

https://www.thebullyproject.com/are_schools_only_responsible_for_bullying_that_happens_in_school

Are Schools Only Responsible for Bullying that Happens in School?

No. Schools must also address bullying that happens on the school bus, during extracurricular activities before or after school, and on field trips.

Sometimes, schools also have to address bullying that occurs through electronic technology—known as cyberbullying. This is true even when the cyberbullying happens off school grounds. Although the law in this area is still in an early stage of development, you should request that a school take action when cyberbullying happens off campus. Here's why:

- The law generally recognizes that, if there is a sufficient connection between off-campus cyberbullying and the school environment, and the online bullying “substantially disrupts” the school environment, then a school may take disciplinary action against the aggressor.
- More often than not, off-campus cyberbullying is accompanied by traditional forms of bullying at school, so there is a connection between what's happening on and off campus.
- Online bullying often causes substantial disruption at school, leading to increased bullying at school.

So, when a school says it can't do anything about online bullying that occurs off school property, that's not true. There are many circumstances where a school can take action.

https://www.educationworld.com/a_admin/cyber-bullying-legal-issues-liability-schools.shtml

Cyber-Bullying and the Law: What Should School Leaders Know?

Student cyber-bullying is a top concern, but since it typically happens off school grounds, it can be tricky for administrators to know when and how to intervene. We asked Attorney Margaret Paget (at right), former Partner and Co-Chair of the Employment Group at law firm Sherin and Lodgen, to shed some light on relevant laws, which vary by state.

Since cyber-bullying often happens off school grounds, not on school computer equipment, and outside of school hours, what can K-12 schools really do in terms of getting involved? Can they, for example, discipline perpetrators?

The answer to this depends partly on the laws of the state in which the school is located, and also whether the school is a recipient of federal financial assistance and therefore subject to Title IX of the Education Amendments Act of 1972 (typically public schools). More than half the United States have in place laws against cyber-bullying. In May 2010, Massachusetts enacted legislation prohibiting bullying in Massachusetts schools. The law prohibits bullying, including cyber-bullying that occurs outside of school when it affects student life within school, and requires all schools to create anti-bullying plans, investigate and discipline bullying, and notify parents and local law enforcement when appropriate.

While some states, such as Massachusetts and Illinois, hold that their bullying prevention laws apply to both private and public schools, other states differ. For example, in Iwenofu v. St. Luke School, an Ohio Court held that private schools have “broad discretion in making rules and setting up procedures to enforce those rules.”

If K-12 schools know that cyber-bullying is occurring, but it happens off school grounds, not on school computer equipment, and outside of school hours, is the school legally liable for failing to take measures to stop it, failing to notify parents, etc.?

Again, this depends on the laws of the particular state and whether the school is subject to Title IX. In Massachusetts, schools are required by law to address complaints of cyber-bullying, including those that occur outside of school, when the conduct affects a student’s school life. Although the Massachusetts anti-bullying law does not provide for damages or other relief, a school’s failure to address bullying in accordance with the law may be a basis for claims under other legal theories such as negligent supervision or negligent hiring, or under Title IX.

If a K-12 school intervenes in a case of off-campus cyber-bullying, couldn’t it be accused of violating the perpetrator’s privacy and/or free speech rights?

This is more a concern of public schools, which are subject to the First Amendment and so must not violate First Amendment rights such as freedom of expression. In Kara Kowalski v. Berkeley County Schools, et al., a student was suspended for creating a hate Web site that targeted another student. The suspended student sued the school district, alleging that it had infringed on her First Amendment free speech rights. The Fourth Circuit held that the speech created actual or reasonably foreseeable “substantial disorder and disruption” at the school and was therefore not the type of speech that merited First Amendment protection.

Speech or other forms of expression loses its protection under the First Amendment only when the conduct “substantially interferes with requirements of appropriate discipline in the operation of the school.” Conduct that is considered disruptive, foreseeably disruptive, or that poses a “true threat” does not fall within First Amendment protection. For example, in D.J.M. v. Hannibal Public School District #60, a student made alleged threats to shoot other students and sued the school for violating his First Amendment right for his subsequent suspension. The court held that the speech constituted a “true threat” statement and would have reasonably led school officials to substantially disrupt school activities in response.

Are there laws specifically prohibiting cyber-bullying, or would the behavior fall under other more general types of laws such as those prohibiting cyber-stalking, etc.? What kinds of charges could be filed against perpetrators of cyber-bullying? If the perpetrator is a juvenile, what happens?

As set forth above, cyber-bullying is expressly prohibited in more than half the United States. For states that have enacted such laws, perpetration of the act is generally considered a crime. And in certain circumstances, cyber-bullying may violate Title IX. Almost all states have cyber-stalking or cyber-harassment laws that prohibit threatening or harmful use of Internet, email and other electronic forms of communication. Depending on the age of the perpetrator, a student may be charged as an adult or prosecuted in juvenile court. In the tragic Massachusetts case surrounding the cyber-bullying and eventual suicide of high school student Phoebe Prince, six classmates were indicted as adults on felony charges that included stalking and criminal harassment.

<https://www.njsba.org/news-publications/school-leader/november-december-2019-vol-50-no-3/it-didnt-happen-in-school-but-can-we-discipline/>

It Didn't Happen in School, But...Can We Discipline?

In New Jersey both staff and students can potentially be disciplined for off-campus conduct if certain requirements are met.

Requirements for Disciplining Students for Off-Campus Conduct Schools in the state can impose discipline on students for conduct that occurs away from school grounds (when such discipline is consistent with the school's code of student conduct) as long as the following two factors are met: (1) the discipline is reasonably necessary for the student's physical or emotional safety, security, and well-being, or for reasons related to the safety, security, and well-being of other students, staff, or school grounds and; (2) the conduct which is the subject of the proposed consequence materially, and substantially, interferes with the requirements of appropriate discipline in the operation of the school. *N.J.A.C. 6A:16-7.5*.

In *P.G. on behalf of M.G. v. Board of Education of the Borough of Woodcliff Lake*, the education commissioner held that the board did not exceed its authority when it suspended M.G. for off-campus conduct related to a weekend traffic stop and subsequent arrest. M.G. was a passenger in a car that was pulled over as part of a traffic stop. At some point after the stop M.G. exited the car. Sometime later, M.G. was found at a different location, with a backpack. A search of M.G.'s backpack led to the discovery of six small bags of marijuana. According to police, the amount and size of the bags signified the potential for an intent to distribute. M.G. was subsequently placed on out-of-school suspension for two days as a result of his off-campus conduct. The Administrative Law Judge initially found that the board could not discipline M.G. and that its actions were arbitrary, capricious, and unreasonable. However, the commissioner of education disagreed and found that, based upon the suggested intent to distribute marijuana, it was not arbitrary or capricious for the board to consider M.G.'s conduct a potential threat to the physical or emotional safety and well-being of M.G. and his fellow students and allowed the discipline.

Two federal court cases out of the Third Circuit, *Layshock v. Hermitage School District*, 650 F.3d 205 (3d Cir. 2011); and *J.S. v. Blue Mountain School District*, 650 F.3d 915 (3d Cir. 2011), involved students who created "parody pages" of high school principals. In *Layshock* and *J.S.* the students referred to the principals in derogatory terms on My Space pages they created off-campus. The court determined that those two cases involved free speech that could not be restricted because there was no evidence that the pages substantially disrupted the school environment other than to insult the principals. The court opined that "under this standard, two students can be punished for using a vulgar remark to speak about their teacher at a private party,

if another student overhears the remark, reports it to the school authorities and the school authorities find the remark ‘offensive.’”

In addition, under anti-bullying laws, school administrators must also investigate and can discipline for off-campus harassment, intimidation and bullying which is brought to the school’s attention.

In *Dunkley v. Greater Egg Harbor Regional School District*, 216 F. Supp. 3d 485 (D.N.J. 2015), a student was suspended for two days for off-campus conduct, for his out-of-school YouTube account which contained a video criticizing a football teammate, and then suspended for nine days for being a co-creator of an anonymous twitter account called “Cedar Creek Raw” which contained inappropriate demeaning and derogatory comments about fellow students. The student contended that he was inappropriately disciplined because the postings took place out of school and they were not disruptive to the school. In addition, the student attempted to compare his case to *Layshock* and *J.S.* The court did not agree with his analysis, and instead differentiated the cited cases by noting that in the two prior cases the students created “parody” pages against a staff member, whereas in this case the student created social media pages against other students. The court opined that the student’s off-campus speech reached into the school in violation of the Anti-Bullying Act and thus the administration did not violate the student’s First Amendment rights by suspending him for his comments on YouTube and Twitter about fellow students.

Goodbye 24/7 Behavior Contracts Additionally, in the 2012 case, *G.D.M. and T.A.M. on behalf of B.M.M. v Ramapo Indian Hills Regional High School District*, 427 N.J. Super. 246 (App. Div. 2012), the Appellate Division invalidated the Ramapo Indian Hills Regional High School District’s extracurricular sports and activities good behavior code of conduct policy for on and off-campus behavior, also known as “24/7 Rule.” The “24/7 Rule” enabled the district to temporarily “suspend” student participation in extracurricular activities for code of conduct violations on and off-campus. Specifically, the board’s regulation for “Extracurricular Activities” set forth good behavior expectations on and off-campus. In addition to general behavioral expectations, the conduct code requirements related to the use of alcohol and drugs, compliance with the New Jersey Code of Criminal Justice, and/or applicable municipal codes or ordinance violations.

The disciplinary consequences for violations of the policy included the following: a seven school day suspension of the student’s right to participate in extracurricular activities, and/or up to and including the next scheduled competitive game, and/or event up to and including a 90 or 180 school day suspension of the student’s right to participate in extracurricular activities.

At the beginning of the 2009-2010 school year, students were given a student handbook and a consent form which acknowledged the handbook and the fact that students will be held accountable for their behavior and subject to the discipline in the handbook. G.D.M., T.A.M. and B.M.M. refused to sign the consent form. G.D.M. and T.A.M. received a notice that if they failed to sign the consent form, the matter would be turned over to administration and that it would be likely that their parental access to Genesis would be blocked. Genesis was the district's online service for parents that allowed access to real time information about a student's grades, assignments, attendance, etc. After receiving the letter, the students' parents sent a letter to the principal saying that they would not sign the consent form as they believed that it was unlawful. The parents ultimately filed a lawsuit.

Ramapo Indian Hills was not the only district utilizing these good behavior contracts with students, however, the Appellate Division ultimately invalidated the 24/7 contracts. In its decision to invalidate 24/7 contracts, the Appellate Division noted that although extracurricular activities are a privilege, a district that wants to revoke a student's participation in the same must follow the New Jersey Department of Education's regulations regarding off-campus student conduct as described in *N.J.A.C. 6A:16-7.5*.

In the 2015 case, *T.H. on behalf of K.H. vs. Board of Education of Upper Freehold Regional School*, a parent challenged the board's 30 day suspension from participation in extracurricular activities, imposed upon student athlete K.H. for off-campus behavior. Student athletes at Allentown High School were required to sign an Athletic Participation/Permission Form, and expressly agree to adhere to the student code of conduct. K.H. posted two pictures on Instagram that appeared to show K.H. and another student, who was wearing an Allentown high school sweatshirt, drinking alcohol. The students used the hashtag "sophomore sensation" on the pictures. The board issued the discipline as the students violated the student code of conduct for off-campus conduct that had a nexus into the school.

Upper Freehold Regional School Board argued that the case was different than the Ramapo Indian Hills Regional High School District case, because in that case any conduct could be penalized as opposed to the Upper Freehold Regional policy which penalized off-campus conduct that had a nexus to the school. The board maintained that because the students were pictured together appearing to drink, one student was wearing a school sweatshirt, and the pictures were tagged with the line "sophomore sensation" the school was implicated to inappropriate and illegal conduct, which prompted the board to issue the 30 day suspension from extracurricular activities. However, the commissioner of education and the administrative law judge both agreed that the board's decision to suspend K.H. was arbitrary, capricious and unreasonable as the off-campus conduct did not "materially and substantially" interfere with the orderly operation of the school as required by *N.J.A.C. 6A:16-7.5*.

Specifically, the commissioner found that it was reasonable for the board to determine that imposing discipline on a student for posting pictures on Instagram, which could be considered to glorify underage drinking by student athletes, was necessary for the student's well-being and the well-being of other students. The commissioner also found that the board's concern that published evidence of apparent alcohol consumption by a prominent student athlete could influence other students to engage in such behavior is consistent with *N.J.A.C. 6A: 16-7.5 (a)1*. However, there was no evidence indicating that the Instagram post caused any disruption to the school environment or impacted the orderly administration of the school. Furthermore, it was found that in order to meet the material and substantial impact requirement under *N.J.A.C. 6A:16-7.5 (a)2*, there must be evidence of more than a mere a risk or fear of an impact on the school environment. Interestingly enough, there was no relief available to K.H. in this matter as she already served the 30 day suspension in 2014 and the board never put anything about the suspension in K.H.'s record so nothing had to be removed.