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Safe and Responsible Use of the Internet: A Guide for Educators

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Part III. Legal Issues – Internet Use in School

3. District Liability to Students and Other Liability Concerns

Liability to Students

Violation of Student Rights

One area of potential liability is the district's failure to recognize a student's constitutional rights. If a student's rights, as addressed elsewhere in this guide, are not recognized by the district and the student suffers harm as a consequence, the district could be held liable. Potential areas of concern are related to due process, search and seizure, and free speech.

Recently, a number of districts have been held liable for damages to students as a result of the inappropriate imposition of discipline for offensive material that the students have posted on their personal web sites. These cases are discussed more fully in "Student Speech."

Another incident regarding student rights occurred at the Winter School District, Winter Wisconsin¹. A high school student was told that she could not look at sites about the Wiccan religion during after-school open access Internet. The student filed a complaint with the State Department of Public Instruction claiming, among other things, that the student's right to practice freedom of religion was violated. The district was facing litigation, but the matter was resolved when the Superintendent sent a letter to the student admitting that the policy was in error.

A districts that unfairly disciplines students for accessing controversial material may find itself in a position of potential liability on the basis of discrimination or violation of student's free speech right to access information. The same may be true for a district that selects, configures, and/or implements a Technology Protection Measure in a manner that appears to be indicating disapproval of certain information or ideas and thereby indicating disapproval of certain students based on their beliefs or status.

It is exceptionally important for all school administrators to have a full understanding of the constitutional rights of students that may be implicated in the use of the Internet. If in doubt, placing a call to the school attorney prior to imposing discipline or restricting student access to potentially controversial, but not inappropriate, material would be prudent.

Failure to Address Online Harassment

School-based harassment is a violation of Title VI and Title VII of the Civil Rights Act of 1964 and of Title IX of the Education Amendments of 1972. Schools are responsible for illegal actions they know about or should have known about. Schools are also obligated to prevent harassment in the school by anyone. Districts must react to harassment of students and staff at the hands of staff, students, and others.

Federal law requires schools to have a policy against race and sex discrimination and to notify staff, students and parents of the policy. Compliance includes monitoring and implementing proactive efforts to foster prevention. Under Title IX, schools also are required to adopt and publish grievance procedures for resolving discrimination complaints, including harassment. In addition, schools are required to have at least one staff member responsible for coordinating efforts to comply with Title IX.

If a school finds there has been harassment, the obligation is to stop it and ensure it doesn't happen again. This means ending any quid pro quo, eliminating a hostile environment, preventing harassment from occurring again, and, when appropriate, correcting the effects on the student who has been harassed.

¹ URL: <http://www.nytimes.com/library/tech/98/06/cyber/education/03education.html>.
Safe and Responsible Use of the Internet – Part III, Chapter 3, page 2

As discussed in "Preparing Young People to Make Safe and Responsible Choices," the lack of tangible feedback when communicating online can lead to rude and offensive speech. Such online speech may rise to the level of harassment. It is critically important that staff, students, and parents know that the district policies addressing harassment include online harassment. The staff member responsible for coordinating the grievance procedures for the district must have good insight into issues related to online bullying and harassment.

Conveniently, establishing evidence of online harassment is easy to accomplish due to the availability of the electronic records.

Other Liability Concerns

Other liability concerns include the following.

Computer Security Violations

There are a range of activities that constitute computer security violations, including attempts to invade computer systems, the deliberate transmission of a virus or worm, and the like.

Technically sophisticated students may be engaged in such activities using district technology resources. School districts could face potential liability if staff know, or have sufficient reason to suspect, that students have been engaged in such activities using district resources.

Recommendations to address this concern include:

- Include an immunity provision in the Student Internet Use Policy.
- Take *prompt* action if there is any suspicion of inappropriate behavior.
- Provide instruction about computer crime and its consequences in computer science classes.
- Monitor Internet traffic to detect excessive usage that could be an indicator of potentially inappropriate behavior.

Losses Caused by System Failure

There is a potential that a district could be held responsible for losses sustained by users as a result of a system failure. These losses could involve loss of data, an interruption of services, or reliance on the accuracy of information maintained on the district system or accessed through the system. The use of a disclaimer that provides notice of the potential for such loss and disclaims district responsibility should protect the district from liability. Users should also be advised to make a personal back-up of material contained on the district system.

Unauthorized Purchases

Districts should be concerned about the potential that a student will violate the district restriction against purchasing products or services through the system. The district will want to make it clear to parents that there is a potential for students to use the system in such a manner. The district will also want to include in its policy a disclaimer for any financial obligations arising from unauthorized use of the system for the purchase of products or services.

Damage to District System

Another area of concern is damage to the district system by misuse of the system that causes damage to the system. An example would be a student intentionally placing a virus on the system. This is no different than any other damage caused by a student or staff member and is likely covered in other district policies.

Copyright Infringement

Districts can be held liable for materials placed on the district web site in violation of copyright. This issue was discussed "District Liability for Material Placed on Web Site or Transmitted Through System." Districts can also be held liable for violation of copyright or licensing agreements in the use of computer software or for material downloaded from the Internet. These issues are discussed in "Copyright."