

## Bullying and First Amendment Rights

### Background

Bullying on school property is unfortunately not a new occurrence. Furthermore, bullying through online platforms involving students is an additional exposure that Connecticut school districts have focused additional attention on in recent years. A 2020 report by the National Center for Education Statistics (NCES) estimated that 15% of public schools experience a cyber-bullying incident at least once a week.<sup>1</sup>

### Scenario

All students involved were part of a high school hockey team at the Hopkinton Public School District in Massachusetts. On February 4<sup>th</sup>, 2019, Student A alleged that other members of the hockey team (Students B thru I, or 8 students in total) had been bullying Student A repeatedly. The bullying incidents alleged by Student A included exclusions from “team events” and the taking of videos without Student A’s consent that would then be distributed in a Snapchat group containing Students B thru I. To provide further context, the following was alleged by Student A:

- Sneaking photos and videos of Student A on the bus and at team spaghetti dinners,
- Sharing these photos and videos of him on Snapchat with lewd and vulgar captions, often times homophobic in nature, *and*
- Whispering about him in his presence.

While Students H and I did not directly take the videos of Student A, Students H and I were part of the Snapchat group where the videos were circulated.

Two assistant principals at Hopkinton investigated the allegations, and all interviews for the investigation were conducted between February 4<sup>th</sup> and 6<sup>th</sup>. The contacting of the parents of the investigation targets occurred on the night of February 4<sup>th</sup>. Part of this investigation involved obtaining one of the student’s cell phones to access the Snapchat group where the videos were shared. School staff was able to view and preserve the messages on the platform that had not been automatically deleted. The Snapchat screenshots showed extremely derogatory comments by three of the students regarding Student A’s appearance, voice, and play on the ice. It was discovered that Students H and I both discussed Student A in the Snapchat group, though to a lesser extent.

While speaking to the assistant principals, members of the team said the purpose of taking photos and videos of Student A was “for laughs” and that much of the content of the Snapchat group did not involve him. While several members of the group stated that they did not realize Student A felt excluded, two students stated “we pick on [Student A]” and that he was “targeted,” respectively.

Hopkinton has adopted an internal Bullying Prevention and Intervention Policy and abides by a district-wide Bullying Prevention and Intervention Plan. Part of the school’s policy includes language defining that an “Aggressor/Perpetrator” is someone “who engages in behavior defined as bullying, cyber-bullying, or retaliation.” Furthermore, the policy notes that cyber-bullying can “include the distribution by electronic means of a communication... if the distribution or posting creates any of the conditions enumerated in the definition of bullying.”

The two assistant principals concluded, as a result of their investigation, that all eight students (Students B thru I) had engaged in “bullying” as defined by school policy and the applicable Massachusetts law. They found that “the purpose was to make fun of [Student A],” and that such “conduct caused emotional harm to [Student A], created a hostile environment for him during school sponsored events and activities and infringed on his rights at school.” Additionally, they found that the Snapchat group included:

- a) Photos of [Student A] taken without his consent
- b) Videos of [Student A] taken and posted without his consent
- c) Photos of [Student A’s] parents with disparaging comments on their appearance
- d) Disparaging comments regarding [Student A’s] appearance, voice, and anatomy
- e) Attempts to get [Student A] to say inappropriate statements and record him doing this

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<sup>1</sup> [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_230.65.asp](https://nces.ed.gov/programs/digest/d19/tables/dt19_230.65.asp)

As a result of the bullying investigation, all eight members of the Snapchat group were suspended from the hockey team for the remainder of the 2018-2019 season. The school principal held individualized suspension hearings for the eight students in February 2019, issuing Student H a three-day suspension and Student I a five-day suspension. The other students received suspensions of one to five days. Later that year, Student I lost his position in the National Honor Society as a result of his disciplinary record.

After the investigation, Student A received support from the school's Student Therapeutic Academy Resource Team (START), declined to try out for another sports team in the spring, and entered formal mental health treatment. He departed Hopkinton at the end of the 2018-2019 academic year to attend school in Canada.

The parents of Students H and Student I filed a notice of intent to sue Hopkinton District School and its administrators, alleging that they violated their sons' First Amendment Rights to Free Speech under state and federal law. Per the case report, *Doe v. Hopkinton Pub. Sch.* (Massachusetts) "is a case about the limits of a school's ability to discipline bullying" and "is not a case about whether a school's decision to discipline two students" who were engaged in bullying was proportional or fair.

## COURT RULING

The court ruled in favor of Hopkinton Public School. The following was highlighted in the case conclusion:

*"This Court recognizes that [Students H and I] feel their punishment is unjust. Undoubtedly, their involvement in [Student A's] bullying was minimal compared to the other students in the [Snapchat group]. Nevertheless, school officials have broad discretion to protect students from bullying, and if in the course of their investigations they sometimes draw in students at the periphery of the group, that does not mean they have violated those student's constitutional rights. In this case, a reasonable official could have found the members of the [Snapchat group] had invaded [Student A's] rights through their collective bullying. As members of that group, who encouraged the other members, [Students H and I] were appropriately subject to discipline.*

*"For these reasons, and because the Massachusetts bullying laws are neither so overbroad nor so vague as to require this Court to find them unconstitutional, the Students' prayer for relief is DENIED and judgement on the case stated enters for the School."*

Furthermore, the court ruled, "[Speech] may be regulated only if it would substantially disrupt school operations or interfere with the right of others."

## LESSONS LEARNED

**Bullying Policy.** Consider reviewing and revising the school's bullying policy in accordance with Public Act 11-232 to ensure that it is current. Aspects of particular interest include references to cyber-bullying.

**Acceptable Use of Networks.** Create or update the school's policy on acceptable use of school equipment, network and technologies, including software that may assist in distance learning (e.g. Google Classroom).

**Staff Training.** Continue to communicate the responsibility of all staff to follow protocols in accordance with the school's bullying policy, in accordance with Public Act 11-232.

**Community Engagement.** Communicate appropriate school policies, such as those related to bullying prevention and acceptable use of network, to students and parents / guardians.

For more information on this topic, please contact your CIRMA Risk Management Consultant. Visit our training schedule at [CIRMA.org](http://CIRMA.org) for a list of current training programs.