

January 6, 2012

Sraga
SHauser, LLC

Priority Briefing

ILLINOIS SCHOOL CODE AMENDED TO EXPRESSLY SUPPORT DISCIPLINE OF INTERNET THREATS

Effective January 1, 2012, Section 5/10-22.6 of the School Code has been amended by Public Act 97-340 to expressly allow administrators and school boards to suspend a student up to ten days, or expel a student up to two years, on a case by case basis, if the student (i) makes an explicit threat on an Internet website against a school employee, student or any school-related personnel, (ii) the Internet website, through which the threat was made, was accessible within the school, or available to third parties working or studying on school grounds, at the time the threat was made, and (iii) the threat could be reasonably interpreted as threatening to the safety and security of the threatened individual because of his or her duties or status as an employee or student within the school.

The amendment sets forth the General Assembly's intent to protect students and school personnel from cyber bullying and cyber threats and the Legislature's support of administration and school boards in disciplining students who use social media and other Internet sites to threaten and harass others. However, administration and school boards should consider students' First Amendment rights and exercise caution when disciplining students because courts differ, and address situations on a case by case basis, when determining whether Internet speech was brought into school, whether Internet speech caused a material and substantial disruption at school, and whether speech is a true threat that can be regulated by the school.

The amended School Code provision is a helpful declaration, but districts already had the right to discipline students for certain types of speech brought into the school. Moreover, the statute's language is subject to interpretation. It is unclear whether the student who makes the threat must have accessed the internet website at school, or whether the website need only be accessible at school if the student made the threat from his or her home computer. (Note, for example, that in the School Code definition of bullying, cyber bullying is committed through use of a school computer.) In social media free speech cases recently decided throughout the country, courts do not always agree as to whether a student's statement should be reasonably interpreted as threatening to safety or security of others. Even the definition of an "explicit threat" may not be as easy as the General Assembly intends. The recent case law concerning student First Amendment rights on the Internet is anything but clear, and we do not yet have Supreme Court guidance on regulating student Internet speech.

If you would like additional information on regulating social media, use of the Internet by students and staff, or with regard to recent First Amendment case law, please contact an attorney at either of our Sruga Hauser, LLC offices.