



<http://www.tradesecretslaw.com/files/2013/09/Rosario-v-Clark.pdf>.

In *Kowalski v. Berkeley County Schools*, a 2011 decision by the U.S. Fourth Circuit Court of Appeals, a ruling in favor of the district resulted from a free speech lawsuit filed by Kara Kowalski, a cheerleader at Berkeley County High School (West Virginia) who was expelled from the cheer squad and suspended from school for using social media off-campus to viciously cyberbully a fellow cheerleader. The court concluded that Kowalski's actions, given the West Virginia anti-bullying statute and an explicit school district policy against bullying, could have been reasonably forecast at the time she engaged in the online harassment of her teammate, to cause a substantial disruption on-campus. The full-text of the case is available at www.ca4.uscourts.gov/Opinions/Published/101098.P.pdf.

Recommendations

- School and athletics administrators should familiarize themselves with their state's anti-bullying law, including provisions explicitly addressing cyberbullying. Personnel should also review model policies developed by their state's board of education, including sections directed at the prevention of cyberbullying and harassment through social media. All of the state anti-bullying statutes and sample policies developed by state boards of education are available using the interactive map at www.stopbullying.gov/laws.
- School and athletics administrators should familiarize themselves with their state's child abuse reporting law, including provisions specifically addressing situations for which instances of bullying or cyberbullying trigger mandatory reporting duties for school officials. All of the state child abuse reporting statutes are available through the U.S. Department of Health & Human Services Child Welfare Information Gateway at www.childwelfare.gov/topics/systemwide/laws-policies/state.
- School officials should include each of the following components in the anti-bullying and anti-cyberbullying (social media) policy development process:
 - **Language of the Policy:** Begin with a vision statement explaining the purpose of the policy and its intended role in creating a safe and respectful school environment free of harassment. Define with specificity the conduct that will be considered to constitute bullying or cyberbullying, along with the evaluative criteria that will be used to determine whether a policy violation has occurred. Set forth with clarity the range of possible consequences for those who engage in bullying behaviors and the hearing processes and due process protections that will be accorded to those accused of violating the policy.
 - **Reporting Procedures:** Clearly state the process to be used by victims in reporting incidents of bullying or cyberbullying, including the name, title and complete contact information for the designated school official to whom reports should be made. Because bullying in school settings often invokes the victim's civil rights under federal or state law (race, ethnicity, color, gender, sexual orientation, and other criteria related to protected class status), the school official to be assigned the responsibility for receiving, processing and investigating allegations should be the district's federally mandated Title IX Coordinator. On April 24, 2015, the U.S. Department of Education's Office for Civil Rights issued a "Dear Colleague" letter clarifying and reinforcing the obligations of school districts nationwide to have in place a Title IX Coordinator and best practices for such officials. The letter is available at www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf.
 - **Investigatory Procedures:** The anti-bullying policy should also include details regarding the steps that will be taken to investigate allegations, including timelines for conducting an evaluation of the assertions, the extent to which anonymity of complainants can or will be preserved during the investigative process, and the proactive meas-