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An educated response to cyberbullying

by Debra L. Innocenti and Monica Velazquez

Cyberbullying can happen anytime and anywhere, and it can reach children even when they are alone. The Centers for Disease Control and Prevention found that 20 percent of high school students were bullied on electronic media in 2014. In an effort to address the growing problem, state legislatures have enacted laws imposing requirements on educational institutions to investigate and discipline cyberbullies. Most recently, an Illinois law, made effective Jan. 1, expands a school's authority to investigate cyberbullying claims even if the reported incident occurred outside school hours and grounds.

Even so, when and how a school responds to reports of cyberbullying can expose it to liability if the school oversteps its authority.

Does a school have an obligation to intervene?

Yes. Chapter 37 of the Texas Education Code requires each independent school district to prohibit cyberbullying and to enforce those prohibitions. The school district is also required to have specific options developed under its local policy that are appropriate to each grade level and that provide for preventing and intervening in instances of cyberbullying. In addition, public schools may be subject to civil rights lawsuits if the student's bullying is based on race, gender or disability and the school does nothing to intervene. Moreover, schools covered by federal law Title IX have an obligation to take prompt and effective action to end hostile environments caused by sexual harassment, including such harassment in electronic form.

Is the school exposed to liability if it intervenes?

If the school exceeds its authority or infringes on a student's rights, yes. This is of particular concern to schools that are recipients of federal assistance (generally, public schools) because they are considered governmental actors and are prohibited from violating a student's

freedom of expression. A student's speech will lose this protection when it becomes a "true threat." Case law has provided some guidelines to consider in determining whether the school can and should intervene, often referred to as the "substantial disruption" standard. The standard looks at whether the cyberbullying substantially or materially disrupted learning and interfered with the educational process or school discipline. Because court rulings have been unpredictable and application of the legal tests is fact-intensive, it is advisable for a school's legal counsel to be involved before the school acts.

How can a school respond to anonymous cyberbullying?

Unfortunately, the Internet makes anonymity easy to maintain. Perpetrators easily can create email addresses and Twitter accounts separate from their identities to do their bullying. In addition, social apps such as Yik Yak and After School, which allow users to anonymously post on message boards and microblogs, have become popular platforms for cyberbullying. Most of these apps have been adapted to prevent misuse, and the developers often caution users that they will assist the victims of cyberbullies by providing IP addresses and time stamps related to the abusive messages. A cyber-crime investigator then can use geolocation websites to determine the general location of the message transmission. In addition, app developers have been agreeable to working with schools to create "geofences" around schools that disable the app within a geographic reference.

What should a school consider in enacting a cyberbullying policy?

Although Chapter 37 of the Texas Education Code requires school districts to have a policy that prohibits bullying and harassment, a model policy has not been developed. A school will need to consider a policy that does not infringe on a student's rights to freedom of expression, freedom from unreasonable searches



and seizures, and right to due process. In addition, the school will need to craft proportionate remedies for cyberbullying incidents and perhaps prohibit retaliation or false accusations against a target or witness of cyberbullying.

What can a school do to prevent cyberbullying?

Schools can work to prevent cyberbullying by setting clear guidelines for using social media and the Internet while on school grounds and by monitoring or limiting students' Internet use on school computers. Education on how to respond to cyberbullying — either as a target or a bystander — also can be helpful. Of course, promoting empathy, healthy interaction and ethical decision-making will translate to how students relate to each other online.

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