

# SAMPLE SCHOOL DISTRICT POLICY GOVERNING STUDENT ECD USE

## March 2013

Increased student use of school and personal electronic communication devices (ECDs) has both positive and negative consequences. ECDs facilitate student free speech, and schools have incorporated them in teaching and learning with much success. However, student ECD use on and off campus can be abused in a way that negatively affects students, teachers, and the school environment. This policy is intended to support the benefits of ECD use while curtailing possible abuses.

Note that this policy is tailored to California public schools. It is based in part on California state law and in part on federal judicial decisions outside the state. Thus, to make it apply to other states, the law of those states must be investigated and the policy modified accordingly.

Note also that this policy is suggestive only and is not intended to take the place of expert advice and assistance from a lawyer. If specific legal advice or assistance is required, the services of a legal professional should be sought.

### **A. Scope and Justification of the Student ECD Policy**

1. The California Legislature has recognized that all pupils enrolled in the state public school system have the inalienable right to attend classes on school campuses that are safe, secure, and peaceful. Education Code Section 32261. Acts of bullying, cyberbullying, and sexting are distracting and potentially terrifying forms of mistreatment that disrupt both a student's ability to learn and a school's ability to educate its students in a safe environment.
2. The school district, through its school administrators and their designees, has the authority to impose regulations on the possession or use of any ECD while students are on campus, while attending school-sponsored activities, or while under the supervision and control of school district personnel. Education Code Section 48901.5.
3. The California Education Code sets forth student discipline rules incorporating these policy provisions, defines specific terms such as "bullying," "harassment," and "sexting," and describes the circumstances when they are grounds for discipline. Refer to Education Code Section 48900(r) and the additional statutory provisions listed regarding discipline for bullying by means of an electronic act.

### **B. Definitions**

1. **Bullying.** The term "bullying" encompasses any severe or pervasive physical or verbal conduct, including communications in writing or by means of an electronic act, committed by a student or group of students that constitutes sexual harassment, hate violence, or threats of intimidation and that is directed to one or more students.

Penalties include disciplinary measures imposed by the school as well as criminal sanctions set forth in California law.

- a. Harassment, threats, or intimidation are intentional acts directed against school personnel or students that create an intimidating or hostile educational environment. The acts must be sufficiently severe or pervasive and have the reasonably foreseeable effect of materially disrupting classwork, creating substantial disorder, or invading the rights of either school personnel or students. Education Code Section 48900.4.
  - b. Sexual harassment takes the form of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature made to school personnel or to a student in grades 4 through 12 where the conduct purposefully or negatively impacts an individual's work or academic performance or creates an intimidating, hostile or offensive educational environment.
    - i. The determination described above is to be made by a reasonable person of the same gender as the victim. The sexual harassment must be sufficiently severe or pervasive as to negatively affect the victim's academic performance or to create an intimidating, hostile, or offensive educational environment. Education Code Sections 48900.2, 212.5.
    - ii. Sexual harassment often takes the form of sexually explicit photos transmitted electronically. This is known as "sexting," a term defined below.
  - c. Hate violence is any act by a student in grades 4 through 12 directed against an individual or that individual's property, with an aim to interfere with the individual's exercise of federal and state constitutional or statutory rights. It is motivated by hostility to an individual's real or perceived disability, gender, nationality, race, religion, or sexual orientation, or because of the individual's association with a person or group with these characteristics. Education Code Sections 48900.3, 233(e); Penal Code §§ 422.6, 422.7, 422.75.
2. Cyberbullying. Cyberbullying refers to online expression via an electronic act that falls into one or more of the definitions of bullying set forth above. The term "electronic act" means the transmission by means of an electronic device, including but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager.
- a. Forms of expression include, but are not limited to, verbal comments, graphic and symbolic communication, and written communication via emailing, instant messaging, and blogging and posting on social internet networking sites. Posting on social networking sites includes, but is not limited to:

- Posting to or creating an internet burn page by a student or group of students for the purposes of bullying one or more students.
  - Creating a credible impersonation of another actual student that has a bullying effect.
  - Creating a false profile of a student for bullying purposes.
3. Sexting. Sexting refers to taking, possessing, viewing, sharing, or sending pictures, graphic images, text messages, emails, or other material of a sexually explicit nature on an ECD.
  4. Electronic Communication Devices. ECDs may be *school-owned* or *student-owned*. Both types may include, but are not limited to, telephones, wireless telephones, computers, pagers, cellular telephones, text-messaging devices, iPods, iPads and other tablets, and personal data assistance devices.
  5. Material Disruption. Material disruption means any of the following:
    - a. The necessary cessation of instruction or educational activities.
    - b. An inability of students or educational staff to have access to classroom and out-of-classroom activities.
    - c. The institution of severe or repetitive disciplinary measures in the classroom or during educational and recreational activities to maintain order and protect students, school personnel, and the property of students and school personnel from harm.
  6. Substantial Interference. Substantial interference means any of the following:
    - a. Interference with the ability of students to participate and learn in a safe schooling environment free of intimidation sufficient to cause psychological trauma, physical harm, or threats of physical or psychological harm.
    - b. Interference with teaching and administrative responsibilities of school personnel through intimidation sufficient to cause psychological trauma, physical harm, or threats of physical or psychological harm.
    - c. Damage, or reasonable fear of damage, to school property or the property of students and school personnel.

### **C. School's Authority Over School-Owned ECDs On and Off Campus**

1. Cyberbullying through the use of school-owned ECDs can begin both on and off campus. Both types have the potential to instantaneously reach a large number of students and public school employees and cause material and substantial disruptions

in public schools and interference with the rights of students and public school employees.

2. Conditions of using school-owned ECDs are set forth in the school district's Acceptable Use Policy, violations of which may be subject to disciplinary action by the District.

#### **D. School's Authority Over Student-Owned ECDs On Campus**

1. Students have the right to exercise freedom of speech in the classroom and on school grounds. While schools possess broad authority to regulate student-owned ECDs, nothing in this provision permits school officials to infringe upon students' constitutionally protected right of free speech. Education Code Sections 48907, 48950.
2. Under California law, the school district may regulate students' possession and use of student-owned ECDs while students are on campus, while attending school-sponsored activities, and while under the supervision and control of school district employees. Education Code Section 48901.5. Students may possess or use an ECD that is essential for the health of the student, as determined by a licensed physician and surgeon. Such use is to be limited to the student's health.
3. School personnel possess the discretion to ban ECDs during classroom instruction hours and school-sponsored activities.
4. School personnel may confiscate student-owned ECDs when they have reasonable cause to believe that ECDs have been used for cheating related to instruction, to bully or harass other students or employees of the school district, or to create a material disruption of school activities or a substantial interference with the rights of other students and of school personnel.
5. School personnel may conduct searches of student-owned ECDs only when they reasonably believe the search will reveal evidence of misuse. The search must not exceed the scope of the alleged misconduct giving rise to the school official's belief in the necessity of the search.
6. California law broadly authorizes the school to punish students who use ECDs to bully or harass while attending school or participating in school activities. Students who are on school grounds, going to or coming from school, on or off campus during lunch period, and attending school-sponsored activities are considered to be involved in school activities. Education Code Section 48900(s).

#### **E. School's Authority Over Student-Owned ECDs Off Campus**

1. School authority is not limited to the geographical boundaries of the school grounds.

2. School officials may regulate students' off-campus use of student-owned ECDs when they can prove there is a strong possibility that the off-campus activity will result in a material disruption of the school environment or a substantial interference with the rights of others.
3. School officials may discipline students for their off-campus use of student-owned ECDs when:
  - a. The student knew or should have known that the off-campus ECD communication and/or its effects would appear on campus, meaning that the on-campus consequences were reasonably foreseeable; and
  - b. School officials can demonstrate a causal nexus between the students' off-campus activity and a material disruption of the school environment; or
  - c. Evidence exists that the off-campus communication caused a substantial interference with the rights of others, including the right of both students and employees to be free from trauma and psychological harm.

#### **F. Dissemination of Policy**

1. The policy shall appear in the student and staff handbook. The school may distribute a copy of the policy annually to all students, parents, faculty, and staff.
2. All parents and students of the school district must sign both the Acceptable Use Policy and the policy on student-owned ECDs.
3. The school will provide training opportunities for school personnel relative to use and misuse of school-owned and student-owned ECDs on and off campus.
4. The school may provide informational programs or other activities designed to promote parent and community understanding of this policy.

#### **G. Enforcement**

The District may take disciplinary action for misuse of ECDs, consistent with the rules implementing this Policy, the District's Acceptable Use Policy, and the District's policy on student-owned ECDs, as well as any District due process procedures. Campus security, law enforcement, or both may be contacted when school officials reasonably believe that a student's communication through an ECD constitutes a threat to the safety and welfare of members of the school community.