

Cyberbullying


CAIS Annual Conference | June 17, 2013

Presented by: Michael Blacher and Pilar Morin

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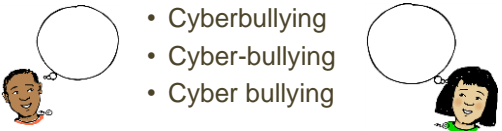
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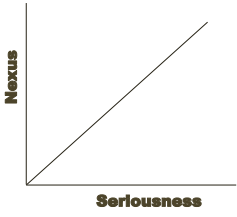
- Cyberbullying
- Cyber-bullying
- Cyber bullying



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When Should School be Involved?

- Sliding Scale



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Student Speech

- **High School Student Free Speech Exception:**
 - Private secondary school may not discipline high school students solely on the basis of speech that is protected by the First Amendment (Ed. Code § 48950).
 - Does **not** apply to:
 - Harassment, threats, or intimidation
 - Reasonable time, place, and manner restrictions
 - Speech in religious private secondary schools, to the extent inconsistent with religious tenets of school.

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Privacy Rights

- California Constitution, Article I, Section 1:
 - “All people are by nature free and independent and have inalienable rights. Among these are ... privacy.”

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Privacy Rights

- Balancing test:
 - (1) Does the employee/student have a reasonable expectation of privacy (both objectively and subjectively); and
 - (2) Was the school's intrusion into that privacy reasonable?
 - Taking into consideration the school's legitimate business needs and the offensiveness of the intrusion.

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Employee Speech: NLRB

- Policies or disciplinary actions cannot chill or restrict employees' protected activity.
- **Both unionized and non-unionized** employees the right to discuss the terms and conditions of their employment.
- California's Labor Code §§ 232 and 232.5 similarly protects discussions involving wages and working conditions.

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Employee Speech Case Study

May the School have a social media use policy that requires employees to:

Treat Everyone with Respect. Offensive, demeaning, abusive or inappropriate remarks are as out of place online as they are offline, even if they are unintentional.

Answer: According to the NLRB, no.

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INVESTIGATING A COMPLAINT

- If an internal investigation
 - Find facts: who, what, when, where, why, how
 - Organize: chronological account
 - School does not need parent's permission for interview
 - Document all contacts/interviews
 - Gather all evidence: print outs, texts, etc.
 - Request that witnesses sign and date statements

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School Documents

- Enrollment Agreement
- Employee Agreement
- Student/Parent Handbook
- Employee Handbook
- Anti-Bullying Policy
- Anti-Workplace Violence Policies
- Anti-Harassment and Discrimination Policies
- Electronic Use Policies
- Code of Ethics

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Final Steps Regarding Complaints

- Prepare findings
- Communicate findings to complainant(s) and accused(s)
 - If the complaint involves students, communicate findings with parents of students
 - Protect privacy
- Tie speech to violation of school rules
- Take appropriate disciplinary/remedial action

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Mandated Reporting Obligations

- Willful Harming or Injuring of a Child
 - “Any person willfully causes or permits any child” unjustifiable mental suffering.
 - “A child is suffering serious emotional damage.”
 - “Child abuse or neglect” does not include a mutual affray between minors.”

Penal Code §§ 11165.3, 11165.6, and 11166.05

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Potential Legal Liability If School Fails to Act

- Negligent/Intentional Emotional Distress
- Negligent Supervision
- Discrimination/Harassment (if the cyberbullying is based on a protected classification)
- Breach of Contract
- Injunctive Relief

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Prevention

- Develop policies that prohibit bullying both on and off campus (including online conduct)
- Educate employees, students, parents about your policy and complaint procedures
- Educate about the technology
- Encourage bystanders to report
- Always investigate and respond

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Thank You!

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