

# ***Sexual Harassment & Social Media Issues***



University of Louisiana at Lafayette

K-12 Law Conference

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# Importance

- Respect Rights of all
- Reputation of school
- Need to know what evidence judge wants to see and hear
- Start thinking and planning now about what can be done when school starts back in August

# Student to Student

- Responsible if \_\_\_\_\_ or Should have \_\_\_\_\_ and school was deliberately indifferent.
- What is known?
- What is deliberately indifferent?



# Ways you might know

- Student telling teacher/counselor
- Picking up a note
- Message on social media
- Complaint or message from parent
- Overheard



# How to demonstrate “not” deliberately indifferent

- Move students in the class
- Move to new class
- Rearrange schedule
- Contact parents
- Meet with students
- Have a policy, explain it and enforce it consistently



# Sexual Harassment

- Quid Pro Quo
- Hostile Work Environment



# Hostile Work Environment

- Words, pictures, rumors or jokes
- Affairs or romances
- Does it affect ability to work or complete work tasks
- Examples



# Procedures and Steps

- Need a Sexual Harassment Policy forbidding sexual harassment and listing penalties.
- Require all to sign acknowledgement of receipt and understanding
- Provide training of some sort for all employees and supervisors (crucial) (includes ways to prevent and handle claims). Past Example



# Complaints

- Need to have someone designated for complaints
- Need to investigate
- Talk to victim and get story with open ended questions (when, how often, where, witnesses, what happened, actual words)
- Talk to accused and get story with open ended questions (anyone out to get you, witnesses, words, ect....)

# Investigation Procedures

- Talk to both sides (use actual words)
- Talk to witnesses
- Review policy and make a decision
- Review decision separately with each side
- If harassment found must take some action (examples)
- Follow-up is crucial to be sure no harassment continues.

# *Meritor Saving Bank v. Vinson*

(1986)

- Bank teller & boss
- Agreed to have sex with boss
- Claimed feared for job
- Boss did not tell her she would lose job
- Does it create a hostile or abusive environment
- Look to frequency and severity of conduct  
(*Harris v. Forklift Systems* (1993))

# Verbal & physical harassment

- Sexual innuendos or sexist remarks
- More than just rude or off-color generally
- Physical can also be assault and battery (bumping , rubbing up against, touching or fondling, kissing)
- Physical more serious than verbal generally
- Constructive Discharge is when you quit due to the abuse

# Myths

- Not responsible for Non-Employees
- Sexual harassment is simply an expression of sexual desire
- There is a profile of a typical harasser
- Men can't help themselves
- If ignored it will go away
- Some people interact in a physical way
- Only men can harass women

# Who wants to pay a million dollar judgment?

- Teacher to Student Harassment or the affair
- Consequences
- Current Headlines
- Revised Statute 14:81.4



# Headlines

- Louisiana No. 3 for inappropriate teacher-student relationships, former U.S. education official says (Times Picayune)
- Two Destrehan teachers facing felony charges for alleged sexual relationship with student (WDSU news)
- Sheriff: 41 year old Teacher confessed to sexual relationship with student (WAFB news)

# How does this happen?

- Potential lack of supervision (do we supervise everywhere on campus)
- Potential lack of reporting (mandatory reporters of child abuse)
- Insufficient training
- How to help prevent?



# Potential signs of a problem

- Physical displays of affection
- Frequent personal communications
- Sexually suggestive conversations
- Obstructing view of room
- Drinking with students
- Hot-tubbing with students
- Language

# Training

- Knowledge and prevention
- Record for court
- Understanding of damage to a student
- How much is this worth?

# Technology & society

## 1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

# Statistics

- Average Facebook user spends 55 minutes a day on Facebook
- Over 500,000,000 Facebook users
- About 50% are on Facebook per day
- 229.2 million hours per day on Facebook

# Good, Bad & Ugly



# Good

- Should not ban technology
- Useful at school
- Here to stay

# Bad

- Student “mis”use of social media and cyber-bullying
- Create fake websites
- Fights carry-over to campus
- Suicides

# Student Websites

- *Layshock v. Hermitage School District*
- *Blue Mountain School District v. J.S.*
- *Kowalski vs. Berkeley County Public Schools*
  
- Standard is whether it causes substantial disruption at school. How would you show a judge it caused substantial disruption?



# Examples

- Pretend to be a teacher or principal
- Complain about teacher or principal
- Harass or intimidate a teacher
- Other offsite conduct examples – eggs, lawnmower – how to compare? Facts

# The Ugly

- Teachers posting inappropriate things
- Is it legal v. is it unprofessional?
- With out tenure some districts are terminating what they consider unprofessional

# Pictures

- Photo of 37 year old female teacher kissing 18 year old male student on the lips.



- Female teacher on her back, eyes closed with bottle of Jose Cuervo by her head

# Risky photos

- Model defends high school teacher fired after posing for Playboy - NY Daily News
- Picture of teacher painting with his buttocks



- Nude photos on partner's website – What other issues does this raise?

**Would you fire for this picture  
by your coach?**



**Coach Talks About Termination**  
**Pocatello**

**LOCAL**  
**NEWS** **8** abc

# Teacher's Facebook Firing Upheld by N.J. Appellate Court

- Parents complained that Jennifer O'Brien had referred to her students as "future criminals" and analogized her job to being a "warden" in posts on her Facebook page.



# A termination in New Jersey ALJ held

- At the administrative level, the administrative law judge recommended that O'Brien be terminated for her Facebook posts. The ALJ determined that the school district's need to operate efficiently trumped Ms. O'Brien's free-speech rights because "thoughtless words can destroy the partnership between home and school that is essential to the mission of the schools."

# New jersey

- Court found that her comments were, indeed, "conduct unbecoming a tenured teacher," which is any conduct that has a "tendency to destroy public respect for government employees and confidence in the operation of public services."
- Not same definition in Louisiana



# The Opposing View

- Court finds firing of teacher for her comments on Social Media “Shocking to One’s Sense of Fairness” Rubino v. City of New York, 106 A.D. 3d 439 (May 7, 2013)
- Posted “after today, I am thinking the beach sounds like a wonderful idea for my 5th graders! I HATE THEIR GUTS!”
- Beach reference alluded to the drowning of a 12-year old on school trip the day before.

# Six (6) things not to post

- Think you're hot? Don't tweet it.
- Keep your side career off Facebook
- Don't post jokes about wishing your students would drown
- Skip the creepy picture uploads revealing your (possibly illegal) fetishes.
- Don't post photos of your students' mouths covered with duct tape.
- Don't advise students in a religious education class to sleep around

# Cases

- Student teacher complaints about supervisor not protected speech. *Snyder v. Millersville University*, 2008 U.S. Dist. Lexis 97943 (E.D. Pa 2009)
- Teacher solicits sex on Craig's list. *San Diego Unified School District v. Commission on Professional Competence* (4<sup>th</sup> Cir. App. Cal. 2011).

# Questions?

- How does Facebook compare to going to Hooters or a Gentleman's club, or a bachelorette party with Magic Mike? Is it the same or different?
- How does off campus conduct (screaming obscenities at an athletic event, drinking at a football game, enjoying a remote spot on the beach) affect teaching?

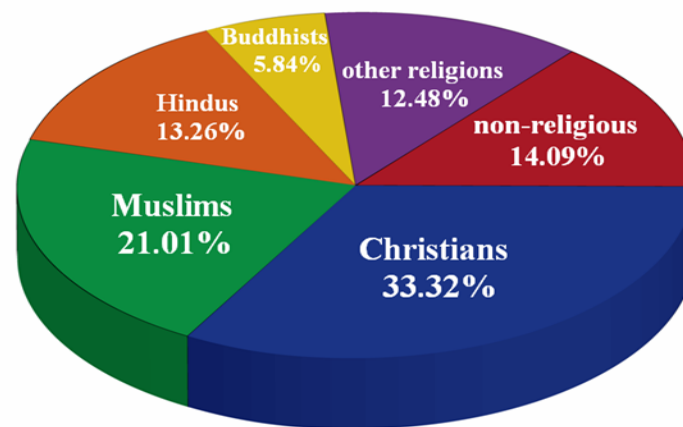
# Suggestions

- Faculty meeting – remind of position and no longer in college
- Don't friend students
- Don't be critical of supervisors or parents on Facebook
- Don't make fun of students or post vulgar, obscene or lewd material
- Ask – would I say this or share with my grandmother?

# Religion at school – What are the courts saying?

- Strong beliefs by many
- Diverse students
- Public employees
- Perception of endorsement by school

World Religions by percentage



# Salvation

- Can we pray at school?
- Absolute right to \_\_\_\_\_, not absolute right to \_\_\_\_\_.
- Student religious rights?
- Time, place & manner
- Non-curricular issues
- Just stay neutral!
- How do these lawsuits get started?

# Santa Fe v. Doe

- High School football game
- Board passed policy allowing students to vote on whether to have prayer at games
- Students elect other student to give prayer
- Who controls intercom?
- Perception?
- Other options?



# The Sabine Parish Case

- Suit alleged that the teacher declared Buddhism stupid, school called for Christian prayer.
- Test question “ISN’T IT AMAZING WHAT THE \_\_\_\_\_ HAS MADE!!!!!!!!!!!!”
- Teacher belittled student in front of the rest of the class for not answering “Lord”
- Superintendent said “this is the Bible belt” and suggested student change faith or transfer to another school.

How would you respond to this picture above your school door?



# Issues

- Whose religion do we follow and use at school?
- Does it change with the majority?
- Does it change with new superintendent?
- Does it change with new principal?

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