



[www.stopcyberbullying.org](http://www.stopcyberbullying.org)

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## **Offsite Internet activities and schools:**

Our guide for schools on Internet-related risk management will be published here at our Web site, without charge, shortly. Until then, some quick pointers:

When a school disciplines a student for creating a Web site, posting a message online or sending a digital communication (text-messaging, instant message, e-mail, etc.) outside of school grounds and school hours, it is treading on very dangerous ground.

The Web sites and messages vary from school bashing, administration and teacher bashing and student bashing, to cyberbullying and harassment of fellow students, vulgarities and threats, to encouraging others to hurt or kill others. Sometimes the students are just behaving badly, or are rude and hurtful, and sometimes they are committing serious crimes, including hacking, identity theft, vandalism and targeting victims for attacks by hate groups and predators.

Cases have challenged the school's authority in many states and federal jurisdictions under constitutional and procedural grounds. And the decisions conflict. There is some guidance from the U.S. Supreme Court on free speech issues in schools, but the last definitive case was decided during the Vietnam War. Most other issues will be resolved by lower courts and the law will vary depending on the state or federal district or circuit in which the school is located. So, before taking action it is essential that the school district seeks advice from knowledgeable counsel in this field. The normal school district lawyer may not have the requisite level of expertise to advise on this, and a constitutional or cyber-free speech lawyer may have to be retained.

There are a few generalizations we can provide, which can give some general guidance. But these cases are very fact specific and the facts in your case may differ from those in the cases already determined in your jurisdiction.

- **Clear threats:** If there is a clear-cut threat (one that is seen by both the person making the threat and those who have seen it or received it), the school is generally entitled to take action, including suspension and expulsion.
- **Clearly disruptive of school discipline:** If the school had proof that the speech has or will disrupt school discipline, the school has a better chance of succeeding. Ungrounded fear or speculation is not sufficient to support the school's burden.
- **In-school activities:** If the student is bringing in print-outs of the Web site, or promoting other students in school to visit the site, or if the student accesses the Web site while at school or creates or works on the Web site from school, there is a greater likelihood that the actions will not be deemed out-of-school activities and would fall within the school's authority.
- **School-sponsored activities:** If the Web site belongs to the school or is created as a school-sponsored project, it will fall under existing U.S. Supreme Court decisions permitting school authority.

- Cyberbullying: If a student targets another student using interactive technologies or the Internet, there is almost always an in-school activity related to the cyberbullying. Privacy-invading e-mails and harassing messages are often printed out and distributed in school and on school grounds. In addition, cyberbullying typically creates a disruption in school, where the victim is afraid, may seek counseling or miss school, their grades may be impacted and friends may get involved. Any proof of an in-school student impact will help support a finding of school authority. Although, you should note that some courts have not extended the school's authority to offline and off-premises actions in a cyberbullying case when the cyberbully himself did not bring the printed materials into the school.
- Cyber-staff harassment: If the school can demonstrate that the student's Web site or harassment has had a real impact on the staff, the school has a greater likelihood of success in upholding its authority. If the teacher or staff member quits in reaction to the harassment or take a leave of absence or seeks medical treatment to help deal with the emotional implications of the student's actions, the courts tend to be more sympathetic and are more likely to give the school the authority to discipline the student. Without this, the courts tend to lean towards leaving the staff member to other legal recourse.

Schools are also attacked (often successfully) when they fail to follow their own procedures. Often pressured by angry staff members, other parents and fear of the problem growing out-of-control, they fail to adhere to their own written rules. They fail to give the requisite notice, in the requisite manner and allow the requisite respond period to lapse before calling a hearing. They sometimes fail to notify the parents and give the student's family a chance to respond. This is not a time for shortcuts or acting without careful planning.

Sometime the schools over-reach in their policy, attempting to prohibit speech too broadly. These policies are generally knocked down unless the school can demonstrate a practice that limits an over-broad reach and clarifies what is prohibited and what isn't for the purposes of the policy and school rules. One school even reserved the right to examine any home computer of their students, to determine whether a cybercrime or abuse has taken place using that computer.

The schools have a valid concern and legal obligation to maintain discipline and protect their students while in their care. But in this tricky area, especially when damages for infringing on the students' rights can exceed the annual salary of much needed teachers and other educational resources, schools cannot afford to guess. Until the law becomes better settled, the schools need to be careful before acting, seek knowledgeable legal counsel, plan ahead and get parents involved early.

Look for our school cyber-risks management guide soon at [InternetSuperHeroes.org](http://InternetSuperHeroes.org), [WiredKids.org](http://WiredKids.org), [WiredSafety.org](http://WiredSafety.org) and our new [StopCyberbullying.org](http://StopCyberbullying.org) Web sites.