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Cyberbullying and Sexting

By Allen Keller

With the prevalence of smartphones, texting and social media platforms have become a substantial part of your students' lives. While these devices provide unprecedented access to information and communication and can be used to keep in touch with family and socialize with peers, they can also be used to anonymously bully, make slurs, post inappropriate comments, or share private images to a wide audience. The news is full of reports from around the country of students "sexting" by sharing sexually explicit images through texting or social media platforms, or engaging in bullying over the Internet or by text messaging.

Due to the prevalence of smartphones and social media use by students, it is imperative for schools to be proactive in addressing inappropriate use of technology and the Internet by students. This includes facilitating conversations about sexting, cyberbullying, and Internet safety, and making sure students are aware of the potential consequences of improper behavior. For instance, sexting and cyberbullying can have major implications on a student's health and wellbeing, both at home and in school, as students who are the victims of sexting or cyberbullying often do not feel safe coming to school, and have difficulty concentrating during school activities and instruction. And, sadly, it has become all too common for victims of bullying to attempt suicide or other serious self-harm.

Additionally, sexting and cyberbullying can result in serious consequences for students

under state and federal law and your school's Student Code of Conduct. For instance, the possession or distribution of illicit content of a minor via sexting is similar to possessing or distributing child pornography, which can lead to referrals to law enforcement officials. Possessing or distributing sexually explicit or inappropriate images should also be listed as a violation of your school's Student Code of Conduct, and subject to potential expulsion.

Please also keep in mind that "David's Law," passed in 2017, has expanded the scope of a school's responsibility to investigate and respond to cyberbullying and your authority to impose discipline for bullying and cyberbullying. Under David's Law, bullying or cyberbullying conduct that takes place away from school property and outside the scope of a school-sponsored or school-related activity is prohibited, and can lead to discipline, including potential expulsion, under your Student Code of Conduct if the out-of-school conduct interferes with a student's Educational opportunities or substantially disrupts the orderly operation of classroom, school, or school-sponsored or school-related activity. Further, a student who engages in cyberbullying may also be and exposed to civil and criminal liability, and the parents of children who engage in cyberbullying may also be exposed to civil liability.

In today's climate, it is imperative that you have anti-bullying policies in place, along with strong Student Code of Conduct guidelines prohibiting sexting and bullying conduct. Please feel free to contact us for sample policies, or if you would like a review of your current policies and procedures.

We're happy to assist in your efforts to maintain a safe and supporting learning environment.

New Rule Implementing the Community Safety Education Act in Effect

By Maia Levenson

In 2017, the Texas Legislature passed Senate Bill 30 ("SB 30"), known as the Community Safety Education Act. SB 30 amended the Texas Education Code to include Section 28.012, which requires school districts and open-enrollment charter schools to provide instruction on interaction with law enforcement. See Tex. Educ. Code § 28.012. On August 27, 2018, the administrative rule adopted by the State Board of Education ("SBOE") to implement SB 30 went into effect. See 19 Tex. Admin. Code § 74.39. The rule, which applies to any student who enters Grade 9 in the 2018 – 2019 school year or later, requires that an open-enrollment charter school "provide instruction in one or more courses to students in Grades 9-12 on proper interaction with peace officers during traffic stops and other in-person encounters." See *id.* § 74.39(a),(f). The required instruction may be provided as a part of any course or courses and must be provided to each student at least once before graduation from high school. See *id.* § 74.39(a).

Pursuant to the SBOE's rule, the instruction provided by an open-enrollment charter school must include all of the following information: (1) the role of law enforcement and the duties and responsibilities of peace officers; (2) a person's rights concerning interactions with peace officers; (3) proper behavior for civilians and peace officers during interactions; (4) laws regarding questioning and detention by peace officers, including any law requiring a person to present proof of identity to a peace officer, and the consequences for a person's or officer's failure to comply with those laws; and (5) how and where to file a complaint

against or a compliment on behalf of a peace officer. See *id.* § 74.39(b).

The new rule requires an open-enrollment charter school to use materials developed through a memorandum of understanding among the Texas Commission on Law Enforcement, the SBOE, and Texas Education Agency when providing instruction to students under SB 30. See *id.* § 74.39(c). These materials are available online at <https://www.texasgateway.org/resource/flashing-lights-senate-bill-30>. An open-enrollment charter school may tailor the instruction as appropriate to suit the school's community but, in doing so, the school must solicit input from local law enforcement agencies, driver training schools, and the community. See 19 Tex. Admin. Code § 74.39(d). The SBOE also amended its rule regarding Academic Achievement Record (Transcript) to require an open-enrollment charter school to clearly indicate completion of the required instruction on proper interaction with peace officers on the academic achievement record or transcript, including the year in which the instruction was provided. See *id.* §§ 74.39(e), 74.5.

Please contact our office if you have any questions or if you would like assistance in implementing SB 30.

Internal Controls: Purchasing Policy and Procedure

By Ramón Medina

In our June 2016 issue, we discussed the new requirements adopted in EDGAR relating to the "Standards for Internal Control in the Federal Government" issued by the U.S. Government Accountability Office and the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our March 2017 through August 2017 issues, we discussed state and federal purchasing requirements. Being that both the federal and state governments require that charter holders

adopt purchasing policies and procedures (i.e., internal controls) for their charter schools and given the emphasis on internal controls in EDGAR and the Yellow Book (aka, *Government Auditing Standards*), all charter school boards and officers should ensure that they have in place purchasing policies and procedures that conform to applicable law and rule and that provide the maximum degree of administrative convenience without calling into question particular transactions.

At a minimum, local board policy should address the legal requirements applicable to the procurement of professional services, the awarding of public works (or construction services) contracts and the use of federal funds to procure goods and services. Additionally, local board policy should provide a framework for the use of state funds to purchase goods and non-professional services that enables the charter organization to demonstrate that its board and officers are properly discharging their fiduciary duty (e.g., all purchases between \$10,000 and \$250,000 must be made through the solicitation of three competitive quotes).

Although state rule requires that the charter school's board also adopt its financial administrative procedures,¹ charter school officers may opt instead to simply adopt a purchasing manual that describes in detail the process that will be followed for the different types of purchases addressed in board rule.² Also, school management should include in the purchasing manual additional details that enable the school to comply with applicable law and rule that is

not specifically addressed in board policy (e.g., identify the specific forms to be completed and the routing of the forms for review and approval).

Importantly, if your school adopted the restrictive purchasing requirements codified in Chapter 44, Subchapter B of the Texas Education Code, either in your school's charter application and/or local board policy or purchasing manual, you should ensure that your school is strictly following all of the legal requirements applicable to these restrictive methods. Often, beyond the plain language of the purchasing law sometimes quoted in local board policy or administrative procedure, the adoption of these restrictive purchasing requirements include additional strings long established as practice in the Financial Accountability System Resource Guide and by government and independent auditors. To avoid an unsavory audit finding, you may want to review existing policy and procedure and ensure that these local requirements achieve the degree of internal control intended by the board and management.

Have Questions? We'll Answer.

If you have any questions concerning the content in this e-newsletter or any other school law matter, please contact Lori Madla at lmadla@@slh-law.com or at (210) 538-5385.

¹ See Financial Accountability System Resource Guide, Module 10, 1.5.5 Accounting Policies and Procedures and 3.1 Locally Adopted Policies and Procedures. The board's adoption of local policy should be documented in the minutes to the meeting of the board during which the policy was adopted or amended. Also, the board policy should include the date that the board adopted the policy.

² If this approach is taken, management should present the purchasing manual to the board as an information item so that the board may have an opportunity to review, inquire about and comment upon its content and alignment to law, rule and board policy. Management's adoption of the purchasing manual should be clearly documented at the beginning of the manual.