Out of Sight, Top of Mind

Strategies for preventing and addressing cyberbullying and other internet-based student misconduct.

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It used to be that a student had to be at school to get in trouble with school administrators. As reliance on cellphones, laptops and other technology continues to expand, so do the ways in which students use the internet to engage in behavior that is harmful to others, detrimental to the school community and difficult for schools to discover and investigate. Consider the following increasingly familiar scenarios:

- A ninth-grade student tells her advisor that another girl took a picture of her while she was changing in the locker room and Snapchatted it to a boy at another school.
- A parent calls the dean of students to say that a group of boys started a private group chat and were spreading rumors about her son's sexual orientation, including sharing unflattering memes and mean comments.
- A faculty member reports that he thinks a student may have secretly recorded their conversation and posted it online.

These scenarios illustrate how old rules don't always fit new misconduct and how schools are challenged to keep pace with the ways students use — and misuse — technology. Handbooks have expanded to expressly include terms like cyberbullying or sexting, and deans' offices are grappling with how to investigate online behavior that is often out-of-sight and hard to prove. Schools also struggle with how to establish reasonable expectations for monitoring student online behavior, and how best to encourage students and others to effectively report cyber misconduct.

KEY TERMS

All states now have some form of an anti-bullying laws, with the majority expressly addressing the concept of cyberbullying. Though definitions vary, **bullying** is generally considered to be a pattern of repeated verbal or physical behavior that threatens or causes harm to another student who typically has less power or stature. **Cyberbullying** is merely the form that the bullying takes, in that it is accomplished online or through an electronic communication device, such as a cellphone, computer, text messaging or social media app (such as Instagram, Snapchat or others). When a student uses electronic media to send or distribute sexually suggestive messages, photos or videos, this is commonly referred to as **sexting**. Some states have passed laws to expressly ban sexting, while others continue to have default child pornography laws that can apply if the image falls within its' definition of pornography.

The Current Cyberbullying Landscape

- Over half of adolescents and teens have been bullied online, over 25% have been cyberbullied repeatedly and well over 50% of those cyberbullied do not tell their parents, according to the i-SAFE Foundation.
- LGBTQ students are even more likely to face cyberbullying, but most surveys do not address this group and the issue gets less attention.
- One in five young adults have experienced sexting coercion (pressuring someone to send explicit pictures) or sextortion, according to a recent Indiana University study.
- Defense costs, and in some cases payments to third parties, are high. One insurer told us recently of an ongoing case in which parents are suing a school because administrators allegedly disciplined students improperly for online speech. The school's defense is that the statements violated the school's anti-harassment policy. Defense costs are north of $800,000 and the case is not yet closed.

MITIGATING THE RISK

Know your state's laws on bullying and sexting. Does your state's bullying law apply to independent schools, and does it include cyberbullying? Are there any obligations to report to local law enforcement? How do sexting laws apply to minor students? Working with your local legal counsel can help your school understand your obligations and draft compliant policies. Students and parents often realize that they may be in trouble for sexting but are shocked to find out they can be implicated by child pornography or other laws.

Review acceptable use and technology policies. Ensure they address not only school-owned devices or use of the school's network, but also use of personal devices. Such policies should put students on notice of their limited right to privacy and also reserve the school's right to monitor use.

Review handbooks and codes of conduct. These should expressly prohibit bullying, cyberbullying and sexting, and provide clear definitions that differentiate this behavior from other prohibited conduct such as harassment, threats or just plain unkind behavior. Consider if your school also needs to include an explicit ban on such things as unauthorized access to another student's account; illegal downloading; online gaming; accessing restricted sites such as gambling or porn sites; or the unauthorized recording and posting of images, videos or audio. Handbooks should also be used to establish clear standards for when the school can discipline a student for misconduct that occurs off campus or during school breaks.

Prepare to investigate misconduct. Schools are advised to include language in their handbooks that permit the school to search personal devices, such as cellphones and laptops, in the same manner that they might search a student backpack. In doing so, you should consult with legal counsel regarding any applicable state laws that might restrict your ability to compel students to provide passcodes or access to personal devices or private social media accounts. Deans or others investigating cyber misconduct should be trained in how to preserve electronic evidence, such as screenshotting text messages or social media feeds, printing out images or forwarding communications. When evidence may consist of sexually explicit images, it is often best to involve law enforcement to avoid an administrator being found in possession of what could be considered child pornography.

Facilitate reporting misuse. Educate students on bystander responsibility and how and to whom they should report concerns about cyberbullying, sexting or related misconduct. Consider in advance how to handle anonymous reports or incidents when a victim may not want his or her identity disclosed. Do not dismiss reports simply because they may have happened off campus or during school vacation. Discuss whether use of alternative reporting mechanisms, such as a website portal or anonymous app, might be right for your school to encourage reporting.

Partner with parents. How students use social media and electronic communications is constantly evolving, and schools (and parents) need to keep up. The responsibility to help students develop good digital citizenship belongs to schools and parents alike. Enlist parental support to reinforce your school's expectations regarding the use of social media and technology, and encourage parents to establish their own rules about technology use at home.

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