

Playing Pranks or Causing Harm?

What rights do educators have when students use the Internet to cause harm?

BY KELLEY R. TAYLOR, ESQ.

In September 2006, a Texas assistant principal filed a lawsuit against two 16-year-old students and their parents. According to the plaintiff's original court petition, in spring 2006, a high school dean showed the assistant principal a printout of a Web page that appeared to belong to her but was actually created by students and posted on MySpace.com, a popular free-access Web site.

The Web page contained obscene and lewd comments and graphics. The site also falsely stated that the assistant principal was a lesbian. The assistant principal was shocked to learn about the site, which was removed when she notified MySpace.com. Her lawsuit alleges defamation as well as negligence against the students and negligent supervision on the part of the students' parents.

The Texas assistant principal is not the only school official who has allegedly suffered humiliation or harm at the hands of students using Web sites like MySpace.com. A Florida student posted a picture of a high school teacher along with unbecoming sexual comments.

The teacher filed a lawsuit against the student. A Pennsylvania student was suspended after posting a fake profile of the school's principal that included crude statements.

Because of these cases, similar incidents, and the millions of teenagers and others who use such Web sites as MySpace.com, schools across the country are struggling to find an effective approach when the profiles on those sites intersect with the school environment. When the material posted on a Web site serves to humiliate, ridicule, or disparage a school official but is not a clear threat or a violation of a school rule or code of conduct, what recourse does the affected school leader have?

Defamation

In the Texas case, the assistant principal chose to sue the two students and their parents for defamation and various forms of negligence. Embarrassing information or inappropriate jokes—which school leaders are unfortunately often the butts of—are not necessarily defamatory in a legal sense. Defamation can be a form of legal remedy in some

cases, however. Accordingly, it is necessary for school officials to have a solid understanding of what defamation is and what it is not.

Defamation is a deliberate false written or oral publication that damages a person's reputation or good name or otherwise injures a person's business or profession. The type of false publication (defamation) involved in the Texas MySpace.com claim was written and, therefore, is generally referred to as *libel*. In any case, there are important aspects of defamation that make up a legal cause of action. Those components are a false publication and damage or injury.

False. Primarily, a defamatory statement must be false. If someone makes a statement about you that is true (no matter how hurtful), it cannot be defamatory from a legal perspective. In addition, a defamatory statement must be published. That is, the communication must be read, seen, or heard by someone other than the individual who made the statement and the person about whom the statement was made. Finally and probably most important, a legally defamatory statement must injure or damage a person's reputation. It is not enough to merely be embarrassed by a false published statement. Your reputation or profession must be damaged in some tangible way.



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Aside from proving the false and injurious nature of a communication, a plaintiff alleging defamation must show that he or she was identified in the statement and that the person who made the statement caused the resulting damage. In terms of identification, individuals are usually named when they are defamed, but it is possible for a person to be identified (from a legal standpoint) without being named.

For example, imagine there is only one secondary school in Petite Town, USA, and the newspaper reports that the principal of Petite Town Secondary School is a criminal. If you are the principal of Petite Town Secondary School, you have likely been “identified.” If untrue and injurious, the defamatory statement that you are a criminal is “of and concerning” you.

The other element of a defamation claim that must be proved is fault. Where public figures are concerned, the U.S. Supreme Court has established a high and complicated legal standard called “actual malice.” Actual malice relates to spite, reckless disregard for rights and interests, or personal hatred that lies at the heart of communication about public officials or public figures.

Whether school officials are “public officials or figures” seems to hinge

on how the deciding court views the controversy. If the court sees the policy-making authority or influence of a school official as considerable, then it is likely to find that official to be a “public official.” If a court decides that a particular school leader is a “private person,” however, that school leader would only need to show that the defendant was negligent in publishing the defamatory statement—a much easier burden of proof.

Defense to defamation. There are various defenses to defamation. It has already been established that if something is true, it isn’t defamatory. In addition, if a subject is a matter of public concern, a defendant can argue that their statements constitute fair comment or opinion on that matter. Finally, some defendants can assert privilege, which usually protects information from official proceedings and open meetings. The three branches of the government and the media also enjoy various forms of privilege.

Criticism, jokes, and parody are often mistaken (usually by the subject of the parody or joke) for defamation. With regard to jokes or parody, a court will consider the totality of the circumstances to determine whether an average person seeing the parody or hearing the joke would recognize it as such. Similar issues are raised when student-made

Web pages contain jokes, parody, or other opinions about teachers, school administrators, and other students.

Although some Internet speech is protected under the First Amendment, defamatory speech is not. As a result, a judge will consider the nature of the hurtful information contained on a Web site. He or she will distinguish merely undesirable or embarrassing information from injurious, defamatory, or otherwise illegal communications.

Negligence

The Texas lawsuit also contained various allegations of negligence. As some school leaders know, negligence is the failure to use reasonable care or the failure to abide by an established standard of care given a particular set of circumstances. Negligence is typically exemplified by inattention, thoughtlessness, or recklessness. The Texas assistant principal’s lawsuit also alleged gross negligence. Unlike basic negligence, which is often about inadvertence, gross negligence involves intent and a reckless disregard in the face of a manifest duty. In other words, a grossly negligent defendant consciously failed to meet an obvious legal obligation.

The Texas assistant principal sued the students for allegedly owing a duty not to publish false statements about

her on an Internet Web page. According to her court petition, both students breached that duty and she suffered damages as a result. The plaintiff, who had disciplined the students before on unrelated school issues, also alleged that the students acted with malice in publishing the imposturous and false material on MySpace.com.

Perhaps even more worthy of note is the fact that the assistant principal included in her court petition the parents of the two students who created the false MySpace page. Her claim is based on the duty that parents have to supervise their children, which the plaintiff argues extends to a duty to supervise Internet activity in the home and on the home computer.

Felony Mischief?

In the end, the Texas assistant principal's lawsuit against the students and their

parents may not be the most significant legal result from the student's Internet mischief. In Texas, fraudulent use of identifying information is a felony. Though it is completely uncertain whether criminal charges would be brought against the juvenile students, the mere possibility brings home the serious nature of their activities.

For decades, students making jokes about principals, teachers, and other students has almost been a societal norm. The Internet and students access to and use of it, however has raised the stakes for some school administrators. When the school's arm of discipline does not reach into a student's home, who is accountable and how school officials are "made whole" are paramount concerns.

Reportedly, the Texas plaintiff's attorney has said that her lawsuit is less about

compensation and more about accountability and teaching a lesson. The case has yet to be resolved, so it remains to be seen where the court will draw line between playing pranks and causing harm. In the meantime, many students will continue to use free-access Internet Web sites for various purposes, and school administrators will have to continue to deal effectively and appropriately with the information posted there. **PL**

Resources

- LaCoste-Caputo, J. (2006, September 21). *Educator sues teens over page on myspace*. Retrieved November 20, 2006, from www.mysanantonio.com/news/metro/stories/MYSA092206.01B.MySpaceLawsuit.2f28841.html
- Kennedy, K. (2006, April 23). *Not-so-myspace any more*. Retrieved November 20, 2006 from <http://www.theledger.com/apps/pbcs.dll/article?AID=/20060423/NEWS/604230392/-1/NEWS0101>

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