



Litigation on Cyber Bullying: Legal Issues for School Personnel

Recent attention to bullying has focused not only on the passing of new state laws on bullying and cyber bullying, but also on what's happening within the courts. Although it is difficult to track bullying-related litigation, a number of recent high-profile cases against school systems have resulted in significant awards to parents or guardians for harm caused to children who are bullied (Kowalski, Limber, and Agatston 2008).

Although published case laws relevant to cyber bullying are very limited and somewhat unclear (Kowalski, Limber, and Agatston 2008; Willard 2006), these three legal questions are particularly relevant to public school staff members in the United States:

- Under what circumstances might school staff members be liable for failing to address cyber bullying?
- When can school staff members intervene to address cyber bullying without violating students' First Amendment rights regarding freedom of expression?
- Under what circumstances can school staff members monitor or search Internet records of students without violating students' Fourth Amendment restrictions on illegal searches and seizures?

Under What Circumstances Might School Staff Members Be Liable for Failing to Address Cyber Bullying?

School staff members may, under certain circumstances, be held liable under state or federal laws if they don't address cyber bullying or harassment. Under state laws, students (or parents or guardians on behalf of their children) may sue

school staff members for negligence to use reasonable care to protect students from harm caused by cyber bullying. Under a variety of federal laws, such as Title IX of the Education Amendments Act of 1972, Title IV of the Civil Rights Act of 1964, and Title II of the Americans with Disability Act, students who are members of protected classes may bring suits against schools or districts for injuries caused by student harassment based on race, gender, or disability. For a detailed explanation of liability for failure to address cyber bullying, see the book *Cyber Bullying: Bullying in the Digital Age* (Kowalski, Limber, and Agatston 2008).

When Can School Staff Members Intervene to Address Cyber Bullying Without Violating Students' First Amendment Rights Regarding Freedom of Expression?

Students have First Amendment rights to freedom of expression, but administrators may, in some circumstances, infringe on these rights to protect students from harm. Although uncertainty exists regarding how existing laws may apply to the cyber world, it appears that administrators may suppress cyber speech that takes place on school grounds under the following circumstances (Kowalski, Limber, and Agatston 2008):

- The cyber speech includes a threat.
- It is lewd, vulgar, or profane.
- The speech is, or appears to be, sponsored by the school.
- The speech disrupts the school or the rights of others.

It is unclear whether or to what extent school staff members may limit students' cyber speech that originates *off campus* (Chaker 2007; Kowalski, Limber, and Agatston 2008; Willard 2006).

Under What Circumstances Might School Staff Members Monitor or Search Internet Records of Students Without Violating Students' Fourth Amendment Protections Regarding Illegal Searches and Seizures?

In efforts to monitor or search students' Internet records for evidence of cyber bullying or other inappropriate speech, school staff members may wish to search

students' computers or Internet records at school. Are these actions permissible, or do they violate students' Fourth Amendment protections against illegal searches and seizures? Following the legal precedent set in cases that have involved searches of students' desks and lockers, students should expect limited privacy of the contents of computers at school. On a regular basis, school staff members may make general inspections of school computers and Internet accounts. They may make more specific searches of computers or accounts in cases when they have reason to suspect content that either (a) is illegal or (b) may provide evidence of activities that are illegal or violate school rules (Kowalski, Limber, and Agatston 2008).

References

- Chaker, A. M. 2007. Schools act to short-circuit spread of "cyberbullying." *The Wall Street Journal*, January 24, page D1.
- Kowalski, R. M., S. P. Limber, and P. W. Agatston. 2008. *Cyber bullying: Bullying in the digital age*. Malden, MA: Blackwell Publishing.
- Willard, N. E. 2006. *Cyber bullying and cyber threats: Responding to the challenge of online social cruelty, threats, and distress*. Eugene, OR: Center for Safe and Responsible Internet Use.