

## **FALL 2017 NEWSLETTER**

### **School Law Legislative Update**

**by Laura O'Leary**

#### **David's Law**

In its most recent legislative session, the Texas Legislature passed S.B. 179, also known as "David's Law," which amends portions of the Texas Education Code and other Texas statutes and which addresses bullying and cyber-bullying of public school students. This law went into effect September 1, 2017.

#### **Changes to the Education Code**

David's Law significantly broadens the definition of bullying to include: (1) a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power; (2) acts which materially and substantially disrupt the educational process or the orderly operation of a classroom or school; (3) acts which infringe on the rights of the victim at school; and (4) cyberbullying, that is, bullying which is done by means of any electronic communication device.

Chapter 37 of the Texas Education Code previously limited the definition of bullying to certain actions that occurred on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the school district. David's Law greatly expands the scope of Chapter 37 to include: (1) conduct which is delivered to school property or to the site of school-sponsored or school-related activity off school property; (2) conduct which occurs in a privately owned vehicle which is being used for transportation of students to or from school or a school-sponsored or school-related activity; and (3) cyberbullying occurring off school property or outside of a school-sponsored or school-related activity if the cyberbullying either "interferes with the student's educational opportunities" or "substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity." Thus, bullying within the purview of a school district could occur in a carpool on the way to school or in a student's car on the way to a football game. Cyberbullying within the concern of a school district could take place solely by means of social media posts outside of school which upset a student to the point that the student stays home from school or chooses not to take certain classes or to join certain extra-curricular activities.

David's Law also expands school districts' obligations in adopting bullying-related policies and procedures. School districts must now adopt procedures for providing notice of an incident of bullying to a parent or guardian of the alleged victim on or before the third business day after the date the incident is reported. Additionally, school districts must adopt procedures for a student to anonymously report an incident of bullying. School districts may adopt policies to assist in the prevention and mediation of certain bullying incidents between students.

Under the new law, school officials may place a student in DAEP or expel a student who: (1) engages in bullying that encourages a student to commit or attempt to commit suicide; (2) incites violence against a student through group bullying; or (3) releases or threatens to release intimate visual material of a student without the student's consent.

David's Law also provides that a principal or designee may make a report to a police department if, after an investigation is completed, the principal has reasonable grounds to believe that a student engaged in assault or harassment by means of repeated electronic communications, as those terms are defined in the Texas Penal Code. The law provides immunity from civil or criminal liability for a report made under this section. A school counselor cannot act as a principal's designee with respect to a report made under the section.

These amendments of the Texas Education Code apply to open-enrollment charter schools.

David's Law also mandates that a school counselor shall serve as an impartial, non-reporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying. However, the new law does not exempt school counselors from any mandatory reporting requirements imposed by other provisions of law.

### **Injunctive Relief**

David's Law also modifies the Texas Civil Practice and Remedies Code to provide a minor student or his or her parents with a simplified means for obtaining injunctive relief against an individual who is engaging in cyberbullying against the minor student. Under this law, the injured student or parent may obtain a temporary restraining order, temporary injunction, or permanent injunction enjoining an individual from engaging in cyberbullying or, if the defendant is a minor, compelling the defendant's parent to take reasonable actions to cause the defendant to cease engaging in cyberbullying. In order to obtain injunctive relief under this section, a plaintiff need only show that he or she is likely to succeed in establishing that the defendant was cyberbullying the minor student. The Texas Supreme Court is required to promulgate forms, written in easily understood language, for use in obtaining relief under this section. This provision has significant First Amendment implications, and we expect that it will be challenged in the courts.

### **Criminal Penalties**

David's Law also modifies the Texas Penal Code to provide that an individual commits a Class A misdemeanor if he or she sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another and: (1) the offense was committed against a minor with the intent that the child commit suicide or engage in conduct causing serious bodily injury to the child; or (2) the actor previously violated a temporary restraining order or injunction issues in connection with a finding that the actor was cyberbullying the child.