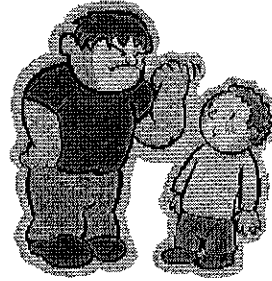


LOUISIANA TECH UNIVERSITY SCHOOL LAW INSTITUTE

BULLYING AND HARASSMENT PART 1 – STATE LAWS

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BULLYING AND HARASSMENT - OVERVIEW

- Act of “bullying” is not new – has been around for as long as children have gathered
- Increased attention in recent years due to increased violence in schools and reports of suicide resulting from student-on-student bullying and harassment
- Anticipate a rise in civil litigation related to bullying and harassment as a result of increased awareness and new legislation

BULLYING AND STUDENT DISCIPLINE

- Students are subject to discipline for any violation of a code of student conduct (LSA-R.S. 17:416)

 - Grounds for suspension have always been at a school system's disposal to combat bullying:
 - Using unchaste or profane language
 - Engaging in immoral or vicious practices
 - Instigating or participating in fights
- LSA-R.S. 17:416(A)(3)(a)
- **Act 861** of 2012 Louisiana legislative session specifically added "bullying" to the list

WHAT IS ACT 861???

TESA MIDDLEBROOK ANTI-BULLYING STATUTE

- Revises "Bullying Statute" – LSA-R.S. 17:416.13
 - Passed June 14, 2012, became effective immediately

- Response to a student suicide in Louisiana

- Makes sweeping changes to definition of "bullying"

- Establishes requirements for reporting, training, investigation, discipline, and student transfer requests

- Incorporates Cyber-bullying into the definition of bullying

BULLYING DEFINED – LSA-R.S. 17:416.13(C)

o Includes a *pattern* of:

- * Gestures, including but not limited to obscene gestures and making faces;
- * Written, electronic, or verbal communication, including calling names, threatening harm, taunting, malicious teasing, or spreading untrue rumors;
- * Physical acts, such as hitting, kicking, pushing, tripping, choking, damaging personal property, or unauthorized use of personal property; and/or
- * Repeatedly and purposefully shunning or excluding from activities

DEFINITION - CONTINUED

o The *pattern* of behavior must:

- * Be exhibited by student(s) toward a student, more than once, *and*
- * Occur or be received:
 - o on school property,
 - o at a school related activity,
 - o in a school bus or van,
 - o at any designated bus stop, or
 - o in any other private vehicle used to transport students to school or school related activities, *and*

DEFINITION – CONTINUED

- **The pattern of behavior must have the effect of:**
 - physically harming the student or placing the student in reasonable fear of physical harm,
 - damaging property or creating a reasonable fear of damage to property, or
 - Be sufficiently severe, persistent, and pervasive so as to:
 - Create an intimidating or threatening educational environment,
 - interfere with a student's school performance, or
 - disrupt the orderly operation of the school

POLICIES AND PROCEDURES - DEVELOPED BY JANUARY 1, 2013

- Governing authority of each school must revise student code of conduct to reflect Act 861 requirements

- BESE/LDE to adopt rules and regulations no later than January 1, 2013

- Governing authority of each school must create a training program no later than January 1, 2013
 - Minimum of 4 hours per year for ALL school employees

**REPORTING BULLYING –
LA. R.S. 17:416.13B(2)(B))**

- Governing authority of each school must develop a reporting form for reporting bullying, which must be made available on the LDE website
- Any student or parent may report bullying (as target or witness) to a school official, teacher, counselor, or other school personnel
- School personnel who witness bullying or learn of bullying thorough a school report *must* report the incident to a school official
 - Verbal report must be made on the same day as personnel witnessed incident
 - Written report must be filed within two calendar days

SCHOOL PERSONNEL – DEFINED

- For purposes of reporting requirements, “school personnel” is defined as:
 - Teacher
 - Counselor
 - Bus driver
 - Any other school employee, whether full-time or part-time
 - Any parent chaperoning or supervising a school function or activity

PARENTAL NOTIFICATION

- Upon a report of bullying, the parents of both the alleged bully and the target are to be notified, in a manner determined by LDOE
- Before interviewing any minor student, parents should be notified and given the opportunity to attend any interviews with their child conducted as part of the investigation
- Parental notification to the alleged bully and target should include a list of possible penalties, including disciplinary sanctions, criminal sanctions, and possible loss of driver's license privileges

INVESTIGATION PROCEDURES

- **Scope of Investigation**
 - School principal or designee must interview the reporter, victim, alleged bully, and any witnesses
 - Obtain copies or photographs of any audio or visual evidence
- **Timing**
 - Investigation must begin on the next business day, and be completed within 10 school days
 - Failure to take timely action can result in school being forced to transfer the student being bullied
- **Discipline**
 - If merit to claim of bullying, must take prompt and appropriate disciplinary actions pursuant to Louisiana Discipline laws (La. R.S. 17:416 and 416.1)

JUST A SNAPSHOT

- This is really just a snapshot of these new provisions
- Very important to read and understand all obligations and requirements
- See Handouts: *Bullying and Harassment Part 1, and Act 861*

CYBER-BULLYING – A CRIMINAL MATTER

- Cyber-bullying not only brings disciplinary sanctions pursuant to Louisiana's bullying statute, but also criminal sanctions
- Defined in Louisiana's criminal code as
 - The transmission of any electronic, textual, visual, written or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen
- La. R.S. 14:40.7

CYBER-STALKING – LA. R.S. 14:40.30

- o The action of any person to use (in electronic mail or electronic communication) any words or language that threatens to inflict bodily harm to any person or that person's child, sibling, spouse, or dependent, or
- o That threatens physical injury to the property of any person, or
- o Is for the purpose of extorting money or other things of value from any person

CYBER-STALKING ALSO INCLUDES - - -

- o Electronically mailing or electronically communicating with another person repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing any person
- o Electronically mailing or communicating with another to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed to any member of the person's family or household with intent to threaten, terrify or harass

CYBER-STALKING IS A CRIME!!!

- o The term includes knowingly permitting an electronic communication device under the person's control to be used for cyberstalking
- o The fine for the crime of criminal cyberstalking is not more than \$2000.00 or imprisonment for not more than one year, or both

CYBERBULLYING IS DIFFERENT

- It can occur 24 hrs. a day, 7 days a week
- It can occur even when a student is alone
- It can occur anonymously
- It can be distributed quickly to a wide audience
- It can be difficult (or impossible) to trace the source or to eliminate the inappropriate texts, messages, or pictures

In 2009, 6% of students in grades 6-12 experienced cyberbullying (National Center for Educ. Statistics & Bureau of Justice Statistics); in 2011, 16% of students in grades 9-12 experienced electronic bullying (Youth Risk Behavior Surveillance Survey).

Source: stopbullying.gov

CYBERBULLYING EFFECTS ARE DIFFERENT

Students who are cyberbullied are more likely to:

- Use alcohol and drugs
- Skip school
- Experience in-person bullying
- Be unwilling to attend (or remain) at school
- Receive poor grades
- Have lower self-esteem
- Have more health problems

Source: stopbullying.gov

NEGLIGENCE AND DAMAGES

TENNESSEE CASE – SEPTEMBER 11, 2012

- \$300,000.00 damages award where student with disability injured by a bully
 - *Phillips o/b/o Gentry v. Robertson County Bd. Of Education*, 112 LRP 45728 (TENN App. Ct. 9-11-12)
- Student with Asperger's left unattended despite warnings he was a potential target
- School on notice bullying was occurring
- Student was hit in the eye with a book by the bully, causing 4 surgeries and resulting in legal blindness in that eye
- Negligence standards substantially the same as Louisiana, so could expect similar result here