

HAZING AND BULLYING: DO YOU KNOW YOUR RIGHTS?

PART 2: BULLYING AND CYBERBULLYING

In part 1 of this article, we discussed hazing, the laws defining it, and potential claims of negligence and negligence per se. While a victim of hazing goes through mental and/or physical endangerment for the purpose of joining an organization, bullying is a one-way, aggressive act against its victim(s).

“Bullying” when I was a kid was getting picked on or made fun of. It might progress to a physical confrontation on the playground. It was usually handled by the kids involved and very rarely involved your parents, your teachers, or any other adults; let alone law enforcement or lawyers.

Today, “bullying” is specifically defined in the Texas Education Code at Section 37.001. Bullying occurs when a student engages in any verbal or written statement, electronic communication, or physical act that results in physical harm to a student, physical harm to a student’s property, or a student experiencing a reasonable fear of harm.

Obviously non-existent when I was kid was “cyberbullying.” Cyberbullying occurs when people, primarily children, use social media, the Internet, or other forms of communication to intimidate, harass, threaten, or belittle others. “Cyberbullying” is also specifically defined in the Texas Education Code at Section 37.218

In Texas, acts of bullying and cyberbullying are potentially covered under several different laws. While some of these laws apply only to students and lead only to school-related punishment, others apply to everyone within the state and can result in criminal penalties and civil awards.

In addition to school-related consequences, people can face criminal charges under appropriate circumstances for:

- A. Harassment (a Class A or B misdemeanor depending on the circumstances)
- B. Online impersonation (a felony or misdemeanor depending on the circumstances)
- C. Disruptive activities (a Class B misdemeanor)

It is more difficult for victims of cyberbullying to recover in civil causes of action. Invasion of privacy and defamation are probably the most applicable tort causes of action to most cyberbullying cases. A victim could also try to establish the tort of intentional infliction of emotional distress.

As part of the civil lawsuit, you can and should, seek a temporary restraining order, followed by preliminary and permanent injunctions.

Since the purpose of a civil lawsuit is to recover damages, claims should be pursued against the alleged bully, as well as the bully's parents under a negligent supervision theory for failure to properly supervise their child's Internet activities.

Losing a civil lawsuit could result in a court order for the bully and parents to pay damages. The order could also include punitive damages designed not to compensate a victim for actual harm suffered, but to penalize the wrongdoer(s).

The suit against the bully and his/her parents would probably lead to the accused family seeking coverage from their homeowner's insurance policy. Most homeowner's insurance policies will not cover intentional acts. But, a homeowner's policy might cover a lawsuit alleging libel, slander, defamation, invasion of privacy, and mental anguish. A covered claim under an accused bully's family's homeowner's insurance policy is good for the victim because there may be a means to recover. A covered homeowner's claim for the bully and parents means the insurance company will hire a lawyer to defend the case and pay damages awarded.

Each case of bullying is different. Whether or not a crime has been committed or someone may be civilly liable depends on the unique facts and circumstances of each situation. An immediate analysis of the facts and circumstances should be undertaken to determine if the bullying or cyberbullying is actionable.

- What should a bullying victim and their family do when bullying starts?
- Whom should a bullying victim and their family turn to?
- Whom should they talk to?

- Whom should they meet with?
- What facts can be captured and which witnesses should the victim secure?

These are only some of the initial questions that require immediate answers if you or a family member is being bullied.

For more information about hazing and bullying or if you need help navigating through the issues related to this matter, please contact Mark Burck at 713-522-9444 or mburck@hanszenlaporte.com.

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