As School Year Begins, Cyber-Bullying Presents A Complex Legal Landscape

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DURHAM, N.H. - As students across the country prepare to return to school, school districts face an often complicated and confusing legal landscape on how to deal with cyber-bullies in their schools, according to a researcher from the University of New Hampshire.

Todd DeMitchell, professor of education, studies school liability, adequate supervision, and responses to preventing bullying and cyber-bullying from school administrators and state legislatures. In addition to his research in this area, DeMitchell has two decades of experience in K-12 as a teacher, principal and superintendent.

According to DeMitchell, if a student is bullied at school or on the bus, the school can take action because the student is under the control of the school. "However, if the bullying occurs outside of school, the situation is more complicated since the evolution of face-to-face bullying to cyber-bullying tests the limits of whether a public school can institute discipline for acts - primarily speech - that occur away from school via the Internet," DeMitchell says.

Cyber-bullying conducted at school allows school authorities to more easily impose discipline. The use of school equipment to cyber-bully also makes a stronger legal argument for action by the school. And if the student emails offensive speech to school or downloads it at school and then distributes it, the school is in an advantageous position regarding disciplining the student. However, speech created at home - such as the creation of the website - affords greater legal protection for the cyber-bullies.

"Unfortunately, the courts have not spoken with one voice on the issue of cyber speech or cyber-bullying," DeMitchell says.

For example, in a Missouri case a student created a vulgar website at home that invited readers to contact the school and provided a link to the school's website. The student was suspended for five days. The student fought the suspension, and a court found in favor of the student, citing First Amendment speech protections.

In another case, a student at a Pittsburgh area school made several Internet postings - one from school and the rest from home - trash talking about another school's volleyball team and players. The student was disciplined, but the court overturned the disciplinary action, arguing that the policy that allowed the school to discipline students away from school and not related to school activities provided "unrestricted power to school officials."

However, in a case involving the Bethlehem (PA) Area School District, a student created a website at home that described a math teacher in obscene terms, showed her with a severed head, and solicited funds to hire a hit man to kill her. The school disciplined the student asserting that the speech was a "true threat." While the website was found not to be true threat, the court ruled in favor of the school district: because the disruptive speech was received at the school via the website, the speech could be deemed to have taken place at school, and the school could regulate it.

"The problem with the approach that web speech created at home can - if accessed at school - become school speech that can be regulated is the very nature of the Internet. Once something is created and placed on the Internet, the author loses control over who can access the speech and where it can be accessed," DeMitchell says.

Because of the unique problems presented by cyber-bullying, DeMitchell suggests that the approach to cyber-bullying be part of the overall approach to providing a safe school environment. He recommends the following:

- Schools must consistently and constantly communicate that all students are valued and all will be equally protected. If the most vulnerable students are not valued and protected, then no student can truly feel safe.

- All instances of bullying, intimidation, and harassment must be swiftly addressed. Be proactive and don't underestimate the power of talking with students about their bullying and/or harassing behavior. Student behavior should be both a trigger for action and an opportunity for persuasion.

His specific recommendations for responses to cyber-bullying include:

- Ascertain if the cyber-bullying took place at school. If yes, treat the behavior as you would any other act of bullying at school and act accordingly.

- Take action if the cyber-bullying took place away from school and did not involve the school's computers or software but it caused a material and substantial disruption or such disruption can be reasonably forecast.

- If the cyber-bullying that took place away from school did not cause a material and substantial disruption, consider it a key for persuasion to discuss with the student how such actions are harmful and inappropriate. Don't underestimate the power of an educator talking frankly with a student. The administrator may not be able to take action because the private speech of the student may be protected.

- Respond to all "true threats" of harm. It is prudent to look to the penal code section of your state for a definition of a true threat, which is more than hurt feelings.

- Involve parents; their child may be the next victim of cyber-bullying. Cyber-bullying is not dependent upon physical size, strength, or crowd support. Parents can contact parents of cyber-bullies and/or contact the police if there are threats of violence, extortion, or if the bullying becomes a hate crime.

"Bullying and cyber-bullying require a schoolwide approach. Educators are the architects and

builders of their school culture; policies are essential but they alone are not sufficient. It is the adults in the school and the parents and guardians at home that create the climate that can combat all forms of bullying," DeMitchell says.

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