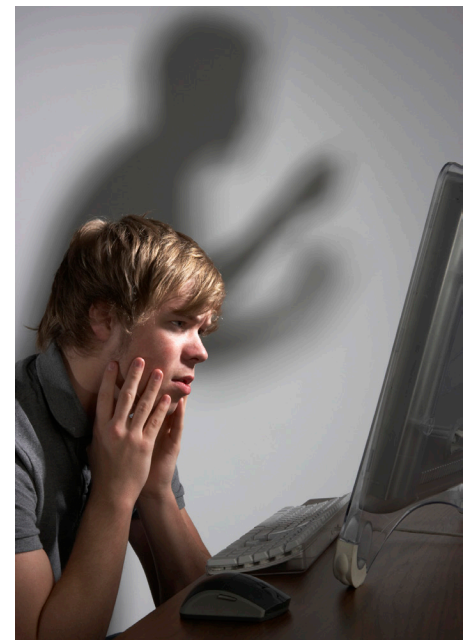
national approach exists. Trends have emerged, however, and most states now treat cyber-bullying as a form of criminal harassment or require schools to proactively adopt anti-cyber-bullying measures.

For example Illinois, Wisconsin and Kentucky have enacted statutes making it a crime to harass someone through electronic communication. Kentucky also goes a step further and mandates that all instances of in-school bullying be reported to the principal, who then has to file a report with local law enforcement. Pennsylvania, New York and Indiana have taken a different approach, and have adopted laws requiring schools to enact anti-bullying policies and provide anti-bullying education.

Constitutional Concerns

As most cyber-bullying occurs after school hours, the First Amendment limits a public school’s ability to formally discipline an offender for what is essentially a form of off-campus speech. Typically this legal issue arises when a school suspends or expels a bully who in turn files a federal civil rights claim arguing that his or her First Amendment rights were violated.

Schools have some power to restrict speech given their unique role in society, however this power is not unlimited. If the school cannot show that the offensive off-campus speech had a sufficient relationship to the school, or that it could potentially cause an in-school disruption, the suspension or expulsion will be a violation of the offender’s First Amendment rights. To date, federal court rulings on this subject have been inconsistent in defining exactly what these standards require, unfortunately creating uncertainty for schools.



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While the damages levied against the offending student(s) will likely be minimal, a school will be responsible for both its own attorney fees, as well as those of the bully under federal fee shifting statutes. The First Amendment would not limit more informal discipline, such as parent conferences, and private schools typically do not have the same Constitutional concerns.

Common Law Exposures

The off-campus nature of cyber-bullying affects a school's potential exposure if a victim commences a lawsuit, as a school's duty to its students generally is limited both in time and place to acts that occur on school grounds during the school day. Although this is a rapidly evolving and sometimes unclear area of the law, it is at least potentially conceivable that a school could be held liable for off-campus cyber-bullying if it fails to adopt state mandated anti-bullying measures. Moreover, if off-campus cyber-bullying escalates to on-campus physical bullying, a school's awareness of the cyber-bullying could be used to establish that the school was on notice of the problem and therefore obligated to provide the victim with protection. Depending on the common law of the particular state, this may be enough to force a trial and find liability.

Risk Control

In general, educators and state education commissioners have recommended a multi-tiered approach to preventing incidents of traditional and cyber-bullying. They include:

- **Developing a safe school climate for students.**

Educators, parents, and school boards must establish and maintain an environment that establishes value and respect for all members of the school community – not just the students. Multiple examples of culturally sensitive behavioral interactions (that go beyond race, ethnic background and religion, for example, and include students with disabilities) that occur throughout the day, demonstrating that no tolerance exists for unacceptable behaviors, foster the most positive school climates.

- **Developing and enforcing a code of conduct or policy.**

As mentioned above, Pennsylvania, New York and Indiana require schools to adopt anti-bullying policies and provide anti-bullying education. Besides identifying prohibited behavior, these measures establish expectations and consequences for conduct regarding bullying and the use of technology. The code of conduct should be distributed or posted as required by law or as needed in order to advise all members of a school community.

- **Responding to incidents of bullying.**

School administrators may incur liability if they fail to promptly and reasonably respond to notification of bullying that occurs.

The US Department of Health and Human Services' National Bullying

Prevention Campaign can be accessed by visiting: <http://www.stopbullyingnow.hrsa.gov/adults/cyber-bullying.aspx>

Various State Law Internet References

State of Kentucky Department of Education
[http://www.education.ky.gov/KDE/Instructional+Resources/Secondary+and+Virtual+Learning/Safe+and+Drug+Free+Schools/Guidelines+for+the+implementation+of+HB+91+\(KRS+158.156\).htm](http://www.education.ky.gov/KDE/Instructional+Resources/Secondary+and+Virtual+Learning/Safe+and+Drug+Free+Schools/Guidelines+for+the+implementation+of+HB+91+(KRS+158.156).htm)

New York State Education Department
http://www.p12.nysed.gov/technology/internet_safety/documents/cyberbullying.html

State of Illinois
http://illinoisattorneygeneral.gov/cyberbullying/for_educators.html

State of Indiana
http://www.doe.in.gov/issas/school_safety_laws.html

State of Wisconsin
<http://dpi.wi.gov/sspw/safeschool.html>



Facilities Safety at K-12 Schools

The wear and tear from physical education classes, interscholastic sports and community use of facilities puts a strain on recreational facilities, equipment and athletic fields. Physical defects can lead to accidents and litigation against



the school and board. A viable risk control program that addresses the particular needs of the individual school can help control this exposure.

✓ According to the U.S. Consumer Products Safety Commission, a fall from playground equipment is the most common type of accident. It accounts for over 200,000 emergency room visits each year by children.

The first item to check in the playground is the condition of the surface below and around the equipment. Plan on 12 inches of wood chips, mulch, sand, pea gravel, or mats made of safety-tested rubber or rubber-like materials. Then look over the condition of the equipment – be aware of protruding hardware, damaged support elements, splintering wood structures or entrapment hazards that could trap children. Openings in guardrails or between ladder rungs should measure less than 3.5 inches or more than 9 inches. Make sure that the proper playground signs are in place and visible.

✓ Soccer goals weigh close to 100 pounds and can tip over, causing injuries to players around the goal. To prevent them from tipping over, make sure the goals are anchored into the ground. Most manufacturers will supply anchoring hardware. Indoor posts should be secured as well.

✓ Sports and recreation facilities need a good look over as well. A

leading cause of injury during sporting events (and an allegation that is usually included in lawsuits that arise from sporting or recreation events) is unsafe facilities, fields, equipment, or gymnasiums, for example: defective wood parquet flooring in the gymnasium, divots or holes on grass fields, and artificial turf fields that have lost their resiliency and no longer protect against falls.

✓ A signage program for recreational facilities is one way to prevent accidents from occurring. Signs give a school the ability to let users know what is and what is not permitted. Signs also contain information about hours of operation, age restrictions and prohibited activities.

Based on leading recreation-liability loss causes for schools, the following checklist will help focus staff attention on equipment and facilities that commonly lead to accidents and injuries:

INDOOR FACILITIES

- ➔ Inadequate safety zones around indoor courts
- ➔ Improper storage of equipment
- ➔ Overcrowding
- ➔ Unsupervised areas
- ➔ Improper maintenance of facilities and equipment
- ➔ Lack of safety glass
- ➔ Wet floors in locker rooms, shower areas and around pools
- ➔ Missing warning or instruction signage
- ➔ Traffic patterns that overlap with play areas

OUTDOOR FACILITIES

- ➔ Overlapping athletic fields
- ➔ Defects on playing surfaces
- ➔ Improper placement of dugouts or benches
- ➔ Inadequate or missing warning tracts
- ➔ Unstable or damaged bleachers
- ➔ Improper fall zones beneath and around playground equipment, or improper ground cover
- ➔ Inadequate fencing
- ➔ Missing warning or instruction signs
- ➔ Damaged challenge course equipment



Establishing a Motor Vehicle Use Policy

A building and grounds employee was driving a school-owned pickup truck back from a trip to a landscaping vendor when he decided to detour from the route back to the school. He picked up two friends on his way to the beach nearby. Along the way, he lost control of the vehicle and hit a concrete pillar. One passenger was ejected and killed; the other was seriously injured.

When the school's business manager heard about the accident, one of her first reactions was: "What were they doing at the beach – miles off the route back to the school? Didn't the driver know school-owned vehicles are for school business purposes only?" Sadly, the answer was no. There was no policy, and no proof that any prohibitions were placed on drivers – except to get vehicles back to the transportation lot by the end of the day. Since it couldn't be proved otherwise, the insurance company was forced to provide coverage for the driver, and the school's insurer paid more than \$1 million in liability claims and expenses.

Sample Driver Use Policy

A properly drafted motor vehicle use policy will help control loss and loss-related expenses resulting from the use of school-owned vehicles. Include your school attorney when drafting a policy for your school.

Generally, the educational institution can be held responsible for accidents involving vehicles the



school owns. A major exception to this rule usually exists when the operator – including an employee – is operating the vehicle beyond the scope of permission (e.g. using a vehicle to moonlight after hours or on weekends). Schools must decide if employees who are assigned vehicles will have unlimited, non-restrictive use, or if limitations will be imposed. Most schools want to impose restrictions, but they fail to do so in a proper way.

The following questions may help clarify the issue:

- Is personal use allowed?
- Are side trips permitted during the workday?
- Can spouse/children/friends use the vehicle?
- Where should the vehicle be kept after hours and on weekends?
- What type of record keeping is required?

If the answer to any of the first three questions is yes, then the school should:

- Establish a clear motor vehicle usage policy. List all prohibitions, rules and procedures that apply to use of school-owned vehicles. Explain the ramifications of failing to follow guidelines.
- Communicate the policy to all employees
- Obtain proof that employees are aware of it, and
- Implement and enforce the policy – use disciplinary means, if warranted.



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