

**Legal Nuts & Bolts  
for School Counselors**

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Liabilities and  
Lawsuits

IOWA CODE CHAPTER  
670

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Liabilities and lawsuits

Anyone who can scrape up \$185 (the current filing fee for a civil action in an Iowa district court) can sue anyone else.

**No one can keep you from being sued; the trick is to keep from being sued successfully.**

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## Liabilities and lawsuits

If you are sued . . .  
Iowa Code Chapter 670

- ▶ Iowa law provides three protections for public employees who are acting without malice and within the scope of their employment or duties:
  - 1) Legal representation (this does not mean, however, that the employee gets to choose his/her own attorney)
  - 2) Payment of any settlement/verdict
  - 3) Protection from disciplinary action by the employer (school district)

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## Liabilities and lawsuits

- Protects public employees who commit mere negligence.
- An employee disregarding the law or acting with malice will not be protected.
- If your doing your job you will very likely be protected under chapter 670.

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## Liabilities and lawsuits

- ▶ Factors considered:
  - ▶ Was the injury/death **foreseeable or preventable**?
  - ▶ Did the counselor or official **create or enhance the danger**?
  - ▶ Did the counselor hold himself out as a **source of aid** or **cutting off other possible avenues** of help?
  - ▶ Did the counselor assess the student **w/o proper training**, improperly evaluating the risk?
  - ▶ Would a **reasonable person** in the counselor/officials shoes notify the student's parent/guardian or speak to a mental health professional to get further guidance?

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Confidentiality

(IOWA CODE 622.10(6))

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Confidentiality  
(Iowa Code 622.10(6))

**TESTIMONIAL PRIVILEGE**

"A qualified school guidance counselor ... who obtains information by reason of the counselor's employment as a qualified school guidance counselor shall not be allowed, **in giving testimony**, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor." [Emphasis added.]

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Confidentiality  
(Iowa Code 622.10(6))

**THINGS TO KNOW:**

- ▶ 622.10(6) only applies to testimony
  - ▶ in court
  - ▶ in a deposition

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**Confidentiality**  
(Iowa Code 622.10(6))

**THINGS TO KNOW:**

- ▶ A counselor cannot waive the privilege; it belongs to the student or student's parent
- ▶ If ordered by a judge to talk, consider the privilege waived
- ▶ There is no "privilege" outside of the realm of testifying. **The counselor's code of ethics and common sense prevail.**

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**Confidentiality**  
(Iowa Code 622.10(6))

**Question: Is a counselor excused from reporting a student's pregnancy to her parent/guardian?**

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**Confidentiality**  
(Iowa Code 622.10(6))

**Answer:**

- ▶ The 11<sup>th</sup> Circuit (South) stated in dicta that it is a matter of "common sense" for counselors to notify parents when they know that counselees are pregnant.
- ▶ The 3<sup>rd</sup> Circuit (East) in dicta was clearly offended that parents were potentially faced with interference in their right to rear their child as they saw fit when a counselor "hid behind the counselor's code of ethics".
- ▶ Neither court went so far as to rule that it was a duty of a counselor. [Arnold v. Board of Education, 880 F.2d 305 (11<sup>th</sup> Cir. 1989); Gruenke v. Seip, 225 F.3d 290 (3<sup>rd</sup> Cir. 2000).]

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**Confidentiality**  
(Iowa Code 622.10(6))

*If you receive a subpoena, PLEASE let your school's attorney know.*

*Don't be afraid to ask your attorney questions.*

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**Student confidentiality**

FAMILY EDUCATIONAL RIGHTS TO PRIVACY ACT (FERPA)

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**Student Confidentiality**

The **Federal Family Educational Rights and Privacy Act (FERPA)** – Students education records cannot be released without the consent of the student parent(s) unless an exception applies.

**Directory information may be disclosed.**

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**Student Confidentiality**

- ▶ **"Directory Information"** - information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.
  - ▶ Directory information **does not include** SSN, Student Identifiers.
  - ▶ **Local Policy** - Schools determine their own directory information by policies.
- ▶ **"Education Records"** – A record maintained by the educational institution or agency working at their request.

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**STUDENT CONFIDENTIALITY**

Directory information **may** include the following:

- ▶ student's name
- ▶ address
- ▶ telephone listing
- ▶ email
- ▶ date and place of birth
- ▶ participation in activities and sports
- ▶ photographic likeness
- ▶ weight and height of members of sports teams
- ▶ dates of attendance
- ▶ awards received
- ▶ most recent previous school attended

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**Student Confidentiality**

**Parent Access**

- ▶ **Adult Student** - When a student attains age 18, the student then gives consent, not the parent.
- ▶ **Dependants** – If the student is still a dependant the parents can access the records.
- ▶ **Non-custodial parents** – Right to Access (one with visitation rights) absent a court order to the contrary.

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## Student Confidentiality

FERPA exempts five categories of information from the definition of "education records."

**Two examples that pertain to counselors:**

- 1) Sole Possession Records
- 2) Information obtained about individuals after they are no longer students.

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## Student Confidentiality

### Sole Possession Records

▶ Three requirements for exemption to apply:

- 1) The information must be a **private note** that is created solely by the individual possessing it.
- 2) The information must be a **personal memory aid**.
- 3) The information must **not be shared or accessible** to any other person except the individual's temporary substitute.

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## Student Confidentiality

### Not covered

▶ Private notes made by a counselor that records **comments made** by parents, students, or other school employees during a conversation.

▶ Notes containing information about the substance of the interactions, particularly the content of the conversation, would not be exempt. Counselors must maintain exclusive, personal control over these notes.

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## Student Confidentiality

**Covered**

- ▶ Personal observations about the behavior of a student or conclusions the counselor has drawn on the basis of interactions with a student or others.

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## Student Confidentiality

**Some important Exceptions under FERPA:**

- ▶ **Legitimate Educational Interest** - Those school employees who have been determined by the school to have **legitimate educational interests** may have access to student records w/o consent.
- ▶ **Court Order/ Subpoena** - To comply with a judicial order or a lawfully issued subpoena.
- ▶ **Health & Safety Emergency**
- ▶ **Postsecondary Institutions** - Disciplinary issues, violations or law, etc.

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## STUDENT CONFIDENTIALITY

**Tips:**

- ▶ Do not talk to other teachers or counselors about a student unless they have a legitimate educational interest
- ▶ Do not talk to other parents about students not their own
- ▶ Do not post things about or relating to a student online
- ▶ Do not post students grades online

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Public Records

FREEDOM OF INFORMATION ACT & IOWA CODE CHAPTER 22

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**SCHOOL EMAIL ACCOUNTS ARE PUBLIC RECORDS!**

- ▶ **Emails** - Any email sent or received on a publicly owned computer **IS A PUBLIC RECORD.**
- ▶ **School District Email Accounts** - Any email sent or received on a public agency email account – even if accessed via one’s personal computer – **IS A PUBLIC RECORD.**
- ▶ Retrieving and responding to such email at home does NOT change the fact that the email is a public record.

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**SCHOOL EMAIL ACCOUNTS ARE PUBLIC RECORDS!**

- ▶ **Public Access** - The public can access public records including your email.
- ▶ Avoid any comments you would not want attributed to you, whether they are derogatory, off-color, or subject to misinterpretation.

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STUDENT SEARCH AND SEIZURE

(IOWA CODE CHAPTER 808A)

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STUDENT SEARCH AND SEIZURE

Iowa Code 808A – Protects students

- ▶ **Student Search rule** – must be published in handbook - A school official – not law enforcement or school official acting at the request of law enforcement – may search individual students or protected areas if:
  - ▶ The official has **reasonable grounds** for suspecting the search will produce evidence the student is violating law or school rule.
  - ▶ The search is conducted in a **manner reasonably related** to the objectives of the search and is **not excessively intrusive in light of age, gender, or nature of infraction.**

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STUDENT SEARCH AND SEIZURE

- ▶ Officials may conduct periodic inspections of all, or random lockers, desks, or facilities owned by the school.
- ▶ **CANNOT conduct**
  - ▶ STRIP SEARCH
  - ▶ Body Cavity Search
  - ▶ Use drug dog to search students body
  - ▶ Search student who is a different sex then the official

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STUDENT SEARCH AND SEIZURE

- ▶ **"Protected Area"** – Student's body, clothing worn/carried, pocketbook, briefcase, backpack, purse or other container for personal items – in immediate possession or close proximity
- ▶ **"School official"** - means a licensed school employee, and includes unlicensed school employees employed for security or supervision purposes.

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STUDENT SEARCH AND SEIZURE

- ▶ In *State v. Jones*, 666 N.W.2d 142 (Iowa 2003), the Iowa Supreme Court ruled that students **DO** have a reasonable expectation of privacy with respect to their lockers.
- ▶ Schools cannot rely on 808A regarding random, suspicionless locker searches, but must give students notice before conducting "locker clean-outs."

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STUDENT SEARCH AND SEIZURE

**808A.4 Exclusion of evidence.**

- ▶ Material or evidence obtained directly or indirectly as a result of a search conducted in violation of this chapter is **inadmissible** in a criminal proceeding against a student.

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**STUDENT SEARCH AND SEIZURE**

**DRUG TESTING OF STUDENTS**

- ▶ A breathalyzer or any other form of a drug test of a student is a search and seizure, and is governed by Iowa Code chapter 808A.
- ▶ A school official **may NOT** conduct random, suspicion less drug tests of students: not as a condition of getting into a ballgame, not as a condition of attending a school dance, not for any reason other than the school official has a reasonable suspicion that the student is under the influence of drugs or alcohol.

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**STUDENT SEARCH AND SEIZURE**

**LIABILITY NOTE**

- ▶ Because Chapter 808A is clear and because in particular the issue about random, suspicionless breathalyzers has been a point of emphasis by the attorneys for the DE, IASB, and SAI for many years, the school official who ignores this particular "nag" does so at his/her personal peril.

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**STUDENT SEARCH AND SEIZURE**

**Scenarios:**

- ▶ We search kids who leave school grounds and return? Can we do this?
- ▶ Can we look into car windows that are on school grounds?
- ▶ What if we want to search a transgender student?
- ▶ Can the booster club or parent organization hire an off duty officer to breathalyze students before being admitted to prom?
- ▶ Can we use drug dogs to conduct a search of a students locker?

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**CHILD ABUSE REPORTING**

(IOWA CODE SECTION 232.68)

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**CHILD ABUSE REPORTING**

- ▶ There are 9 categories of child abuse defined in Iowa Code section 232.68.
  - ▶ Physical abuse
  - ▶ Mental injury
  - ▶ Sexual abuse
  - ▶ Denial of critical care ("neglect")
  - ▶ Offer the child as a prostitute
  - ▶ Presence of illegal drugs in a child's body
  - ▶ Manufacturing/possessing a dangerous substance in child's presence
  - ▶ Bestiality in the presence of a child
  - ▶ Allowing a registrant on the SOR to supervise a child

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**CHILD ABUSE REPORTING**

**Example:**

- ▶ Susie's mother lives with a guy ("Joe") who is a sex offender. Susie's mom is not married to Joe. If Susie's mom leaves Susie in Joe's care with no supervision, this is reportable child abuse. If Joe shows up in his vehicle alone to pick up Susie from school, is this reportable child abuse?

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**CHILD ABUSE REPORTING**

**Answer:**

- ▶ Yes, it is child abuse if a caretaker knowingly allows unsupervised access to a child by a registered sex offender or allows a registered sex offender to have custody or control of a child up to age 14 or a child up to age 18 if the child has a mental or physical disability.

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**CHILD ABUSE REPORTING**

**Exceptions:**

- ▶ A registrant who is the caretaker's spouse;
- ▶ If the registered sex offender is a minor child.

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**CHILD ABUSE REPORTING**

**LIABILITY NOTE**

- ▶ A mandatory reporter who knowingly and willfully fails to make a required report of suspected child abuse faces the following:
  - ▶ A simple misdemeanor
  - ▶ Civil liability for any damages proximately caused by such failure
  - ▶ Sanctions from the BOEE

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**CHILD ABUSE REPORTING**

**LIABILITY NOTE**

- ▶ If you have a founded child abuse report against you, you **MUST** report this to the Board of Educational Examiners.
- ▶ You are granted immunity from any liability, civil or criminal, by making a report of suspected child abuse when the report is made in good faith.

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**CHILD ABUSE REPORTING**

You don't have to report things you might see or hear when you are not working in your capacity as a counselor.

**When in doubt report it!**

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**Sex Offenders**

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**Sex Offenders**

- ▶ **Students.**
  - ▶ County sheriffs inform school officials when a student or other person residing in the district is to register, but not all minors are now required to register.
  - ▶ The school board determines the educational placement of the student.
  - ▶ The district cannot refuse to enroll a resident student, but may place the student outside of the general student population.
  - ▶ Districts are not required to nor prevented from dissemination of information available on the SOR Web site to parents and staff.

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**Sex Offenders**

- ▶ **Residency.**
  - ▶ Registrants are prohibited from residing within 2,000 feet of a school, except:
    - ▶ Minors.
    - ▶ Residents est. before July 1, 2002.
    - ▶ Residents est. before a new school was built.

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**Sex Offenders**

- ▶ **Non-students.**
  - ▶ Registrants convicted of a sex offense against a minor are prohibited from the following:
    - ▶ Being present on school property
    - ▶ Being in any school vehicle when the vehicle is transporting students, unless enrolled as a student at the school, without the consent of the principal or designee (hereinafter "principal.")
    - ▶ Loitering within 300 feet of the school's boundary, unless enrolled as a student at the school. (Cannot consent to this.)
    - ▶ Being employed by, a volunteer at, or acting as a contractor at a school (public and nonpublic). (Cannot consent to this.)

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**Sex Offenders**

- ▶ **Contractors & Vendors** – Are absolutely prohibited from having a registrant on school property.
  - ▶ Even in the summertime when no kids are present.
  - ▶ Even if no students in the building. (Bus barn, new attendance center)

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**Sex Offenders**

- ▶ *Exceptions.*
  - ▶ A registrant may do the following:
    - ▶ Vote - reasonable;
    - ▶ Transport a child or ward of the registrant to and from school for the time reasonably necessary for this task.

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**Sex Offenders**

- ▶ *Additional restrictions.*
  - ▶ A school board is prohibited from passing a resolution or policy that would impose any additional restrictions.
  - ▶ Example - a board could not adopt a policy prohibiting all registrants from being on school grounds.

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**Sex Offenders**

► **Resources.**

- <http://www.iowasexoffender.com/>
- Iowa Division of Criminal Investigation at 515-725-6050 or at [dps-sorinfo@dps.state.ia.us](mailto:dps-sorinfo@dps.state.ia.us)

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**Sex Offenders**

**LIABILITY NOTE**

- Nothing in the law about sex offenders imposes any duty on school officials.
- No duty = no liability, absent a school creating a legal duty where one does not exist in statute.

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**Sex Offenders**

**LIABILITY NOTE**

- Principals cannot deny access to registrants who have not committed a sexual offense against a minor, so will need to determine the type of offense.
- SOR details may be found at: <http://www.iowasexoffender.com/>.

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Alleged Abuse by School Staff

(281—IOWA ADMINISTRATIVE CODE CHAPTER 102)

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Alleged Abuse by School Staff

- ▶ Not reportable to DHS – School Staff are NOT Caretakers
- ▶ Reportable under Chapter 102 to a Level One Investigator
- ▶ Each school is required to have a level one investigator.

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Alleged Abuse by School Staff

- ▶ What is a violation of Chapter 102?
  - ▶ Acts of the school employee
  - ▶ Alleged to have occurred on school grounds
  - ▶ On school time
  - ▶ On a school-sponsored activity, or in a school-related context.
  - ▶ Physical (with visible injury) or Sexual Abuse

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**Alleged Abuse by School Staff**

- ▶ What is investigable under Chapter 102?
  - ▶ Must be a written report
  - ▶ Filed by anyone with knowledge of the incident
  - ▶ Must include basic information showing:
    - ▶ The victim was a student at the time of the incident;
    - ▶ The alleged act of the school employee resulted in injury under the rules; and
    - ▶ The person responsible for the act is currently a school employee.

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**Alleged Abuse by School Staff**

- ▶ Administrative Leave - Schools are required by law to place any employee on administrative leave once a complaint has been filed alleging that the employee physically or sexually abused a student.

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**Alleged Abuse by School Staff**

**LIABILITY NOTE**

- ▶ Level One investigator has no special immunity under Chapter 102, however they are protected by Iowa Code chapter 670.
- ▶ If complaint is founded the employee is subject to sanctions by the BOEE.
- ▶ The school is required to report a "founded" complaint to the BOEE.
- ▶ A "founded" report means that the investigation has ruled out any exceptions, so it is reasonable to expect adverse action by the BOEE.

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Sexual Exploitation by School Staff

(IOWA CODE SECTION 709.15)

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Sexual Exploitation

Consensual sexual relationships between students and teachers or coaches or any licensee of the Board of Educational Examiners (BoEE) do not exist.

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Sexual Exploitation

**Sexual Exploitation by a School Employee - Iowa Code section 709.15(3)** - Sex crime for a school employee (licensed by the BOEE) to engage in any "sexual conduct" with a student.

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### Sexual Exploitation

Definitions to note:

- ▶ "Student" includes adult students and those within 30 days of graduation/transfer.
- ▶ "Sexual conduct" includes kissing, "petting," and all the way up to "all the way."
- ▶ "School employee" includes volunteers if the volunteer has a license from the BoEE.

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### Sexual Exploitation

- ▶ NO exceptions for the following:
  - ▶ Employee/volunteer of School A having a sexual relationship with a student of School B
  - ▶ **Pre-existing relationship** that started when both parties were students if one is now a BoEE licensee (such as a kid in college who serves as a volunteer coach for a school).

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### Sexual Exploitation

- ▶ A report to the BoEE from the superintendent is required when the licensee's contract is either not renewed or is terminated or the licensee is allowed to resign because of an incident that would constitute sexual exploitation.
- ▶ Violation of BoEE rules if a Superintendent fails to report

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**Sexual Exploitation**

**LIABILITY NOTE**

- ▶ A school employee who commits sexual exploitation once commits an **aggravated misdemeanor**.
- ▶ A school employee who engages in a pattern of sexual exploitation commits a **class "D" felony**.
- ▶ A school employee convicted of sexual exploitation shall lose his/her license from the BoEE and shall register as a convicted sex offender.

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**Sexual Exploitation**

- ▶ **State vs. Nicoletto – IA Sup. Ct. – Reversed coaches conviction** - Reversed the sexual exploitation conviction of a part-time assistant high school basketball coach because the court found that the coach, who only held a coaching authorization, was not a "practitioner" as defined in Iowa Code section 272.1 (7).
- ▶ **What do you think happened as a result?**

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**Sexual Exploitation**

- ▶ **HF 2474** – legislature passed and the governor signed a bill specifically including those are "issued a coaching authorization under section 272.31, subsection 1."
- ▶ Today Mr. Nicoletto would be a convicted felon.

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School Anti-Bullying, Anti-Harassment Law

(IOWA CODE CHAPTER 280.28)

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School Anti-Bullying, Anti-Harassment Law

(Iowa Code Chapter 280.28)

- ▶ "Harassment" and "bullying" shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on any actual or perceived trait or characteristic of the student and which creates an objectively hostile school environment that meets one or more of the following conditions:
  - 1) Places the student in reasonable fear of harm to the student's person or property.
  - 2) Has a substantially detrimental effect on the student's physical or mental health.
  - 3) Has the effect of substantially interfering with a student's academic performance.
  - 4) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

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School Anti-Bullying, Anti-Harassment Law

- ▶ Every school must have a policy against Bullying and Harassment and procedures in place for investigation
- ▶ Closely aligned with anti-discrimination under Civil Rights Law and policies.
- ▶ Look at BOTH.
- ▶ **The worst thing an educator can do is nothing.**

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**School Anti-Bullying,  
Anti-Harassment Law**

**PUNISHING THE PERPETRATOR**

- ▶ **ACADEMIC PUNISHMENT.**
  - ▶ *Requires a close nexus* – to school for school officials to be able to suspend perpetrators from class.
- ▶ **EXTRACURRICULAR PUNISHMENT.**
  - ▶ Good conduct policy violations – suspension from extracurricular activities, including school dances, prom, student council, or an elected class office, as well as suspended from interscholastic activities.

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**School Anti-Bullying,  
Anti-Harassment Law**

**PROTECTING THE TARGET**

- ▶ Notify the perpetrator and perpetrator's parents of the allegation
- ▶ Keep an extra eye on the perpetrator...and let the perpetrator and his/her family know that you will be doing so.
- ▶ Give target's family option of notifying law enforcement. Let LE determine if it's a crime.
- ▶ Do not discourage target's family from exploring civil actions (defamation, invasion of privacy, intentional infliction of emotional distress)

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**School Anti-Bullying,  
Anti-Harassment Law**

**PROTECTING THE TARGET**

- ▶ Gather evidence and investigate
- ▶ Check with the target often to make sure s/he is not suffering any retaliation from the initial perpetrator or friends of the perpetrator
- ▶ Make sure staff knows the lines of communication. Staff should be *required* to report harassment
- ▶ Make sure students know how to report incidents.
- ▶ Offer counseling/mental health support to the target

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**School Anti-Bullying, Anti-Harassment Law**

**LIABILITY NOTE**

- ▶ Deliberate Indifference = Successful lawsuit
- ▶ There is no requirement to eradicate harassment; the only requirement is to take steps that are reasonably calculated to alleviate or prevent harassment.

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**Scenarios**

- ▶ **Twitter Polls** – Students polling to see who is the biggest "Hoe," "Fag," etc. Can the school do anything?
- ▶ **Facebook Posts** –
- ▶ **Website Blogs** –
  - ▶ What about Freedom of Speech?
  - ▶ What if it happened outside the school day?
  - ▶ Do I report to law enforcement?
  - ▶ Do I report to twitter?

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**Scenarios**

- ▶ **What about Freedom of Speech?** Obscene speech – sexually explicit material that violates decency – is not protected by the First Amendment.
  - ▶ "It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986). School districts may impose sanctions on students in response to indecent speech, because the State has a decided interest in protecting its youth from obscene and vulgar materials and speech. *Id.* at 682, 685, 106 S.Ct. 3159.
  - ▶ Case by Case analysis

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**Scenarios**

- ▶ **What if it happened outside the school day?**
  - ▶ The test that has emerged from the circuit courts when considering off-campus student speech, including online social networking speech, is that school officials have the authority to discipline students for off-campus speech that will foreseeably reach the campus and cause a substantial disruption. *S.J.W. ex rel. Wilson v. Lee's Summit R7 Sch. Dist.*, 696 F.3d 771, 777 (8th Cir.2012); *J.S. ex rel Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915 (3d Cir.2011); *Kowalski v. Berkeley Cnty. Schs.*, 652 F.3d 565 (4th Cir.2011); *Doninger v. Niehoff*, 527 F.3d 41, 48 (2d Cir.2008); *Wisniewski v. Bd. of Educ. of Weedsport Cent. Sch. Dist.*, 494 F.3d 34, 38-39 (2d Cir.2007).
  - ▶ Some courts also require that a sufficient nexus exist between the off-campus student speech and the disruption at school. See *Layshock ex rel. Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir.2011).
  - ▶ Good Conduct Policies reach further.

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**Scenarios**

- ▶ **Do I report to law enforcement?**
  - ▶ Depends on the circumstances
- ▶ **Do I report to twitter?**
  - ▶ Depends on the circumstances

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**MIS-ADVENTURES IN CYBER-SPACE**

SEXTING, FACEBOOK, AND CYBERSPACE.

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### MIS-ADVENTURES IN CYBER-SPACE

**SEXTING**

- ▶ 2009 Iowa Supreme Court Case
- ▶ Jorge, was in high school when he sent a minor female friend, at her request, a picture of his penis. She testified that "all my friends are doing this...it's just a joke." BUT – her mother was not amused.
- ▶ Convicted of dissemination of obscene material to a minor.
- ▶ On the sex offender registry until June of 2016.

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### MIS-ADVENTURES IN CYBER-SPACE

**FACEBOOK**

- ▶ A cheerleader is suing her high school and coach for allegedly forcing her to give her Facebook login to her coach so that the coach could monitor illegal activities by her "Cheerios."
  - ▶ If true, there is a vast difference between the coach monitoring social electronic media on her own (perfectly legal) and forcing a student to give such information to a school official.
  - ▶ Note that this would be OK if the school were to sponsor a social medium site, but only for the medium sponsored by and made available to students by the school.

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### MIS-ADVENTURES IN CYBER-SPACE

**My TEACHER IS IN MySpace!**

- ▶ A teacher created a MySpace account ("Mr. Spiderman"), ostensibly so he could answer questions about homework and to learn more about his students.
  - ▶ Students complained about the content.
  - ▶ Contained pictures of naked men and inappropriate conversations with students.
  - ▶ The teacher closed down this account, but soon activated another account under the name "Apollo68."
  - ▶ This account again generated student complaints.
  - ▶ Eventually, the teacher was terminated and his termination was upheld by the courts. [*Spanierman v. Hughes, et al., 576 F.Supp.2d 292 (D. Conn 2008).*]

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**MIS-ADVENTURES IN CYBER-SPACE**

**Teacher Blogs**

- ▶ Veteran teacher created a publicly-available blog on the teacher's own time and using her own equipment.
  - ▶ Mentor teacher
  - ▶ Blogged recklessly about her colleagues and the district.
  - ▶ The 9<sup>th</sup> Circuit characterized her comments as "highly personal and vituperative."
  - ▶ Her mentee asked for another mentor and she was reassigned to a non-teaching position.
  - ▶ This adverse employment action was upheld.
  - ▶ The teacher failed to meet the balancing test in *Pickering v. Board of Education*, 391 U.S. 563 (1969) (employee's speech is protected only if it touches on matters of public concern). [*Richerson v. Beckon*, 337 Fed.Appx. 637 (9<sup>th</sup> Cir. 2009).]

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**MIS-ADVENTURES IN CYBER-SPACE**

**Emails**

- ▶ A principal in Florida received an email from her vice principal, detailing the complaints of a parent of one of the students at the school.
  - ▶ The principal wrote back, "Tell her 'she can eat sh--.'" And then hit "send" before noticing that the parent was on the "cc" line.
  - ▶ The principal had hit "reply all."

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**MIS-ADVENTURES IN CYBER-SPACE**

**Emails**

- ▶ An athletic director in a large Catholic high school sent an email to all coaches regarding housekeeping items.
  - ▶ Unfortunately, he neglected to delete the string of non-related messages solely between him and his brother (an A.D. at another Catholic high school) at the bottom of his email.
  - ▶ Among the included messages was an unflattering description of a local priest, who happened to serve the parish in which the A.D.'s high school was located.
  - ▶ One of the coaches who received the email had recently had a spat with the A.D., and was only too happy to share the email with the press and the school's president. In that order.

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**MIS-ADVENTURES IN CYBER-SPACE**

- ▶ A Pennsylvania district suspended one of its teachers over a Facebook photo of her with a male stripper at a bachelorette party.
- ▶ She had not posted the pictures.
- ▶ She was fully clothed.
- ▶ The district recently paid a settlement to the teacher.

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**MIS-ADVENTURES IN CYBER-SPACE**

- ▶ A Pennsylvania district, fed up with inappropriate use of cell phone during school time, planned to jam cell phone signals inside school buildings. The district discovered that its plan is illegal under Federal Communications Commission (FCC) rules.

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**ELECTRONIC SOCIAL MEDIA ACCEPTABLE USE POLICY POINTERS**

FOR STUDENTS AND TEACHERS.

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**ACCEPTABLE USE POLICY POINTERS**

- ▶ For students:
  - ▶ Clearly tell students what is not acceptable:
    - ▶ Use of cell phone during class for any reason
    - ▶ Taking pictures in locker room
    - ▶ Taking any picture of another person for the purpose of ridiculing the other person (falling asleep, chewing food with mouth open...it doesn't have to involve nudity)
    - ▶ Use of cell phone or any device to cheat
    - ▶ Use of cell phone or any device to harass another person

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**ACCEPTABLE USE POLICY POINTERS**

- ▶ Clearly inform students of the consequences of unacceptable use:
  - ▶ Device shall be confiscated
    - ▶ Duration
    - ▶ May be turned over to law enforcement
    - ▶ Subject to search
  - ▶ Other discipline (suspension from class/from activities)
  - ▶ Parents shall be informed
  - ▶ Law enforcement shall be informed where appropriate

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**ACCEPTABLE USE POLICY POINTERS**

- ▶ For staff – Social Networking:
  - ▶ Limit student access to your site. Better yet, prohibit student access to any personal site not maintained solely for instructional purposes.
  - ▶ NEVER discuss students or colleagues.
  - ▶ Never post images of students.
  - ▶ If using a site for instructional purposes, keep school administrators and parents informed of your use. Keep up a strictly professional relationship with students on such a site.

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**ACCEPTABLE USE POLICY POINTERS**

▶ **For staff – Social Networking:**

- ▶ Do not ask to be a student's friend on the student's site and do not accept a student's invitation to be his/her friend. If you accept, tell the student's parent. (If you do not want to tell the parent, this says something about the appropriateness of accepting the invitation.)
- ▶ Monitor your site regularly and remove postings that are inappropriate.
- ▶ Google yourself to find out what others see. If you don't like what comes up, fix it!
- ▶ Do not access your site or other non-school sites using school equipment, time, or other resources.

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**ACCEPTABLE USE POLICY POINTERS**

- ▶ **Regarding searches:** If a school has reason to believe that pornography is on a confiscated student or staff member's computer, cell phone, etc., **call local law enforcement and have them search the device.**
- ▶ Current state and federal criminal statutes do not provide any exceptions from prosecution for possession of pornography to school officials who conduct lawful searches.

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**MISCELLANEOUS WAIVERS**

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**MISCELLANEOUS**

**WAIERS**

- ▶ Will a waiver or release form do any good?
  - ▶ A form that has the parent/guardian waive a minor child's right to sue as a condition of allowing the child to participate in an activity is in violation of the law.
  - ▶ The Iowa Supreme Court ruled about a year ago that parents/guardians cannot waive their minor children's right to sue before any injury occurs to the child.
  - ▶ It is still a very good idea, however, for schools to use "Acknowledgement" forms to show that the student and family were advised of and acknowledged relevant risks.

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