



Avoiding Unintended Consequences: Distance Learning, Student Safety and District Liability

Online

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Sponsored by: LearnSafe

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Mickes O'Toole, Firm Chairman/Founding Partner

- 35 years as leading education law attorneys in the United States
- Represents more than 200 school districts, private schools, colleges and universities in a variety of school-related legal matters
- Recognized by attorneys of Missouri and Kansas as the best education attorney for the past five years
- Served on the Board of Directors of the National Council of School Attorneys and a frequent speaker both nationally and in Missouri on school law and constitutional issues.
- Ph.D. in educational administration.
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Confusing Guidance Provided with the Arrival of the Pandemic

- Masks were not effective
- Masks were mandatory
- Projected Deaths were 2.1 M
 - Then 100,000
 - Then 50,000
 - Then 150,000
- COVID spread by virus on surfaces
- Low surface infection
- Students not susceptible
- Students are super spreaders
- Close schools to avoid spread
- Open schools as they pose little risk
- Only way to educate students is by Distance Learning
- Best educational outcome is returning students On-Site Learning



School Reopening

- School reopening plans are evolving even as they are released
- Some form of distance learning method is being considered by every district in the country
- Duty of Care: Responsibility the district has to the parents of students.



Shift to Distance Learning

- With the Onset of COVID, the Use by Students of School Provided Computers has Dramatically Increased
- The Ability of Teachers/Administrators to Monitor these Devices Declined Precipitously.
- Students Using their Devices Communicate with their Teachers, with the Class and with Individual Co-Students.
 - Facebook Messenger
 - Google tools
- As a General Rule, You Must Assume that your Students, including Elementary, Know More About Your Technology than your Staff.

So What Do We Know

- Safety Risks to the Nation's Students Exacerbated by Technology
 - Bullying
 - Sexual Abuse
 - Student Suicide
 - Pornography
 - Student-impacted violence
 - Depression
- Controlling Access to Internet
 - Filtering/Blocking Access
 - Blocking inappropriate sites is not enough
- Monitoring Individual Devices
 - Controlling usage of District devices to maintain safety and control liability



How Do We Fulfill Our Legal Duty to Protect Students From Dangerous Content in Distance Learning Using District Devices?

Children's Internet Protection Act

Requires school districts that receive E-Rate funding to utilize software to block images that constitute obscenity, child pornography, and material that is “harmful to minors.”

47 U.S.C. § 254(h)(5)(B)

CHILDREN'S INTERNET PROTECTION ACT (CIPA)

- Requires K-12 schools to utilize internet filters to block images that constitute obscenity, child pornography and material that is “harmful to minors.”
- **Requires districts to monitor/supervise student and staff technology usage.**
- Failure to effectively implement CIPA requirements results in litigation resulting from suicides, bullying, student violence, sexual abuse, etc.
 - “The District does not take [] seriously as evidenced in their failure to comply with CIPA and their own policies.”




Sources of Student Risk

Unsupervised Access to Sites That Could be used to Exploit Children

- Filtering does not address communication between students and the outside world or traffic from sites that “seem” innocuous.
- Monitoring is an individualized, ongoing review of what is under the “net”.

Talk to strangers!

You don't need an app to use Omegle on your phone or tablet! The web site works great on mobile.



Omegle (*oh-meg-ull*) is a great way to meet new friends, even while practicing social distancing. When you use Omegle, we pick someone else at random and let you talk one-on-one. To help you stay safe, chats are anonymous unless you tell someone who you are (not suggested!), and you can stop a chat at any time. Predators have been known to use Omegle, so please be careful.

If you prefer, you can add your interests, and Omegle will look for someone who's into some of the same things as you instead of someone completely random.

By using Omegle, you accept the terms at the bottom. You must be 18+ or 13+ with parental permission.

Video is monitored. Keep it clean ! *

18+: ([Adult](#)) ([Unmoderated Section](#))

What do you wanna talk about?

Add your interests (optional)

▶ College student chat

Start chatting:

Text or Video

Spy (question) mode Unmoderated section



Duty of Care

- District and its staff have a moral and legal duty to provide students with a safe learning environment.
- Duty is active in nature requiring affirmative steps to protect students.
- Legal question focuses on what you knew and what you should have known.
 - Clearly educators know that use of technology and social media poses a risk.
 - Not enough to wait for harm to occur.
 - But rather, must actively monitor technology use.
- Violations of CIPA are litigated as personal injury claims, i.e. negligent supervision.
 - Safety of care.
 - Fail to satisfy duty.
 - Harm to students.

Liability Begins...

- If you are Aware of Inappropriate Content Either Accessible via Your Student Technology
- If you are Aware of Means to Protect Students Such as Monitoring
- And You Fail to Act,
 - Your Students will be Harmed – Some Significantly and Irreversibly.
 - You may be liable for Failure to Act.
 - Could lose federal funding



CARES ACT IN BRIEF

- ESSER – Elementary & Secondary School Emergency Relief Fund
- Any activity authorized by the ESEA of 1965
- Coordinated response to COVID19
- Address unique needs of low-income and special needs children
- Purchasing and training on proper sanitizing
- **Technology and meals for provision of services**
- **Purchase of Ed Tech**
- **Mental health and summer services**

Acquisition of Monitoring Technology is a Valid Use of CARES Act Funds.

- Monitoring is More Challenging and Important with Distance Learning
- Monitoring Communications Electronically from Student to Student as well as Staff to Student
- Active Observations when in school
- Use of Automated Monitoring and Reporting of Inappropriate Communication

Active Electronic Monitoring of Student Communication on School Devices

- Identify Student Threats to Harm Themselves or Others
- Identify Filter By-pass and Accessing Adult Content
- Identify Drug Related Activity
- Identify Predatory Grooming



Where Do We Go From Here?

- Policy Development
- Community awareness of issues and districts' action plan
- Training of students, administrators and faculty
- Ongoing audit of effectiveness of district plan
- Maintaining flexibility in district response to developments in technology
- Monitoring of student use of their technology is the most effective way to mitigate liability
- Stop viewing control of technology use as a technology problem to be managed by District teachers and staff
- Protecting our children from technology misuse can only be achieved with the combined efforts of principals, counselors and technology specialists

Auditing of Policy Compliance

- Audit results provided to Board and to the Community
- Recommendations for policy modification



Training

- FCC Order Mandates
- Training component must include:
 - Appropriate interactions with other individuals on social networking websites and chat rooms
 - Cyberbullying awareness and response
 - Availability of appeals related to content filtering
 - Disciplinary consequences of policy violation
 - Mandatory reporting
 - Disabling of technology protection for bona fide research and other lawful purpose for an audit

Internet Safety Policy Requirements

- Adopt and implement an Internet Safety Policy that addresses:
 - The safety and security of minors when using electronic mail, chat rooms and other forms of direct electronic communication;
 - Unauthorized disclosure, use and dissemination of personal identification, information regarding minor;
 - Measures designed to restrict minors' access to materials harmful to minors; and
 - Providing reasonable public notice and hold at least one public hearing on merits to address the proposed Internet Safety Policy.

All in this Together

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Tom has been recognized by attorneys of Missouri and Kansas as the best education attorney for the past five years (SuperLawyers). He has received the same recognition annually from St. Louis Magazine and Kansas City Magazine. He is also routinely recognized as one of the best education attorneys nationally. He is the only Missouri attorney so recognized. A founder of the Missouri Council of School Attorneys, Tom has served as its president for two terms.

He also served on the Board of Directors of the National Council of School Attorneys. Additionally, Tom has served as counsel to the Missouri Association of Rural Education (MARE) and Cooperating School Districts of the St. Louis area. He is a frequent speaker both nationally and in Missouri on school law and constitutional issues.

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Tech Spending On The Rise: Devices, Curriculum Software and Cybersecurity

Laptops and tablets, followed by curriculum software and subscriptions — both needed to facilitate online learning — make up the two biggest drivers of projected increased district tech outlays for the fall.

The biggest projected increase at 52% is for devices (laptops and tablets), followed by curriculum software/subscriptions at 48%.

STUDENT SEXUAL ABUSE

- 20% of girls will be sexually abused before their 18th birthday
- 40% of children who are sexually abused are abused by older, or more powerful children
- Survivors of childhood sexual abuse are 10-13 times more likely to attempt suicide
- 70% of Internet porn traffic occurs between 9:00 a.m. and 5:00 p.m.
- 50 porn videos a week are watched by an average high school male
- IS CIPA COMPLIANCE A CHECKLIST OR IS IT DESIGNED TO PROTECT THE VERY KIDS THAT DEPEND ON YOU?



STUDENT VIOLENCE

- 84 shooting incidents occurred at K-12 schools (or 53% of the total)
- In more than half of the incidents, the shooters intentionally injured or killed at least one other person with a gun
- 7.4% reported being threatened or injured with a weapon in the 12 months preceding the shooting
- More than 215,000 students have experienced gun violence at school since Columbine
- In 2010, 784 juveniles were arrested for murder, 2,198 for forcible rape and 35,001 for aggravated assault



BULLYING

- 28% of U.S. students in grades 6-12 experienced bullying
- 30% of young people admit to bullying
- 15% of high school students were emotionally bullied in the past year
- 81% of students relate that bullying online is easier to avoid disciplinary action than bullying in person
- 55.2% of LGBTQ students experienced cyberbullying
- 3 M students are absent from school each month because they fear bullies

