

Walking a fine line on school bullying

By: [Jacqueline Birzon](#) August 25, 2014

Representing a constituency of a thousand people or more, attorneys on school district retainers basically serve as corporate attorneys in the private sector.

But unlike the polished adults corporate lawyers usually represent, the majority of an education attorney's clientele is students under the age of 18 – less-experienced people who might not fully be aware of the laws they're breaking, but whose rights must be promoted nonetheless.

One part of education law under a new microscope these days is bullying. Fueled by students whose motives can be unclear even to themselves, harassment in schools is a long-standing, unavoidable facet of middle and high school, and to that end 14 states have enacted new laws setting misdemeanor and felony charges for bullying and cyber-bullying crimes.

New York remains one of those states lacking criminal sanctions for students found guilty of intentional bullying. In July, Albany County's Court of Appeals struck down a county law criminalizing cyber-bullying, stating the law was too broad and, as worded, violated First Amendment rights.

In the case at the heart of the appeals court's ruling, a student was charged with a misdemeanor in 2010 for violating a county anti-cyber-bullying law that made it a misdemeanor to post "embarrassing or sexually explicit" photos. The defendant anonymously posted incriminating pictures of classmates on a social media website.

While the ruling actually protected that alleged bully, Edward Nitkewicz, senior counsel at Mineola-based the Sanders Law Firm, said it also established a precedent for how other counties can successfully craft and enforce anti-cyber bullying statutes, which are already on the mind of many local lawmakers. In 2010, for instance, then-Suffolk County Legis. Jon Cooper tried unsuccessfully to pass legislation that would make it a misdemeanor to repeatedly abuse a child online or via text message.

The new ruling shot down the Albany cyber-bullying law, but also "laid out a fairly straightforward roadmap to how Albany County can rewrite that provision so it does comport with the First Amendment and freedom of speech rights, and still protect a child," Nitkewicz noted.

"There are absolutely instances of cyber-bullying that should be considered a misdemeanor or, in some instances, a felony," the attorney said. "Sometimes, it gets so out of hand that it should be considered criminal, in my opinion."

In 2010, the state passed the Dignity for All Students Act, legislation aimed at protecting students from harassment in school while providing schools with guidelines for penalizing students who intentionally harass their peers. Under the DASA, students are given protections similar to those issued to employees under the New York State Human Rights Law, which protects workers from unlawful sexual harassment and harassment based on gender, race, religion or national origin. In 2013, the state added language to specifically address the issue of cyber-bullying, which often occurs on social media platforms outside the confines of the classroom.

Under DASA, a student who engages in bullying behavior can be suspended anywhere from five days to several weeks, Nitkewicz noted. In school bullying cases, administrators are tasked with exercising due diligence and are implored to investigate all bullying – but it ultimately falls to school district attorneys to ensure everyone’s rights are protected.

North Babylon-based attorney Larry McCord, founder of Larry McCord and Associates, noted that victimized students don’t always verbalize their feelings, so it often becomes a parent’s job to advocate for the victim, work with school administrators or seek the help of counsel. Getting the victimized student to come forward, McCord said, is essential.

“Let them know that it’s OK to talk an adult about it,” the attorney said. “If the student continues to be victimized, it will negatively impact their education, which they are entitled to receive while in school.”

Jericho-based special education attorney Sandra Gumerove pointed out that students with special needs are often unaware that they’re being bullied – and may also be unaware that they themselves are the aggressor, another particular challenge for school attorneys.

“Often, students with special needs do not understand that they are being bullied because they so much want to be part of the typical student group,” Gumerove said. “The district, in my mind, has the same legal obligation and a higher moral obligation to protect these students.”

Education attorneys must also walk a fine line that determines when they should and should not press the legal gas in bullying cases – a line closely guarded by school administrators, who routinely shell out \$250,000 to \$400,000 for retainers that typically do not cover litigation costs.

“My first reaction is not to litigate or generate more conflict,” Nitkewicz noted. “It’s a sensitive subject dealing with kids, so we try to avoid litigation so there’s less harm. And by not going to court, schools don’t have to spend the extra money to litigate.”