

# CLIENT NEWS BRIEF

## Cyberbullying: New Bill Confirms Schools' Authority to Discipline for Bullying Taking Place Off Campus by "Electronic Act" in Certain Instances

Effective January 1, 2014, Assembly Bill (AB) 256 amends the definition of "electronic act" to make it clear that bullying can include electronic conduct occurring both on *and off* campus. AB 256 provides helpful statutory direction that has been missing from Education Code section 48900 since bullying was first added in 2009. Importantly, however, AB 256 does not automatically grant schools jurisdiction to discipline students for such off campus conduct or expression.

There have been repeated amendments to Education Code section 48900's bullying provisions over the past few years (see Lozano Smith Client News Brief Nos. [42 \(2012\)](#), [62 \(2011\)](#), and [32 \(2011\)](#)). Since the rise of social networks and the related smart phone boom, districts have had to wrestle with questions regarding the enforcement of discipline when alleged bullying is carried out electronically and off school grounds. The current definition of prohibited "bullying" under the Education Code does not explicitly include electronic acts that occur *off campus* as an offense for which students may be disciplined. This said, even under this existing law, schools have been permitted to impose discipline for bullying conduct or expression taking place electronically and off campus, so long as they can establish jurisdiction to discipline by showing a sufficient nexus between school and the bullying.

Education Code section 48900, subdivision (r), already states that prohibited bullying includes communication via an electronic act and contains a list of specific types of technologies and electronic acts covered under the law. AB 256 addresses the common reality that students may use these technologies to bully from off campus. AB 256 thus amends the definition of "electronic act" for bullying purposes to include "the creation and transmission originated on *or off* the schoolsite" of such bullying conduct or expression.

Even with this helpful clarification to the Education Code, enforcing discipline for cyberbullying remains fraught with complicated considerations, including issues of jurisdiction, student free speech and due process rights. Notably, despite the explicit addition regarding off campus conduct, AB 256 does not remove the need to confirm and document the impacts of bullying conduct on school activity or attendance to establish jurisdiction. Districts are still obligated to conduct fact-specific analyses on a case-by-case basis before they discipline for many cyberbullying activities. Discipline for cyberbullying should only be enforced when one of the four statutory harmful effects is present under section 48900, subdivision (r), where the district's jurisdiction has been established under section 48900, subdivision (s), and where the district can meet the applicable "substantial disruption" or "true threat" free speech standards under which a district may discipline a student based on speech or expression without violating the student's free speech rights.

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Lozano Smith continues to be on the forefront of student discipline law, regularly assisting school districts in adopting policies and procedures to comply with Education Code requirements, and helping to ensure that the constitutional rights of disciplined students are not infringed in the discipline process. If you have any questions regarding these changes and any advisable board policy and administrative regulation updates, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).