



A Joint Powers Authority  
serving school and  
college districts  
throughout the state.

5350 Skylane Boulevard  
Santa Rosa, CA 95403

Tel: (707) 524-2690  
Fax: (707) 578-0517  
santarosa@sclsca.org  
www.sclsca.org

General Counsel  
Carl D. Corbin

Attorneys  
Monica D. Batanero  
Nancy L. Klein  
Damara L. Moore  
Jennifer E. Nix  
Steven P. Reiner  
Mia N. Robertshaw  
Loren W. Soukup  
Patrick C. Wilson  
Frank Zotter, Jr.

Of Counsel  
Robert J. Henry  
Margaret M. Merchat  
Virginia A. Riegel

# LEGAL UPDATE

November 15, 2016

**To:** Superintendents, Member School Districts (K-12)  
**From:** Carl D. Corbin, General Counsel *CDC*  
**Subject:** AB 2536 and 2212 – Cyber Sexual Bullying and Student Discipline  
Memo No. 40-2016

---

On September 21, 2016, the Governor signed Assembly Bill (“AB”) 2536 and AB 2212, which effective January 1, 2017, adds cyber sexual bullying as a new offense for student discipline and requires the California Department of Education (“CDE”) to share information on cyber sexual bullying.<sup>1</sup> We advise school districts to update their policies and student discipline procedures to reflect the changes described below.

## Cyber Sexual Bullying Information

The revised Education Code section 234.2, with additions underlined, follows:

- 234.2. (a) The department shall display current information, and periodically update information, on curricula and other resources that specifically address bias-related discrimination, harassment, intimidation, cyber sexual bullying, as defined in Section 48900, and bullying based on any of the actual or perceived characteristics set forth in Section 422.55 of the Penal Code and Section 220 on the California Healthy Kids Resource Center Internet Web site and other appropriate department Internet Web sites where information about discrimination, harassment, intimidation, cyber sexual bullying, and bullying is posted.
- (b) The department shall annually inform school districts of the information on the California Healthy Kids Resource Center Internet Web site and other appropriate department Internet Web sites where information about cyber sexual bullying is posted pursuant to subdivision (a). The department may use electronic mail to inform school districts of this information.
- (c) School districts are encouraged to inform pupils regarding the available information and resources on the department’s Internet Web sites regarding the dangers and consequences of cyber sexual bullying to help reduce the instances of cyber sexual bullying.

---

<sup>1</sup> The Governor also signed on September 21, 2016, AB 2212, which also amended Education Code section 48900. Section 1.5 of AB 212 incorporates amendments to Section 48900 proposed by both AB 2212 and AB 2536.

## **Student Discipline – Revisions to Education Code Section 48900(r) – Cyber Sexual Bullying**

The revised Education Code section 48900(r), with additions underlined, follows:

...

(2) (A) “Electronic act” means the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, video, or image.

(ii) A post on a social network Internet Web site, including, but not limited to:

(I) Posting to or creating a burn page. “Burn page” means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). “Credible impersonation” means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). “False profile” means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.

(iii) An act of cyber sexual bullying.

(I) For purposes of this clause, “cyber sexual bullying” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described in subparagraphs (A) to (D), inclusive, of paragraph (1). A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.<sup>2</sup>

(II) For purposes of this clause, “cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.

(B) Notwithstanding paragraph (1) and subparagraph (A), an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

Please see the following link for AB 2536:

[http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201520160AB2536](http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2536).

---

<sup>2</sup> Education Code sections 48900(r)(1)(A)-(D) are as follows:

(A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.

(B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.

(C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.

(D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.



School & College Legal Services of California  
Tel: (707) 524-2690 Fax: (707) 578-0517  
[www.sclscal.org](http://www.sclscal.org)

Please see the following link for AB 2212:

[http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201520160AB2212](http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2212).

Please see the following link for the California Healthy Kids Resource Center website:

<https://www.californiahealthykids.org/index>.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

© 2016 School and College Legal Services of California

*All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.*