

ALERT

To: WTH Clients
FROM: Whitted, Takiff + Hansen, LLC
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PREVENTION OF CYBER-BULLYING

Effective January 1, 2015, pursuant to Public Act 098-0801, the General Assembly amended the bullying prevention statute, Section 27-23.7 ('Bullying Prevention') of the Illinois School Code, 105 ILCS 5/1-1 et seq. The following outlines the pertinent changes to the statute and procedures by which incidents of bullying must now be investigated.

Expansion of the Protection for Students

Public Act 098-0801 expanded the prohibition of cyber-bullying to "nonschool-related locations" under certain conditions. Under the amendment to this Section, no student shall be subject to bullying,

*(4) through the transmission of information from a computer that is accessed at a nonschool-related location, activity, function, or program or from the use of technology or an electronic device that is not owned, leased, or used by a school district or school **if the bullying causes a substantial disruption to the educational process or orderly operation of a school.** This item (4) applies only in cases in which a school administrator or teacher receives a report that bullying through this means has occurred and does not require a district or school to staff or monitor any nonschool-related activity, function, or program.*

105 ILCS 5/27-23.7(a)(4) (Emphasis added.) Consequently, school districts may now discipline a student for cyber-bullying that occurs through the use of that student's personal device even if the device was used in the privacy of their home, so long as the bullying causes a "substantial disruption" to the educational process or orderly operation of a school. Notably, the statute does not define "substantial disruption," therefore, the standard is subjective and likely left to the school's discretion; although, there is decisional case law under school First Amendment cases that will likely provide guidance. Prior to the amendment, a school district's jurisdiction to discipline was limited to situations that had a more substantial nexus to either school related events or school owned property.

Pursuant to the Public Act, the pertinent Section of the School Code now also defines "cyber-bullying" as,

[B]ullying through the use of technology or any electronic communication, including without limitation any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic system, photoelectronic system, or photooptical system, including without limitation electronic mail, Internet communications, instant messages, or facsimile communications. . . . [which] includes the creation of a webpage or weblog in which the

creator assumes the identity of another person or the knowing impersonation of another person as the author of the posted content or messages . . . [and] also includes the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons if the distribution or posting creates any of the effects enumerated in the definition of bullying in this Section.

105 ILCS 5/27-23.7(b).

Process to Investigate, Referral Supports for Victims

In addition, Public Act 098-0801 amended the School Code to impose on school districts and non-public, non-sectarian elementary or secondary schools additional requirements concerning their policy on bullying. School districts and non-public, non-sectarian elementary or secondary schools must now have in place a policy that includes, (1) “a process to investigate whether a reported act of bullying is within the permissible scope of the district’s or school’s jurisdiction” and (2) requires “that the district or school provide the victim with information regarding services that are available within the district and community, such as counseling, support services, and other programs.” See 105 ILCS 5/27-23.7(d).

These changes are significant in that schools now have an affirmative duty to maintain and provide a list of community resources to assist victims of bullying and cyber-bullying. Schools must also have a process in which they determine whether an “off-campus” incident causes a substantial disruption to the educational process or to the orderly operation of a school. If the school makes that determination, then it would retain jurisdiction over the student who committed the act of cyber-bullying.