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California Association of Independent Schools *Trustee and School Head Conference*

“Student/Parent Legal Issues”

January 27, 2007

Presented by:

Michael Blacher and Donna Williamson

**Student/Parent
Legal Issues**

Presented by:
*Michael Blacher &
Donna Williamson*

Overview

- **School Admissions**
- **Student Contracts/Policies**
- **Enrollment**
- **Student Accommodations**
- **Student/Parent Liability**
- **Student Discipline**
- **Press and the Media**
- **Updates**

Sources of Law

- **Federal**
 - Civil Rights Act – Title VII (most of the time)
 - Americans with Disabilities Act (probably not)
- **State**
 - Education Code (sometimes)
 - Civil Code – Unruh Civil Rights Act (maybe)
- **Regulations**
 - Education Code Regulations (sometimes)
- **Case Law**
- **Attorney General Opinions**

Student Contracts / Policies

Tuition

- **Tuition contracts: a contract is formed if**
 - the student agreed to pay; and
 - the agreement included a date when payment was due; and
 - the date, if applicable, when the student could have canceled without penalty
- **Incomplete year**
 - If school is able to mitigate damages (i.e. fill the spot with another student)
 - Exiting student/parents no longer owes lost tuition
- **Enforcement**
 - Civil Court
 - Small Claims Court
 - Insurance

Student Contracts/Policies

- **Consider Including in Student Handbooks**
 - Philosophy of School
 - Attendance
 - Arrival/Dismissal
 - Punctuality
 - Student Pick Up
 - Absences
 - Safety/Emergency Procedures
 - Open/Closed Campus

Violation of any of these Policies May be Grounds for Discipline Including Expulsion

Student Contracts/Policies

- **Consider Including the Following in Student Handbooks (cont.)**
 - Standards for Student Conduct
 - Personal/Academic Dishonesty
 - Cheating/Plagiarism
 - Inappropriate Behavior
 - Behavior which Damages Reputation and Well-Being of School (important for parents, too)
 - Harassment
 - Bullying
 - Computer Use Policy
 - Dress Code

Violation of any of these Policies May be Grounds for Discipline Including Expulsion

Student Contracts/Policies

- **Reducing Risks**
 - Clearly Communicate Expectations of Students and Parents
 - Share Concerns Regarding Appropriateness of Program
 - Do not Permit the Student to Stay in Program Beyond where it is Educationally Appropriate
 - Work with Family to Assist with another Placement or Recommend Consultant
 - Treat all Families Similarly Situated in the Same Manner
 - This includes children of faculty
 - Document

Student Contracts/Policies

- **Breach of Contract**
 - Does Contract Refer to Policies/Handbook?
 - Are Polices/Handbook Distributed?
 - Is Contract/Policy Language Clear?
 - Do not Make (including to faculty) Verbal Promises.

Student Accommodations

- **Americans with Disabilities Act**
 - Title III of ADA Applies to Place of "Public Accommodation."
 - Includes Private Schools.
 - Does not Include "Religious Entities."

Student Accommodations

Americans with Disabilities Act

- **How is School Organized?**
 - If Part of Synagogue will be "Religious Entity"
 - If Incorporated as "Religious Corporation" will be "Religious Entity"
 - Less Certainty if "Public Benefit Corporation"
- **What if Unruh Applies?**
 - Students May be Covered

<http://www.ada.gov/reg3a.html>; *Silo v. CHW Medical Foundation* (2002) 27 Cal.4th 1097

Student Accommodations

- **To prevail on an ADA Title III claim a student must show:**
 - Disabled within the meaning of the ADA
 - Otherwise qualified for participation in the program
 - Made a request for a reasonable accommodation
 - The school denied the request

Student Accommodations

- **Requires Interactive Process**
- **Applies only to otherwise qualified individuals**
- *Substantial modifications of program are not required (including modification to discipline rules)*

Student Discipline

Discipline Contracts:

- **Helps Schools to:**
 - set clear expectations for students with behavior issues
 - document student behavior
 - document the steps taken to correct it
 - inform parents

Student Discipline

- **Free Speech**
- **Private *secondary* schools may not discipline students solely on the basis of speech that is protected by the First Amendment.**

Ed. Code § 48950

Student Discipline

Bullying Policy

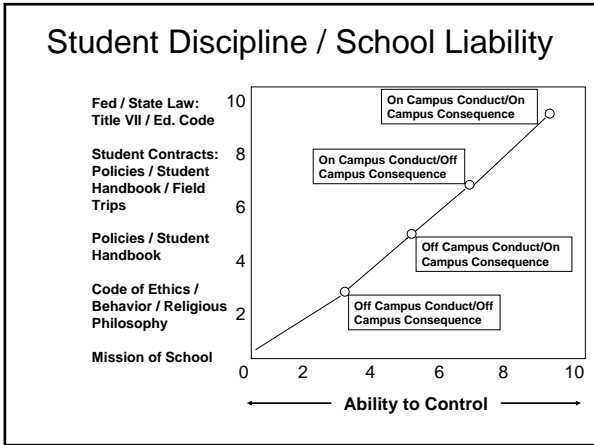
- **Model Policy Developed by California Department of Education**
- **Required for Public Schools as Part of Comprehensive Safety Plans**
- **Highly Recommended for All Schools**
 - Act Need Not Be "Harassing"

Ed. Code § 32280-88

Student Discipline

True/False/Maybe

A school can expel a student solely on the grounds that the student's parents are intrusive or uncooperative.



Negligent Supervision

- **Negligence Analysis**
 - Specific knowledge of threats of harm OR
 - Reason to have knowledge of threats of harm (knows of a course of conduct by student involving habitual and specific acts which create an unreasonable risk of harm to other persons)
 - Has the opportunity and ability to control such conduct and
 - Fails to exercise reasonable care to prevent harm to others

Press and the Media

What Schools Can/Cannot Do

- Schools *may not* prevent members of the press from lawfully gathering on public streets near a school campus
- There are no known statutes in place preventing media organizations from advertising near school campuses
- Schools *may* refuse entry to any person or organization not authorized to enter its campuses; schools are advised to develop clear policy regarding press on campus
 - require members of the press to provide their name, address, occupation and purpose of visit
 - do not allow press on campus without prior written approval by school administrators
 - do not allow press to photograph students without parental consent

Press and the Media

What Students Can/Cannot Do

- **Once students leave campus, they cannot be prevented from granting interviews to members of the press**
 - Potential for Discipline Depending on What Student Says
- **If students feel their rights have been violated by the press, there are a number of civil causes of action available to them**
Planned Parenthood Shasta-Diablo, Inc. v. Williams (1995) 10 Cal.4th 1009, 1017
Penal Code § 602; 79 Ops. Cal. Atty. Gen. 58

Crisis and the Media

- **Be Prepared for Media**
 - Have Only One Spokesperson
 - Refer All Questions to That Person
 - Keep Private Information Private
 - Prepare Written Statement
 - Stay on Message

Updates:

- **Unruh Civil Rights Act**
- **Civil Code § 51 et seq. – Unruh Civil Rights Act**
 - Applies to all "Business Establishments."
 - All Individuals are Free and Equal Regardless of:
 - Sex, Race, Color, Religion, Ancestry, National Origin, Disability, Medical Condition, Marital Status, or Sexual Orientation.
- **Same Protected Categories as the Fair Employment and Housing Act.**
 - Entitled to Full and Equal Accommodations, Advantages, Facilities, Privileges, or Services.

Discrimination/Harassment

- **Does Unruh Apply to Private Schools?**
 - **Maybe Not:** *Reed v. Hollywood Professional School* (1959) 169 Cal. App. 2d Supp. 887.
 - **Maybe So:** Civil Code § 51.9 – Sexual Harassment Refers to "Teachers."
 - *Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist.* (1997) 964 F. Supp. 1369.
 - *Isbister v. Boys' Club of Santa Cruz, Inc.*(1985) 40 Cal.3d 72.
 - "Business Establishment" means Places of Public Accommodation or Amusement.
 - **Definitive?:** *Mother Doe v. California Lutheran High School.*

SAMPLE BULLYING POLICY & RESOURCES

See next page.

Sample Policy for Bullying Prevention

The _____ School District believes that all students have a right to a safe and healthy school environment. The district, schools, and community have an obligation to promote mutual respect, tolerance, and acceptance.

The _____ School District will not tolerate behavior that infringes on the safety of any student. A student shall not intimidate or harass another student through words or actions. Such behavior includes: direct physical contact, such as hitting or shoving; verbal assaults, such as teasing or name-calling; and social isolation or manipulation.

The _____ School District expects students and/or staff to immediately report incidents of bullying to the principal or designee. Staff are expected to immediately intervene when they see a bullying incident occur. Each complaint of bullying should be promptly investigated. This policy applies to students on school grounds, while traveling to and from school or a school-sponsored activity, during the lunch period, whether on or off campus, and during a school-sponsored activity.

To ensure bullying does not occur on school campuses, the _____ School District will provide staff development training in bullying prevention and cultivate acceptance and understanding in all students and staff to build each school's capacity to maintain a safe and healthy learning environment

Teachers should discuss this policy with their students in age-appropriate ways and should assure them that they need not endure any form of bullying. Students who bully are in violation of this policy and are subject to disciplinary action up to and including expulsion.

Each school will adopt a Student Code of Conduct to be followed by every student while on school grounds, or when traveling to and from school or a school-sponsored activity, and during lunch period, whether on or off campus.

The Student Code of Conduct includes, but is not limited to:

Any student who engages in bullying may be subject to disciplinary action up to and including expulsion.

Students are expected to immediately report incidents of bullying to the principal or designee.

Students can rely on staff to promptly investigate each complaint of bullying in a thorough and confidential manner.

If the complainant student or the parent of the student feels that appropriate resolution of the investigation or complaint has not been reached, the student or the parent of the student should contact the principal or the Office of Student Services. The school system prohibits retaliatory behavior against any complainant or any participant in the complaint process.

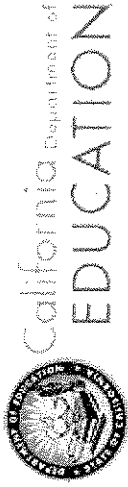
The procedures for intervening in bullying behavior include, but are not limited, to the following:

All staff, students and their parents will receive a summary of this policy prohibiting bullying: at the beginning of the school year, as part of the student handbook and/or information packet, as part of new student orientation, and as part of the school system's notification to parents.

The school will make reasonable efforts to keep a report of bullying and the results of investigation confidential.

Staff are expected to immediately intervene when they see a bullying incident occur.

People witnessing or experiencing bullying are encouraged to report the incident; such reporting will not reflect on the victim or witnesses in any way.



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Bullying Resources

Provides resources for educators, parents, and community members with tools for recognizing bullying behavior and approaches for determining how to respond.

Addressing the Problem of Juvenile Bullying

This Fact Sheet, written by Neils Ericson of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), discusses juvenile bullying, a form of violence among children that has come under intense scrutiny amid reports that it may have been a contributing factor in recent school shootings and that it may be related to other forms of juvenile violence. This OJJDP Fact Sheet defines bullying, noting that it can take three forms: physical, verbal, and psychological. It also describes a recently published report by the National Institute of Child Health and Human Development (NICHD) and summarizes the report's findings on the long- and short-term effects of bullying. The Fact Sheet concludes with a discussion of the Bullying Prevention Program, an initiative designed to reduce bullying by intervening at the school, classroom, and individual levels.

Bullying at School

This California Department of Education publication discusses methods for determining whether or not bullying behavior and/or hate-motivated behavior is present, and it outlines ideals, policies, and practices that positively affect student behaviors and promote school staff awareness and action. (For easier downloading, this publication is available in its entirety and as separate chapters.)

- » [Bullying at School \(full document\)](#) (PDF; 1.3MB; 52pp.)
 - » [Introduction](#) (PDF; 265KB; 7pp.)
 - » [Chapter 1: California's Urgent Challenge](#) (PDF; 224KB; 4pp.)
 - » [Chapter 2: Understanding School Bullying](#) (PDF; 238KB; 7pp.)
 - » [Chapter 3: Preventing School Bullying and Other Hatelful Behaviors](#) (PDF; 264KB; 9pp.)
 - » [Chapter 4: Understanding Hate-Motivated Behavior and Crime](#) (PDF; 265KB; 8pp.)
 - » [Chapter 5: Working with the Media](#) (PDF; 252KB; 7pp.)
 - » [Conclusion, Appendices, and References](#) (PDF; 234KB; 10pp.)
- [Bullying Fact Sheets](#) (PDF; 230KB; 12pp.)

[Bullying at School Information](#)

This site provides information about bullying: what families can do, what schools can do, what schools can do. Sample policies, ideas for in-service.

Bullying Prevention Program

A universal intervention for the reduction and prevention of bully/victim problems, the program is one of ten "blueprints" for violence prevention identified in a project initiated by the Center for the Study and Prevention of Violence (CSPV), with funding from the Colorado Division of Criminal Justice and the Centers for Disease Control (and later from the Pennsylvania Commission on Crime and Delinquency). The "blueprint" is designed to be a practical description of a bullying prevention program that meets a very high scientific standard of program effectiveness.

Committee for Children

Provides many resources for bullying prevention. This site can guide the selection of a bullying prevention program by the bullying prevention committee.

Fight Crime: Invest in Kids

Founded in 1996, Fight Crime: Invest in Kids is a bipartisan, nonprofit, anti-crime organization led by more than 2,000 police chiefs, sheriffs, prosecutors, victims of violence, and leaders of police officer associations.

No Bully

This site is part of the Telecom/Police STOP BULLYING Campaign. Spot and Bo are used to show you around the site. Information for kids, teachers, and grownups.

Preventing Bullying: A Manual for Schools and Communities

Search ED Pubs (U.S. Department of Education) using the keyword "bullying" to find this publication that address the problem of bullying in schools. This pamphlet defines bullying, discusses the seriousness of this behavior and the effectiveness of a comprehensive approach, and presents strategies for administrators, teachers, students, and parents to use when dealing with bullying situations. It also provides examples of innovative and successful approaches used by schools in different parts of the country.

Recognizing and Preventing Bullying (PDF; Outside Source)

This fact sheet was created by the National Resource Center for Safe Schools, a project of the Northwest Regional Educational Laboratory, and jointly funded by the U.S. Department of Education and the US Department of Justice.

SafetyZone

The National Resource Center for Safe Schools works with schools, communities, state and local education agencies, and other concerned individuals and agencies to create safe learning environments and prevent school violence.

Set Straight on Bullies

Examines the myths and realities about schoolyard bullying. Changing attitudes about the seriousness of the problem is stressed. It studies the characteristics of bullies and bullying victims. Most importantly, it provides strategies for educators, parents and students to better prevent and respond to schoolyard bullying. Sample student and adult surveys are also included.

Stop Bullying!

Guidelines for schools prepared by the New Zealand Police and Telecom. The guidelines cover policies, responses, and maintenance.

[Take Action Against Bullying](#)
Programs, tips and strategies, workshops, 1-888-552-8559.

[Taking the Bully by the Horns](#)
A self-help book and web site giving young people the skills they need to deal with bullies and maintain healthy self-esteem.

More information about bullying and hate:

[Anti-Defamation League](#)

[Institute on Violence and Destructive Behavior](#)

[National School Safety Center](#)

[Office of Juvenile Justice and Delinquency Prevention](#)

[Planet Tolerance for Kids](#)

[Safe School Center, Los Angeles County Office of Education](#)

[Simon Wiesenthal Center](#)

[Southern Poverty Law Center](#)

Questions: [Vivian Linfor | vlinfor@cde.ca.gov](mailto:Vivian.Linfor@vlinfor@cde.ca.gov) | 916-323-1028
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SAMPLE STUDENT BEHAVIORAL CONTRACT

See next page.

**Student Behavioral Contract
(Grades K – 5)**

Name of Student	Date of Birth	Class
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I know that I have a right to:

- be in a safe school, free from discrimination, harassment and bigotry;
- know what is correct behavior and what behaviors may result in disciplinary actions;
- counseling by staff about my behavior and how it affects my education and welfare in school;
- due process of law when I violate school regulations for which I may be suspended or removed from class.

I agree to:

- come to school on time with the assistance of my parents, prepared to work;
- use courteous and polite language;
- participation in class/community meetings to acknowledge a person's thoughtfulness, assistance or courtesy;
- resolve conflicts peacefully and express my feelings in words;
- dress in a clean, neat and safe manner;
- take care of my personal belongings and respect other people's belongings;
- tell my parents what I learned in school each day;
- complete my homework every day and show it to my parent(s)/guardian(s);
- follow the rules in the Discipline Code.

I have discussed this with my parents and I will follow this agreement.

Student Name: _____ Signature: _____ Date: _____
(Please Print)

{Parent Section}

I have received a copy of the **Discipline Code** and **Bill of Student Rights and Responsibilities** and understand the behavior that is required of my child.

I understand that my participation in my child's education will help him/her be successful in school. I have read this agreement and I will carry out the following responsibilities to the best of my ability.

- Encourage my child to be a respectful and peaceful member of the school community.
- Discuss the Discipline Code and the Bill of Rights and Responsibilities with my child.
- Participate in parent conferences, class programs and other activities in which my child is involved.
- Assure that my child will arrive at school on time everyday.
- Provide a quiet place for my child to his/her homework.
- Spend at least 15 minutes per day reading with my child.
- Listen to my child retelling of his/her school day experiences.
- Provide the school with current telephone numbers and emergency contact information.
- Alert the school if there are any significant changes in child's health or well-being that affects his/her ability to perform in school.

Parent/Guardian Name: _____ Date: _____
(Please Print)

Parent/Guardian Signature: _____

NEW YORK TIMES ARTICLE REGARDING INTERNET SITES

See next page.



June 22, 2006

Young People's Web Postings Worry Summer Camp Directors

By PAM BELLUCK

Summer camp directors have a new scourge, and it is not mosquitoes or impetigo. It is the Internet, specifically sites like MySpace, Facebook and Friendster, where young people often post personal or revealing information.

Camps say they are increasingly concerned about being identified in photographs or comments on these sites, even innocuously. They worry about online predators tracking children to camp and about their image being tarnished by inappropriate Internet juxtapositions — a mention, say, of the camp on a site that also has crude language or sexually suggestive pictures.

"This is probably the No. 1 issue facing all camp programs," said Norman E. Friedman, a partner at AMSkier Insurance, a major camp insurer.

Some camps are banning or limiting digital cameras, fearful that images could wind up in undesirable places online. Some are telling counselors, parents and campers to remove camp references from personal Web pages, blogs or social networking sites like MySpace or Xanga.

"The biggest concern is the safety of the campers," said Peg Smith, chief executive officer of the American Camp Association, which is urging camps to monitor Web sites, contact parents, and set rules about what counselors and campers can post. "The information that kids share today often is personal and private information that allows predators to track them down. We're also concerned about cyber-bullying."

Some camps, like Camp Fernwood, a girls camp in Poland, Me., are trademarking their names, logos or slogans so they can legally order others not to use them online.

In addition, "We are asking local police enforcement for more of a presence and are beefing up internal security, all of that directly because of MySpace," said Fritz Seving, Fernwood's director. "We're bringing in a child psychologist to spend two days with campers talking about good decision-making."

Some camps are banning or limiting more electronics. Camp Runoia in Belgrade Lakes, Me., is suggesting campers bring disposable cameras, not digital ones. Camp Nashoba North in Raymond, Me., allows digital cameras, but is banning iPods that play movies because "a child or anyone could put something inappropriate on

it," Sarah Seaward, the director, said.

AMSkier became aware of the Internet issue several months ago when a camp director searching MySpace found his camp's name over a photograph of a naked woman, Mr. Friedman said. The insurer recently wrote hundreds of camps urging them to ask parents to have children remove "confidential information" from Web pages and tell counselors not to post pictures of campers or communicate with campers through personal Web pages.

Directors of many camps, like Riverview in Mentone, Ala., and Gesher Summer Program in Livingston, N.J., are also searching counselors' Web sites for content they consider inappropriate.

Island Lake camp in Starrucca, Pa., recently asked campers to take its name off Web sites, concerned about cyber-bullying, safety and image.

"There were some things that we found that some of the kids posted that were really kind of nasty, saying bad things about counselors," said Mark Stoltz, an Island Lake director. "Most of the sites were not negative," Mr. Stoltz said, and "most of the kids who had stuff up there were nice kids," but all references had to go.

One innocuous site belonged to Xander Green, 15, of Manhattan, a longtime Island Lake camper who formed a MySpace group for about 30 campers active in Island Lake theater. When a camp newsletter said campers should delete Island Lake references and use its official message board for all camp chatter, Xander called the camp and was told to remove his group.

"Everyone was kind of really mad about it and some people didn't understand," Xander said. "It was a drag because the group was a way for everybody to communicate in our own way without being on their monitored message board."

At Camp Runoia, Pam Cobb, the director, said she looked up new counselors on MySpace and Facebook and found "people who we had hired who had things on their Web site that were inappropriate."

She told counselors "they need to clean up their sites or make them private, or they can choose not to work with us."

One counselor, she said, chose the last option, apparently reluctant to remove a "beer-drinking party scene."

Another counselor, Jessica Scott, 22, made her Web presence camp-appropriate, removing a blog and making her Facebook entry available only to close friends. She said her Facebook page "was just pictures of being at parties with friends, not that crazy, but at camp they don't even want us to have pictures with a cup in your hand."

Ms. Scott said her blog discussed "regular college 22-year-old life — things that were frustrating me, who's getting along with who, where am I going, and how's school and relationships." Because it did not mention her surname,

"I didn't think anybody could connect it to me." Still, she took it down.

Mr. Seving, the director of Camp Fernwood, said he found campers' Web pages with "our ZIP code in their name or 'Fernwood forever' or 'Fernwood girl.' "

He added: "The good side of that is that they identify with our community. The bad side is it's also a direct road map, and we don't want to have to deal with that kind of exposure. This takes camp, a place that kids feel really safe about, and it adds this element of danger to it."

Many directors are less concerned about Internet activity at camp itself, since many already ban gadgets like cellphones and laptops to create an "unplugged" experience. A bigger concern is off-season as campers or counselors discuss camp with each other online.

"One camp director called me in a panic," said Christopher Thurber, a psychologist who advises camps. "She had Googled her camp's name and linked to a soft-core porn site where she found pictures of her campers in their bathing suits. And what's in the background? The camp banner."

Scott Lantzman, director of Gesher Summer Program, a day camp, created his own MySpace account and invites every counselor to be on his friends list, so he can more easily gain access to their sites.

"You really get a lot of information that you can't ask for in a job interview, but you go on the Web and it's all there," said Mr. Lantzman, who asked one counselor to remove a photograph of herself in a bikini holding a beer.

Aaron Marcus, 17, another counselor, said a few counselors objected to such scrutiny, but "I kind of think it's a good idea."

Parents of campers contacted by camp directors seem to generally share that impression.

"I think it's important that they really want kids and parents to be aware, to go and check the sites," said Karen Segal, Xander Green's mother.

Ms. Seaward said that when she contacted one mother about her daughter's site, which had photographs of the girl and friends with champagne glasses, "the mother's first reaction was she doesn't have a site. Then she said, 'Well maybe she does, but I think I've looked at it and it's fine.' "

But, Ms. Seaward said, "she called me back the next day and said, 'Upon further review, we have had her shut her site to make it private.' "