

GOING VIRAL: NAVIGATING SOCIAL MEDIA WITHIN THE SCHOOL COMMUNITY

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Social media has transformed how we interact online and engage with our communities with the average person spending over six hours a day online. Since the start of the COVID-19 pandemic, we have seen an even greater increase in social media usage due to stay-at-home orders and remote learning. But what do you do when a student's social media post or video goes *viral* for all the wrong reasons? A student threatens to harm another student in a video game chat on Discord, or a student posts a nude photo of another student on Reddit, or TikTok videos of underage students drinking alcohol starts circulating among the Senior class. Schools with the proper policies and procedures in place will be best equipped to promptly address and navigate these often complicated and very public situations.

Cyberbullying

With teens reporting a near-constant use of the internet, cyberbullying is a growing concern for school communities. Students are even more susceptible to online threats as schools have moved to distance learning during this past year. Cyberbullying can include offensive name-calling, spreading of false rumors, exchanging explicit images, threats of physical harm, and sexual harassment. Bullies may focus on a trait that sets another apart, such as an individual's race, color, disability, religion, sex, national origin, gender identity, and/or sexual orientation. While social media sites and apps are the most common platform for cyberbullying, online gaming is another area in which a minor can be exposed to cyberbullying.

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Social media also eliminates the need for direct confrontation among peers, making it more appealing for a student to use as a method of harassment. Students also try and make themselves appear more popular and compete for the most “likes,” comments, follows, and page views in hopes of being the next social media influencer. Schools should monitor their presence on the internet and keep up-to-date on the latest social media trends.

Legal Implications

While students may claim that they were only joking when they made a harassing comment or threat in a social media post, each state has its own criminal laws that apply to bullying and threatening behavior, and such conduct could constitute a crime. For example, in 2019, a Massachusetts court upheld the manslaughter conviction of a teenager who was accused of cyber-bullying her teenage boyfriend into committing suicide. After the mass shooting at a high school in Parkland, Florida, the Florida legislature passed a law that explicitly includes the making of threats via electronic communications or posts a felony. Some states also have laws that specify how a school can discipline a student with respect to cyberbullying, including mandates that schools have a formal policy to identify bullying or hazing behavior. Schools should be aware of the criminal laws that may apply in their own jurisdiction.

There are also potential civil legal claims that schools could face if a student is involved in cyberbullying another student, such as negligence claims if the school was aware of ongoing bullying and did not take reasonable steps to address it, breach of the enrollment contract, and/or claims related to invasion of privacy.

School Handbooks and Policies

Schools should evaluate their parent/student and employee handbooks to ensure that the proper policies and procedures addressing bullying, hazing, harassment, sexting, and technology usage, including social media, are in place. Anti-bullying policies should identify the prohibited conduct and provide examples of bullying, including cyberbullying. Technology policies, including those related to social media, should specify the acceptable usage, including the use of school issued devices and school-issued email addresses and use of personal devices on school property or school events. The policies should also

address off-campus conduct, as such behavior may still negatively affect the school and its community.

The school's handbooks should also be clear regarding the school's ability to search individual and school-issued devices for evidence of improper conduct, obligations to report any violation of school policies, and the disciplinary process for such violations. Ensure that your students, staff and faculty have the proper training regarding such policies and maintain records of their acknowledgment and understanding of these policies.

Investigations and Discipline

If your school is made aware of a social media post or communication by a student that involves cyberbullying or threatening communications, a trained individual at your school should conduct an investigation into the allegations. This should include determining whether law enforcement or other agencies such as child and family services should be contacted. An investigation should also include witness interviews to gather relevant information in a timely manner.

The school should assess any appropriate discipline that may be issued, in accordance with the school's rules, guidelines and procedures. Schools should also review their handbooks and enrollment contracts to be aware of their policies regarding the sharing of disciplinary actions with other schools and/or universities. Before sharing any such information, confirm you are acting in accordance with school policy and any applicable laws in your jurisdiction or your School could face additional legal claims. Also, enrollment contracts should be reviewed to determine whether any refund of tuition is due in the event a student is expelled or withdrawn from the school for disciplinary reasons after the withdrawal date specified in the contract.

Best Practices

Now is the time to review your school's handbooks, policies, and procedures to be prepared to address these potential scenarios. What should you do?

- Remind students that all online communications, texts, emails, etc. must be respectful and appropriate.
- Train students on cyberbullying and its potential consequences. Don't assume that students know that

bullying, harassment, hazing and threatening violence not only violates school policy, but could also be a crime. Give students clear examples of inappropriate behavior.

- Train employees on how to recognize cyberbullying and report to the appropriate individuals so that an investigation can be conducted.
- Make sure that parents and students understand that there may be times when inappropriate conduct must be reported to law enforcement.
- Review search, disciplinary and reporting policies and put your parents on clear notice of the school's procedures, including the sharing of disciplinary information with other schools in order to avoid potential issues.

Should you have questions or need assistance in managing any of these issues, you should contact your Fisher Phillips lawyer, the author of this article, or any member [of our Education Practice Group](#). To ensure you stay up to speed with the latest developments, make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.