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## **Sticks and Stones in the Digital Age: Bullying, Cyberbullying and Oregon Law**

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### **Bullying Past and Present**

In the past, educators and policy-makers widely viewed bullying as an unpleasant but unavoidable fact of childhood and adolescent life. The rise of internet social networks, email, and text messaging, however, has enabled increasingly extreme forms of bullying and “cyber bullying.” Cyberbullying can be more severe than traditional schoolyard friction: bullies can intrude deeply into the lives and relationships of their peers. A cyber bully can target a young person’s security, peace of mind and reputation, and do so in ways that deny victims and their families equal footing to respond. Instigators can act anonymously to increase the distress they cause and hide from accountability. These factors can allow bullies, or abusers, to disrupt lives in ways that would have been unthinkable a generation ago. Left unchecked, the consequences of cyber bullying can go beyond what a young person can be expected to tolerate.

### **Oregon Tort Law**

Longstanding tort law and recently-enacted statutes protect victims and reporters of bullying and cyberbullying in several ways. Tort law requires parents, school districts and their employees who see warning signals to take meaningful steps to stop peer abuse. If they fail to do so, they can be legally responsible for the harm that results. In these situations, liability and potential immunity issues must be evaluated carefully on a case-by-case basis. In cases involving public schools and their employees, potential claimants and their attorneys should note that Oregon’s Tort Claims Act requires that proper notice of the claim be provided within 180 days. ORS 30.275. Even if there is only a small chance that the Tort Claims Act may apply, it may be important for an attorney to send a notice that complies with the requirements of the act in an abundance of caution.

### **School Anti-Bullying Statutes**

Recently, the legislatures in Oregon and several other states have passed statutes placing clearer responsibility on schools to prevent and stop bullying and cyberbullying in the school context, and to preserve the “safe and civil environment” to which students are entitled. Oregon’s school anti-bullying statutes, ORS 339.351 *et seq.*, were amended by emergency legislation in 2007 (HB 2637, Chapter 647 Oregon Laws 2007) to add cyberbullying. The statutes require school districts to adopt policies prohibiting bullying and cyberbullying. ORS 339.356. Under these statutes, bullying and cyberbullying generally mean “any act that substantially interferes with a student’s educational benefits, opportunities or performance, that takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop, and that has the effect of:

- (a) Physically harming a student or damaging a student's property;
- (b) Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student's property; or
- (c) Creating a hostile educational environment.” ORS 339.351.

The statutes also prohibit reprisals and provide liability protections to people who promptly report bullying or cyberbullying problems. ORS 339.362.

Whether conduct occurs on in or outside the school context, common law remedies remain available. *See* ORS 339.364.

### **Victim Resources**

Generally, young people affected by cyber bullying and their families should promptly notify the adults who may be in a position to stop the activity: parents, school officials, or other adults who may be giving the instigator(s) access to technology. When the conduct involves threats or sexual coercion, the conduct should be reported to the police immediately. In cases where a young person is in danger or where significant harms have occurred, a private attorney can evaluate options, take steps to stop the behaviors, preserve evidence, and pursue legal remedies for harms as may be appropriate.

### **About the Author**

Scott F. Kocher is a trial lawyer representing individuals and families in personal injury, wrongful death and other plaintiff-side civil matters in Oregon and Washington. He holds degrees from Harvard Law School (J.D. 2001) and Harvard College (A.B. magna cum laude 1997). He is a partner in Vangelisti Kocher LLP, 811 SW Naito Parkway, Ste. 420, Portland, Oregon 97204. Mr. Kocher can be reached on the internet at [www.vangelisti.com](http://www.vangelisti.com) or by telephone at 503-445-2100.