

**CLIENT NEWS BRIEF**

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**COURT PROVIDES GUIDANCE REGARDING PERMISSIBLE RESTRICTIONS  
FOR STUDENT INTERNET USE ON SCHOOL GROUNDS**

The California Court of Appeal's recent decision in Crosby v. South Orange County Community College District (2009) \_\_\_\_ Cal.App.4th ("Crosby") provides insight as to permissible school district and community college regulation of student internet use on campus. The court held that a community college district could develop a policy whereby a student would be subjected to discipline for his or her use of the school's internet system.

In Crosby, a community college student filed a lawsuit against South Orange County Community College District ("District") alleging the District's policy restricting internet use to "appropriate academic, professional and institutional purposes" violated Education Code section 66301. Section 66301 prohibits a state college from disciplining a student for on campus conduct that the First Amendment free speech clause of the U.S. Constitution would protect if the conduct occurred off campus.

Plaintiff Crosby logged into a computer workstation in the college library and accessed several profiles on MySpace. A campus police officer believed the profiles Crosby accessed to be pornographic in nature and told Crosby that he could not view MySpace utilizing library computers. Subsequently, Crosby's records were placed on hold, preventing him from enrolling in classes until he met with the vice president of student services regarding this and other incidents. Crosby challenged the District's policy restricting internet use on the grounds that the District's policy violated section 66301.

The trial court agreed with Crosby, finding the District's internet policy overboard on its face because the policy vested the District's governing board with discretion to determine what constitutes an "appropriate" academic, professional and institutional purpose. The trial court stated that section 66301 permits students to engage in speech, conduct or communications on campus the same as they can off campus, irrespective of whether a board deems it "appropriate." The District then adopted a revised policy that satisfied the court's judgment in the case. The revised policy limited internet usage to educational and employment purposes.

Despite prevailing on this issue, Crosby appealed the trial court's decision contending that the court's judgment did not go far enough because it did not eliminate all restrictions on internet use.

The appellate court upheld the lower court's decision. While the District's challenged policy was overbroad on its face and violated section 66301, the court stated the District could still develop a policy whereby a student could be subjected to discipline for his or her use of the school's internet system.

The court stated that Section 66301 provides students with the same free speech rights on campus that they have off campus; however, this does not mean that students enjoy the same free speech rights guaranteed to them in the privacy of their own home. A state college or university, like any other governmental entity, may reserve a particular forum for its intended purpose provided the regulation of the speech is reasonable and not in an effort to suppress expression that is contrary to the views of school officials. A college library, like any other public library, is not a traditional public forum for speech nor has the college's library been designated as a public forum. Thus, the District could reasonably regulate student access to the internet by developing a policy, pursuant to section 66301, limiting student internet use to educational and employment purposes.

The court's analysis in Crosby can be applied to internet usage policies for both K-12 and community college districts. Although section 66301 applies to state colleges and universities, case law has long held that K-12 school districts may restrict student speech in certain circumstances (see, e.g. Tinker v. Des Moines Independent Community School District (1969) 39 U.S. 503). Moreover, section 48950 of the Education Code, applicable to K-12 school districts, is nearly identical to section 66301. This decision confirms that, notwithstanding Education Code sections 48950 and 66301, both K-12 and community college districts may develop policies regulating student use of school internet technology, if such regulation is reasonable and content neutral.

If you have questions or require assistance in drafting internet usage policies please contact one of our seven offices located statewide.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

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