
Preface

This manual is dedicated to the competing principles (1) that schools are not required to **surrender control** over school activities to students and (2) that students are exposed to a **robust exchange of ideas**.¹ While the classroom needs to be a *marketplace of ideas* where First Amendment free expression exists, a safe and orderly school environment conducive to learning must be maintained. The increasing use of technologies, including the Internet, the **most participatory form of mass speech yet developed**,² confounds administrative decision making. Technology use muddles the point at which students' First Amendment protections end and a school's authority begins. The schoolyard may no longer be confined within its physical limitations.

This manual provides public school leaders and front-line school personnel with data-driven solutions for resolving cyber bullying incidents. Included within the manual are the following:

1. Comprehensive and easily applied tests that differentiate netiquette violations from **First Amendment** protected expressions.
2. Strategies for school leaders to use to address and document aggressive cyber situations.
3. Real-world cyber bullying scenarios from court cases that address the authority of schools to regulate, censor, or sanction inappropriate cyber expression by students both on and off campus.
4. The cyber bullying School Sanctioning Worksheet that provides practical guidelines for school decision makers. These guidelines support transparent accountability, identify specific and objective factors for school personnel to assess in each case, and document a school's decision to sanction cyber bullying incidents.

The primary focus of this manual concerns school leaders' decision-making processes when dealing with incidents of cyber bullying. The real-world examples provided will equip school administrators with the knowledge and tools to lead their schools or districts through issues surrounding cyber bullying. It should be noted, however, that *although differences between cyber bullying and bullying exist, these materials may also be used when dealing with other bullying or discipline issues*. The suggestions included in this handbook may easily be applied to other student disciplinary decisions.

The book is organized into four sections. The Introduction discusses cyber bullying as a recent, emerging phenomenon. Cyber bullying is defined within the context of appropriate school behavior. Examples of sexting and slamming support the statistical significance of the problem in public education. This section raises the challenges to school districts created by students' inappropriate use of technology. A brief summary of current state remedies is also discussed.

The next section of the book is titled Part I, Resolving School Cyber Situations. This section is divided into nine chapters that provide a brief update on recent court cases related to cyber bullying and public school safety. The purpose of this section is to provide a complete legal analysis of cyber bullying situations through the eyes of the courts. Case scenarios provide real-life examples of student expressions that are both terrifying and destructive to productive school functioning. The case discussions impart a strong foundation for making legally sound decisions, and they include the dictates of the courts regarding a school's duty to protect its students from harm.

Chapter 1 identifies the issues and confusions existing in schools resulting from student cyber expressions. This chapter distinguishes protected expressions from unprotected expressions as this distinction is reflected in court decisions. Chapter 2 reviews the Supreme Court's perception of appropriate student expressions at school. It provides the three categories of student expression that can be controlled by school administrators. Chapter 3 discusses the state and local take on school-related expressions. Highlights of regional differences in resolving cyber bullying issues in schools are discussed. Too often, school administrators believe that the concept of *in loco parentis* authorizes total control of students while under school supervision. This is, in fact, no longer true. Public schools no longer act in the place of parents.

Chapter 4 focuses on inappropriate student expressions that are vulgar, lewd, or developmentally unacceptable for the intended student audience. Chapter 5 examines the school official's ability to control pedagogy and school-authorized academic and extracurricular

activities, publications, and events. Chapter 6 details disruptive student expressions that impact the educational environment. This includes expressions that disrupt by implying that there will be violence, causing administrative management issues, or undermining school leadership authority.

Chapter 7 addresses a school's authority to reach beyond the schoolyard gate. Off-campus activities that establish a sufficient nexus (connection) to school-related functions may be censored provided that they substantially disrupt the school or impede students from obtaining educational benefits. Chapter 8 focuses on a school's duty to protect from peer-on-peer cyber bullying. A school is not responsible for peer-on-peer activity *unless* the school is aware of the situation and is deliberately indifferent to the circumstances. Even then, the school would not be responsible for the harm *unless* a pattern of systemic abuse has occurred. Chapter 9 covers proactive approaches that have been developed to deal with school cyber bullying situations. These approaches include state and federal legislative mandates, community practices, and school-parent-student acceptable use policies.

Part II examines the basic lessons and rules school administrators need to know to avoid liability for or litigation from inappropriately responding to cyber bullying situations. This part discusses the schools' options while handling these incidents and the schools' need to provide fact-intensive justification for its actions. This section is divided into two chapters. Chapter 10 discusses the lessons learned from decisions that school personnel have made in the past. In particular, this chapter demonstrates how costly cyber censoring mistakes are to school districts, and it lists options other than censorship that are available to schools. Chapter 11 summarizes the Top Ten Rules that generally govern school authority over student cyber expressions. These Rules stem from Supreme Court decisions and the lower courts' interpretations thereof. The Top Ten Rules give school officials concise guidance regarding which student expressions can be regulated and which cannot.

Part III gives the reader the tools needed to systematically evaluate and determine appropriate cyber bullying disciplinary actions. Chapter 12 introduces the MATRIX, a rubric that will assist administrators in formulating decisions that are *not* arbitrary and capricious. The chapter describes the need for such a decision-making tool and identifies the philosophical goals that support its use. Chapter 13 describes in detail how the MATRIX works. Included within this chapter is a sanctioning worksheet organized into six sections.

Each section identifies specific information relevant to school discipline. The six sections are

Section 1: The student/offender's pedigree information, general background information, and contact information for those involved in the incident.

Section 2: The category and description of the cyber bullying presenting offense.

Section 3: Numerical calculations correlating to the intensity of the presenting offense.

Section 4: Numerical calculations correlating to the offender's status and personal characteristics.

Section 5: Numerical calculations mitigating the offender's liability for his or her conduct.

Section 6: The total sanctioning score and actual disposition received.

A step-by-step description for completing the worksheet provides a straightforward guide with which to process and document a school's sanctioning decisions.

CAVEAT

The manual and accompanying MATRIX provide an objective framework within which to structure a sanctioning decision. The manual does not dictate specific sanctions and should be used as a guide only. **This material is advisory, and its use is voluntary.** School administrators must consider what is an appropriate sanction based on community standards, the policies of regional offices of education, and specific state legislative directives. If any discrepancies arise between school or state policies and the manual's recommendations, always defer to independent legal counsel. Decisions to act or refrain from acting should not be determined on the basis of this information without seeking legal advice. **The manual is intended to complement a school district's preexisting decision-making practices, not to replace them.**

Notes

1. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 512 (1969).
2. *Reno v. ACLU*, 521 U.S. 844, 863 (1997).