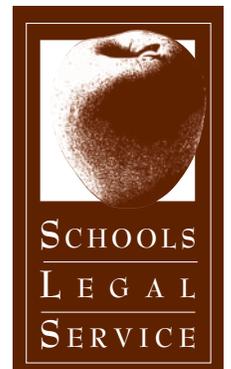


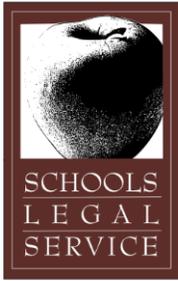


*My Space or Your Space:*

## **Internet Misconduct & Student Discipline in California Schools**

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# School Business Law Update

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## AB 86 Amends the Education Code to Expressly Address Cyberbullying

Approved by the Governor on September 30, 2008, Assembly Bill 86 amends the “Interagency School Safety Demonstration Act of 1985” (Educ. Code §§ 32260-32295.5) and the student discipline provisions of the Education Code (Educ. Code §§ 48900-48927) to address “bullying committed by means of an electronic act” also commonly known as “cyberbullying.” When pursuing student discipline for cyberbullying, school districts typically face a number of problematic hurdles. Included are jurisdiction issues, due process/fair notice concerns and free expression issues. Unfortunately, AB 86 does not help school districts clear any of these hurdles.

For all effective purposes, AB 86 simply re-packages the provisions already in the Education Code. Although it adds verbiage to some of the provisions and re-orders them, the revisions do not result in a substantive change of the law. In other words, the hurdles which have been problematic all along are still present and are just as vexing.

Essentially, AB 86 revises the Education Code in two ways. First, it adds cyberbullying to the list of misconduct to be addressed through interagency cooperation and safety programs. Second, it makes cyberbullying an offense under Education Code section 48900. At first blush, these revisions sound like improvements. However, since AB 86 expressly defines “bullying,” as either (1) Education Code section 48900.2 misconduct (sexual harassment); (2) Education Code section 48900.3 misconduct (hate violence); and/or (3) Education Code section 48900.4 misconduct (severe or pervasive harassment, threats or intimidation), it adds nothing to the law. Interestingly, the AB 86 definition of “bullying” does not include Education Code section 48900.7 misconduct (terroristic threats). This shortcoming seems to be an oversight.

Additional shortcomings are as follows:

(1) AB 86 does not expressly give school districts jurisdiction over internet misconduct perpetrated against other students, staff or the school district which may have occurred after school hours and in circumstances not directly connected to school activity.

(2) The AB 86 definition of bullying does not include:

(a) Posting demeaning or defamatory communications directed at students or staff;

- (b) Transmitting electronic communications using profane language or obscene expressions directed at students or staff;
- (c) Deploying malware directed at interfering with the functionality of electronic devices owned by students, staff or the school district; and
- (d) Other illicit internet activities directed at inflicting social and emotional cruelty on targeted students or staff.

Following the enactment of AB 86, the decision to discipline an act of cyberbullying is still heavily encumbered by the jurisdictional provisions of Education Code section 48900 and constitutional due process and free speech issues. Tools designed to help school administrators overcome some of these hurdles could have been provided, but AB 86 does not do so.

For additional information on cyber-bullying, you may wish to refer to the publication “A California Administrator’s Guide to Cyber-bullying and Other Internet Misconduct,” which is posted on the Members Only section of the Schools Legal Service website as follows:

<http://wwwstatic.kern.org/gems/SLSClients/FCyberbullyingABH.pdf>

(Ctrl + click will access this link)

If you need further information on this topic, do not hesitate to contact our office.

— Alan B. Harris

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