Cyberbullying: A Continuing Concern For Schools

Insights

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School bullying has been a problem that schools have wrestled with for years. Traditionally, much of the focus has centered on students being bullied because of their religious, ethnic or life-choice identifications. In a recent and highly publicized situation in Philadelphia, Asian students were targeted by African American students at South Philadelphia High School. In many instances over the years, students who identify as gay have been publically bullied. Most of the bullying has involved violence, threats, merciless teasing and behaviors that are customarily regarded as schoolyard or playground bullying.

These concerns have prompted anti-bullying legislation in many states and directives from state boards of education for public schools to develop anti-bullying policies. Most independent schools have strong anti-bullying policies in their student codes of conduct to cover these behaviors. Typically policies are addressed to cover behavior at school or at school-sponsored events. But technology has created another and far more insidious form of bullying. "Cyberbullying" takes place over the Internet or through cell phones. Even if not acting maliciously, students can be utterly clueless about the harmful consequences of their online statements or cell phone-texting, and this form of activity presents a much greater challenge for schools than traditional schoolyard bullying.

There isn't a school administrator who isn't aware of problems caused by online postings by students on the Internet. During the past year the suicide of a Rutgers University freshman, following his humiliation by the online video streaming of his homosexual encounter with another student, made national news. It was an example of the devastation that can ensue by student use of the Internet and social media sites such as Twitter and Facebook to engage in invasions of privacy and harassment.

Stories of this type of misuse of modern technology by students are legion. The medium allows a sender to appear anonymous. It is a sad fact that many students do not appreciate the power of their posted online communications – which they might think harmless and amusing when composed – to hurt and destroy their target by exposing the target to humiliation and scorn. Cyberbullying most commonly occurs among schoolmates, and often involves middle school students.

Some Real World Examples

Some cases have involved sexually explicit pictures of pre-teens and teenagers being posted for the world to see. The Rutgers student was not the only suicide reported as having been caused by cyberbullying. Students also have targeted teachers and administrators at times. In a middle school

cyberbullying. Students also have targeted teachers and administrators at times. In a middle school in Chapel Hill, North Carolina, an eighth grade girl – unhappy with a perceived slight by a teacher, recently announced on her Facebook page that the teacher was a "pedophile." Her Facebook "friends" piled on, noting in their comments that the teacher was a child rapist and that he suffered from bipolar disorder. None of the comments about the teacher were true. He eventually heard about them, was concerned because they could do career-ending harm if believed, and he complained to the principal.

What did the principal do? She called the girl into her office, demanded that she use her password and log on to her Facebook account so she could review the offending posts. The posts violated a school code of conduct prohibiting students from "falsifying, misrepresenting, omitting or erroneously reporting allegations of inappropriate behavior of a school employee toward a student." The principal demanded the girl delete the offending posts from her Facebook page and directed her to write an apology to her teacher. The principal then called in the girl's parents and offered them the choice of their daughter's being expelled from school for the balance of the semester and enrolled in an "alternative" school for "problem children," or of facing a tribunal which might impose even harsher sanctions.

The student was devastated. She explained her posts were not meant to be serious and had been intended as a joke. Her father acknowledged what the girl did was wrong but was concerned that the punishment of sending his daughter to what used to be charitably referred to as a "reform school" could ruin his daughter's future. He has threatened a lawsuit against the school for violating her privacy by forcing her to log on to her Facebook page.

But unlike the girl in Chapel Hill, many perpetrators of cyberbullying are hard to identify. Postings often are anonymous. Students have created fictitious Facebook and MySpace pages in the names of their targets. Several years ago a teen-aged girl in the Midwest created a fake Facebook page in the name of her social rival, a young girl who she believed had stolen her boyfriend. The postings were explicit and humiliating. The targeted girl suffered severe significant stress and ended up dropping out of school.

Similarly the *New York Post* has reported that the daughter of an Indian diplomat and a senior at John Bowne High School in New York was arrested in May 2011 and suspended from school for cyberbullying two of her teachers. The offending and anonymous emails were sexually explicit, with references to incest, rape, and prostitution. One of the few printable emails stated: "You disgusting bastard. I hope you die in Hell." Her arrest was made at school by uniformed police officers, who paraded her in handcuffs in front of much of the school community. The student claims she did not commit the offense and has threatened to sue the school district for $1.5 million. The problem was a faulty investigation and too hasty a conclusion.

Apparently those who investigated misunderstood how to read Internet protocol addresses, which pinpoint an email's origin, and then compounded their mistake by misusing circumstantial evidence to arrive at a less-than-certain conclusion. Among the bits of evidence relied on by the school for its

accusation against the student was the fact that she was the only student in both teachers' classes, that she speaks French and one of the emails used a French curse word; another point the school noted was that she had complained about the level of instruction of one of the teachers on Facebook. But officials apparently ignored the fact that the student had asked the same teacher for a college recommendation at the same time the flurry of emails was ongoing. The police have dropped charges. The school district may be sued.

Doing Too Much Versus Doing Too Little
Those who have been targets of the phenomenon of cyberbullying often feel that there is nothing that can be done to stop the bullying or harassment short of retaining a lawyer and threatening a lawsuit. And even the potential lawsuit is fraught with risk. While the courts hold online comment to be public and therefore subject to the same defamation laws that apply to the news media, there is always a defense argument that the postings are mere hyperbole. They will look to schools for support.

But some states have enacted laws against cyberbullying and have subjected it to possible criminal sanctions. What is a school to do? Many schools have taken steps to reduce the exposure of their students and teachers to cyberbullying and to protect themselves from potential lawsuits arising out of discipline imposed for off-campus behavior.

The first legal issue is whether a school can discipline a student for off-campus behavior. The courts long have held that public school administrators, restrained by the Constitution, can discipline students only for behavior which has resulted in a "substantial and material disruption." One problem is that this issue has not really been addressed in the digital age of the school environment. And disruption can be in the eye of the beholder. Two recent decisions of the United States Court of Appeals for the 3rd Circuit show how the courts are struggling with the issue of to what extent a public school can discipline a student for online posting effectuated from an off-campus computer.

In the case of *Layshock v. Hermitage School District*, a three-judge panel ruled in favor of a high school student who had been suspended from Hickory High School in Hermitage, Pennsylvania, for using an off-campus computer to create a fake MySpace page in the name of his high school principal who he characterized as a habitual drug user. The court ruled that the remarks were in the nature of a parody and were speech protected by the First Amendment.

But in *J.S. v. Blue Mountain School District*, the same court upheld the suspension of a female middle school student who also had created a fake MySpace page in the name of her principal, and had used sexually explicit language to describe him as a bisexual who liked hitting on students and their parents. In an effort to reconcile these two apparently conflicting opinions from panels in the 3rd Circuit, the court consolidated the cases and last summer heard oral argument before a 15-judge panel. The opinion which should be clarifying is still pending.

Our Advice

Independent schools do not suffer from the same constraints as public schools, and so have more leeway than public schools in dealing with the problem. The first step in protecting your school is to expose the problem, by educating both parents and students. Make them aware of the potential devastation caused by hurtful words disseminated to a potentially infinite audience by the mere pushing of the "send" button. Consider whether your school should empanel a committee of teachers, administrators, and students to meet and discuss the problems. Because they are closest to the problem, such a group can develop its own strategies and suggestions by reviewing and proposing updates to school policies. Virtual bullying, like schoolyard bullying, is best stopped through the engagement of the students themselves.

Second, review your school's student code of conduct and determine whether it is appropriately worded to cover cyberbullying. There is a delicate balance here. If the school is a public school, make sure the policy is not so broad that it results in improperly suppressing student freedom of speech. The policy should cover issues of student complaints, confidentiality, investigation, and discipline. The policy should be clarified and explained in plain English. Encourage students to bring matters like this to the attention of administrators.

Third, review your school's protocol for investigation in order to avoid taking action against someone whose computer identity may have been stolen, and to avoid a too-hasty rush to judgment such as what may have happened with the diplomat's daughter in New York. A protocol should also provide confidentiality guidelines to protect student privacy during and after the investigation and limit dissemination of the results of the investigation to those with a need to know. Review these policies for compliance with education attorneys familiar with the developments in this area.

Finally, there is the question of discipline. Administrators often feel their hands are tied if they cannot demonstrate that a post they find offensive has caused disruption at school and they are unwilling to invoke discipline for fear of being tied up in the courts. Yet administrators retain significant ability to address these problems.

Indeed, even public schools can take informal action, such as calling the student and parents in to the school, expressing dissatisfaction, and enforcing an extracurricular sanction. Take advantage of every situation to have a teachable moment for the school.

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