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MICHIGAN SAFE SCHOOLS INITIATIVE WORKGROUP March 21, 2007

LEGAL UPDATE (Covering the time period from January 18, 2007 to March 20, 2007)

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MICHIGAN SAFE SCHOOLS INITIATIVE

March 21, 2007

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SAFE SCHOOLS CASE LAW UPDATE

The following cases in our jurisdiction are summarized because of their potential applicability and relevance to Michigan Safe Schools' law.

People v. Osantowski, --- N.W.2d ----, 2007 WL 705032 (March 8, 2007).

Facts: Andrew Osantowski was a student at Chippewa Valley High School when he was arrested for making terroristic threats over the computer regarding his plans to inflict death and terror upon his family and individuals from his school. Osantowski was convicted of making a terroristic threat, using a computer to make a threat of terrorism, and a felony firearm conviction for possession of a firearm during the commission of a felony he was sentenced to 30 months to 20 years imprisonment. Osantowski appealed his jury trial convictions to the Michigan Court of Appeals.

Issue: Is the Michigan Anti-Terrorism Act unconstitutionally vague in that it fails to provide fair notice of unlawful acts or overbroad in that it infringes on Osantowski's First Amendment freedoms?

Holding: The Court of Appeals found that the Michigan Anti-Terrorism Act was not unconstitutional.

Reason: Osantowski claimed that Michigan Anti-Terrorism Act was overbroad because it criminalized the making of a threat, but did not require either an overt act to effectuate the threat or the communication of the threat to the intended victim. The court determined that the plain and ordinary meaning of the statute prohibited only "true threats" because the statute addressed only communication of a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The court reasoned that because the statute requires the existence of an intent to "intimidate or coerce," it extended beyond the type of speech or expressive conduct that is afforded protection by the First Amendment. Osantowski claimed that the law was vague because it failed to provide notice of what constituted unlawful conduct. The court held that the language and the definitions of the terms used in the statute provides a person of ordinary intelligence a reasonable opportunity to know what behavior or conduct is prohibited. The court specifically pointed out that "the statute criminalized communicating to any other person a serious expression of an intent to commit a "willful and deliberate act" that would constitute "a violent felony" under Michigan law, which is intended to intimidate or coerce a civilian population or influence or affect the conduct of government."

MICHIGAN SAFE SCHOOLS INITIATIVE WORKGROUP
PROPOSED LEGISLATION

There have been four bills introduced that address bullying, harassment and intimidation in schools. These Bills include:

Senate Bill 107, introduced on January 30, 2007 by Senator Glenn Anderson (D - Garden City, Livonia, Redford Township, and Westland) and referred to the Committee on Education.

House Bill 4091, introduced on January 23, 2007 by Representative Aldo Vagnozzi (D – Farmington and Farmington Hills) and referred to the Committee on Education.

House Bill 4201, introduced on February 1, 2007 by Representative Lorence Wenke (R – Kalamazoo, Calhoun Counties) and referred to the Committee on Education.

House Bill 4162, introduced on January 30, 2007 by Representative Pam Byrnes (D – Washtenaw County) and referred to the Committee on Education. This bill has the same content as Senate Bill 107, above.

These Bills are summarized in the attached chart.

Representative Frank Accavitti (D – Macomb County) introduced **House Bill 4243** on February 8, 2007. The Bill was referred to the Committee on Education.

If passed House Bill 4243 would require a school district which enrolls a transfer student to request from the student’s previous school a copy of his or her school record. The Bill amends the definition of “school record” to include the student’s attendance record or summary, academic record showing grades completed and courses passed, disciplinary records that includes all final, pending, and initiated suspensions or expulsions, health records, and the student’s individualized education program. The disciplinary records must include a description of the primary incident or incidents that led to each suspension or expulsion, the date when each of these incidents occurred, and any other information that is related to the suspension or expulsion and is considered appropriate by school officials of the school from which the student is transferring.

Senate Bill 30, introduced by Senator Michael Switalski (D – Roseville, Sterling Heights, Clinton Township) on January 24, 2007. The Bill was referred to the Committee on Education.

Bill 30, if passed, would prohibit school districts from being a member of a statewide interscholastic athletic association and to participate in events operated or sponsored by such an association unless the association has adopted and implemented within one year a policy that requires random urinalysis testing of student-athletes who participate in a statewide tournament, funds the testing by implementing a \$1.00 surcharge on admission charged for games, meets, or

contests that are part of the statewide tournament, provides for testing of a number of student-athletes each year based on the financial resources expected to be available that year, requires the testing to occur within 24 hours after a student-athlete is notified that he or she has been selected for the testing, and provides specific penalties for student-athletes who have illegally used anabolic steroids. The penalties include, for a first offense, a suspension from participation in interscholastic athletics for a period of 90 to 180 school days, at least 8 weeks of substance abuse counseling during this period, and weekly urinalysis testing during this period. For the second offense, the student-athlete would receive a suspension from participation in interscholastic athletics for a period of 180 to 360 school days, at least 16 weeks of substance abuse counseling during this period, and weekly urinalysis testing during this period. For the third offense, the student-athlete would be permanently ineligible from participation in interscholastic athletics. In addition, the policy would provide that the student-athlete or his or her parent/guardian would be responsible for the paying of any costs for the counseling and testing. If the association drafts such a policy, the school district must require the pupil and his or her parent/guardian to execute a form consenting to the testing and penalties before permitting the pupil to participate in interscholastic athletics.

ENACTED LEGISLATION

No legislation has been enacted in our jurisdiction relating to school safety.

SELECTED SAFE SCHOOLS *PRESS SECTION* SUMMARIES

Local News

Detnews.com, *Parents demand anti-bullying laws*, March 13, 2007

<http://www.detnews.com/apps/pbcs.dll/article?AID=2007703130455>

- Parent of students who were bullied at school or on the school bus are now actively the Michigan Legislature to adopt legislation requiring all Michigan schools to adopt policies against bullying.
- The bills would require all public schools to prohibit bullying or harassment.
- The House Committee heard testimony from parents Suzanne Harder and Kevin Epling, whose children were bullied by other students in school and on the school bus.
- House Bills 4091 and 4162 and Senate Bill 107 were introduced to address bullying and harassment in schools and House Education Committee Chairman Tim Melton, D – Auburn Hills, has indicated that he plans to send the two-bill package to the House floor addressing bullying in schools.

LSJ.com, *Parents plead for passage of anti-bullying measure*, March 14, 2007

<http://www.lansingstatejournal.com/apps/pbcs.dll/article?AID=2007703140343>

- Matt's Safe School Law, House Bill 4162, would require Michigan's public school districts and charter schools to adopt strict policies against bullying and encourage them to follow the state's anti-bullying policy model.
- Matt's father, Kevin Epling, testified in front of the House Education Committee.
- The committee will vote, perhaps as early as March 20th to send House Bill 4162 to the full House of Representatives.
- Student Nate Harder testified that he was afraid to get on the bus because of bullies.
- The Department of Education estimated that new legislation would cost a minimum of \$25,000. Lisa Swem, an attorney who represents more than 450 school districts, testified that there was no need for the exacting deadlines and consequences laid out in the original House Bill 4162.
- The law, if approved, would require action from the respective Boards of Education of the individual school districts and public school academies.

News from other states

Statesmanjournal.com, *Salem-Keizer School District learned from sex-abuse case*, February 11, 2007

<http://www.statesmanjournal.com/apps/pbcs.dll/article?AID=/20070211/ITK/702110312/1016>

- Kay Baker, former Superintendent in Oregon's Salem-Keizer School District, recalls the day that she learned that a middle school band teacher was accused of molesting four students.
- A review this teacher's record revealed parent complaints regarding inappropriate behavior for a number of years.
- Baker spearheaded a community coalition to teach district employees, parents and other people who work with youth how to recognize grooming behaviors and other tactics used by offenders, how to talk with children about sexual abuse, and when and how to report concerns. She utilized representatives from local police departments, the District's Attorney's Office, the Sheriff's Office, and other local resources.
- Two years later, the community partnership training model has spread to districts throughout Oregon.
- Since November 2005, more than 1000 community members have attended evening workshops about how to recognize child molesters. The workshops cover topics such as why predators offend, tactics they use, responding to sex-abuse disclosures, and how to report child sex abuse. Workshops on Internet safety, including avoiding Internet predators, cyberbullying, preventing identity theft, and use of social networking web sites such as MySpace, have recently been added.
- The District took its own steps to improve prevention including, a comprehensive review of all policies and procedures, resulting in a number of policy changes, such as a new rule that discourages district staff from driving students to events in their personal vehicles.
- The District also performed background checks on all district employees and volunteers.

- The District conducted a three full day workshop regarding recognizing the behavior of sexual predators with nearly 500 school administrators, licensed and classified staff and school resource officers in attendance. District employees also get annual training about recognizing suspected child abuse, responding appropriately and reporting it.
- As a result of the success of the program, the district hired a full-time prevention and protection coordinator to organize child abuse training and prevention efforts and adopted a new health curriculum for elementary school students that moves away from the “stranger danger” model and towards a recognition that most crimes against children are committed by someone the child knows and trusts.

Latimes.com, *L.A. Board of Education adopts discipline policy aimed at reducing suspensions*, February 28, 2007

<http://www.latimes.com/news/local/la-me-lausd28feb28,1,4296587.story?ctrack=1&cset=true>

- The Los Angeles Board of Education adopted a new, district wide discipline policy aimed at decreasing the number of students suspended and kept after school for misbehaving. The new policy takes a “holistic approach” to correcting student misbehavior that emphasized intervention. Rather than merely correcting and punishing students, teachers will be expected to explain why a behavior is wrong and give an alternative. Parents will be asked to participate by sitting in on their child’s class or meeting with the teacher. In some cases, a mentor may be assigned to the student.
- This policy was meant to respond to criticism that teachers and principals are too reactive and uneven in how they handle discipline cases by standardizing the response. Some critics question whether the policy’s focus on positive reinforcement will stray too far from ensuring that there are consequences for a student’s actions.
- For example, some of the suggested responses to a student harassing a classmate are to assign a peer tutor and to write up a “student behavior report card.”

Denverpost.com, *Hand over the cell*, February 23, 2007

http://www.denverpost.com/search/ci_5285461

- Principals in suburban Denver schools have searched students’ cellphone text messages when they suspect the students of cheating, drug abuse or other school violations.
- School officials argue that policies that allow them to search lockers, backpacks and cars parked on school grounds also authorize searches of cellphones when there is a “reasonable suspicion” of wrongdoing.
- The ACLU is calling the practice a “dramatic and unprecedented invasion of students’ privacy” and contending that it exceeds the authority granted to schools to conduct searches of students by the Supreme Court.
- With the advent of new technology, districts are struggling with regard to where to draw the line on searches.
- Other Districts have faced a public backlash when they proposed a policy that allowed the District to search students’ text messages.

- School officials in suburban Denver compare the search of a student's cellphone text messages to a teacher intercepting notes between classmates.
- The ACLU is concerned that there is no way to limit the scope of the search and that messages that are not part of the District's "reasonable suspicion" could be seen by the official.
- District officials said that the easiest way of not having a cellphone searched is to keep it out of site and do not use it during class.

Eschoolnews.com, *States seek laws to curb eBullying*, February 23, 2007

<http://eschoolnews.com/news/showStory.cfm?ArticleID=6878>

- Washington, Oregon, and Rhode Island are considering bills that could curb or outlaw "cyber bullying," in which students taunt or insult their peers on social-networking websites or through instant messaging. There is speculation, however, over how effective such legislation will be, or whether it can stand up to free-speech challenges.
- One Vermont parent told the story of his son, who committed suicide after receiving threatening, taunting, and insulting messages calling him gay. He is now pushing Vermont and every other state to enact laws expressly prohibiting cyberbullying.
- Legislators and educators say there's a need for guidelines outlining how to punish cyberbullying. They say the behavior has gone unchecked for years, with few laws or policies on the books explaining how to treat it.
- While schools have been proactive in educating staff on cyberbullying, many administrators believe that stopping the problem will require parental participation, pointing out that cyberbullying is not going on in school, but in the home.
- The ACLU contends that it would be difficult to draft a cyberbullying law that does not infringe on free speech rights and questions how much authority a school has to monitor, regulate, and punish activities occurring inside a student's home.

Miamiherald.com, *Judge seals sex offender's psych report*, March 5, 2007

<http://www.msnbc.msn.com/id/17468829/>

- A judge agreed to seal a court-appointed psychologist's evaluation of a 29-year-old sex offender accused of tricking four schools into allowing him on campus as a student.
- Neil Havens Rodreick was charged with 15 criminal counts, including child pornography, assault, fraud, forgery and failing to register as a sex offender. He was previously convicted in a 1996 Oklahoma incident in which he was accused of lewdly propositioning a 6-year-old boy.
- In Arizona, authorities say Rodreick powdered his face and shaved his body to look younger in an elaborate masquerade that began at least as far back as 2005. He was caught January 17, 2007 after spending a day in the seventh grade at Mingus Springs Charter School in Chino Valley, about 90 miles northwest of Phoenix. Mingus Springs administrators called police when Rodreick's birth certificate and other enrollment paperwork didn't check out. Police later caught him at a home with two other convicted sex offenders and a 61-year-old man who had posed as Rodreick's grandfather. At first,

Rodreick's disguise was good enough to convince police that he was a preteen. Only later did arresting officers notice stubble poking through Rodreick's pancake makeup.

- In all, investigators say Rodreick attended four schools during the past few years in Surprise, Chino Valley, Payson and Prescott Valley. While living in Payson, police there said Rodreick started a skateboarding club with several children between 13 and 17. He allegedly brought some of them home, but none reported being harmed.

FoxNews.com, *FBI Puts Local Officials on Notice About Extremists Trying to Sign Up to Be School Bus Drivers*, March 16, 2007

http://www.foxnews.com/printer_friendly_story/0,3566,259168,00.html

- Out of an abundance of caution, the FBI issued an "informational bulletin" to state and local officials regarding extremist groups trying to earn licenses to drive school buses.
- The Associated Press reported that members of unnamed extremist groups have succeeded in gaining the drivers licenses.
- A Department of Homeland Security official told Fox news that "at this time there is no evidence that any of these individuals have got these jobs, or got hold of school buses," he also said, the bulletin was sent to state and local law enforcement officials, and "some school districts have reported an increased number of foreign nationals seeking school bus driver positions and a number of other unusual events."
- FBI spokesman Richard Kolko told FoxNews.com, "There is no plot. There is no threat. And parents and children can feel perfectly safe."
- An unnamed counterterrorism official told the Associated Press that the bulletin did not say how often foreign extremists attempted to get licenses or drive school buses, and did not specify where this might have happened. The bulletin noted "recent suspicious activity" by foreigners who either drive school buses or are licensed to drive them.
- Homeland Security Department and the FBI "have no information indicating these individuals are involved in a terrorist plot against the homeland." The memo also notes, "Most attempts by foreign nationals in the United States to acquire school bus licenses to drive them are legitimate."
- One counterterror official said it was likely that the foreigners investigated were merely employed as bus drivers, and did not intend to use them as part of any terror plot.
- FBI spokesman Kolka said, "I hate to characterize this as a warning," calling it an "informational bulletin. He said it was part of routine information sent to local law enforcement agencies that they should use only as background information while doing their normal duties. He went on to say, "This is just an awareness issue for local law enforcement.... It just makes them smarter."

**Table comparing recent Bills before the Michigan Legislature
addressing bullying and harassment**

	Senate Bill 107/ House Bill 4162	House Bill 4091	House Bill 4201
Requires school districts to adopt and implement a policy on bullying and harassment at school.	Yes	Yes, includes intimidation	Yes
Requires that the policy be adopted through a process that includes representation of parents or guardians, school employees, volunteers, pupils, school administrators, and community representatives.	Yes	Yes	Requires that the Board take into account the concerns and opinions of parents of pupils of the school district.
Requires that the policy contain the following components A. Statement prohibiting harassment or bullying of a pupil. B. A definition of Harassment or Bullying. C. A description of the type of behavior expected from each pupil. D. Consequences and remedial action for policy violators. E. A procedure for reporting an act of harassment or bullying and allowance for anonymous reporting. F. Procedure for prompt investigation of reports and complaints identifying who is responsible for the investigation. G. Range of school response once an incident of harassment or bullying is identified. H. A statement that prohibits reprisal or retaliation against the reporter and consequences for acts of reprisal or retaliation. I. Consequences and remedial action for false accusations of harassment or bullying. J. Statement on how the policy is to be publicized. K. Provisions encouraging individuals to report incidents of harassment or bullying to the appropriate school official designated in the policy.	<p>Yes, also includes that the investigation into an accusation of bullying or harassment be completed within 3 school days after a report or complaint is made.</p> <p>This bill requires that the response be commensurate with the severity of the incident and with the offender's record of behavior. The range of responses includes reporting criminal activity to law enforcement. If action is taken against a pupil in response to an incident, a description of the incident and the action taken shall be included in the pupils' permanent disciplinary record.</p> <p>Finally, this bill has a requirement that a school employee who has witnessed an incident of harassment or bullying or who has reliable information that an incident of harassment or bullying has occurred shall report the incident to the principal or his or her designee.</p>	<p>Yes, but does not contain a provision encouraging individuals to report incidents of harassment or bullying to the appropriate school official designated in the policy.</p> <p>Also, the policy must be publicized to include notice that it applies to participation in school-sponsored activities.</p>	No, requires that the policy, at a minimum shall define bullying and harassment, prescribe consequences for pupils bullying or harassment, and establish a procedure for the investigation of a report made by a pupil or employee that an incident of bullying or harassment has occurred.

Requires adoption of the policy by a specific date.	Yes, Board must adopt policy by December 31, 2007 and within 30 days, submit a copy to the Department of Education.	Yes, Board must adopt policy and transmit a copy to the Superintendent of Public Instruction by September 1, 2008.	Yes, policy must be in place by January 1, 2008.
Requires the Department of Education to draft a model bullying and harassment policy.	Yes	Yes	Yes
Requires the Department of Education to develop appropriate procedures for investigating, reporting, and responding to violations of this section by a school district.	Yes	No	No
Requires the Board of Education to ensure that notice of the school district's policy under this law by publicizing it in the student code of conduct.	Yes	Yes, also requires that the policy applies to participation in school-sponsored activities.	No
Provides for immunity from liability for school employees who report an incident of harassment or bullying to the appropriate school official pursuant to the reporting procedures.	Yes	Yes	No
Encourages schools to form bullying prevention task forces, programs and other initiatives involving school staff, pupils, administrators, volunteers, parents, law enforcement, and community leaders	Yes	Yes	No
Requires school districts to do the following: a. provide annual training on the harassment or bullying policy to school employees and volunteer who have significant contact with pupils b. develop a process for discussing harassment or bullying with pupils	Yes	Yes	No
Requires school districts to incorporate regarding the school district's policy against harassment or bullying into each school's employee training program.	Yes	Yes	Yes, must address classroom management, how to identify bullying and harassment, and appropriate strategies and methods to address bullying and harassment. Also requires such training prior to receiving a

<p>Law does not prevent a victim from seeking redress under any other available law.</p>	<p>Yes</p>	<p>Yes</p>	<p>teaching certificate.</p>
<p>Requires the Department of Education to establish a form and procedure for school districts to report incidents of harassment or bullying on an annual basis and make this information available to the public.</p>	<p>Yes</p>	<p>No</p>	<p>No</p>
<p>Requires that if an investigation under this law results in a report to law enforcement, that the law enforcement agency must commence an investigation within 3 days after the report is made.</p>	<p>Yes</p>	<p>No</p>	<p>No</p>
<p>A law enforcement agency investigating a report under this law may receive directory information concerning a school district's pupil if such information is requested.</p>	<p>Yes</p>	<p>No</p>	<p>No</p>
<p>Defines "at school" as in a classroom, elsewhere on or immediately adjacent to school premises, on a school bus or other school-related vehicle, at an official school bus stop, on a pupil's way to or from school, or at a school-sponsored activity or event whether or not it is held on school premises.</p>	<p>Yes, includes using telecommunications access device or telecommunications service provider that occurs off school premises if the telecommunications access device or the telecommunications service provider is owned by or under the control of the school district.</p>	<p>Yes, but does not include "on a pupil's way to and from school."</p>	<p>No</p>

Check for patterns in these fatal school attacks

The highest number of fatal school attacks since 1999 have occurred in September, March and April. This list doesn't include numerous copycat attacks in which students were wounded and not killed. Nor does it include all interrupted plots. However, it shows attacks appear to occur in clusters.

Year	Date/Location	What happened
1998-99 17 killed	April 20 – Columbine High School, Littleton, Colo. <i>400 related plots were reported the next month.</i>	2 students randomly killed 14 students and 1 teacher, then committed suicide.
1999-2000 5 killed	Nov. 19 – Deming (N.M.) Middle School Feb. 29 – Buell Elem. School, Mount Morris, Mich. March 10 – Beach High School, Savannah, Ga. May 26 – Lake Worth (Fla.) High School.	Student killed 1 student. Student killed 1 student. Student killed 2 students. Suspended student killed 1 teacher.
2000-01 4 killed	Jan. 17 – Lake Clifton Eastern High School, Baltimore. March 5 – Santana High School, Santee, Calif. March 30 – Lew Wallace High School, Gary, Ind.	1 student was killed in front of school. Student killed 2 students Expelled student killed 1 student.
2003-04 5 killed	Sept. 24 – Rocori High School, Cold Spring, Minn. April 14 – John McDonogh High School, New Orleans. April 24 – Red Lion Area (Pa.) Junior High School.	Student killed 2 students. Four teens killed 1 student, wounded 3. A student killed 1 principal, then committed suicide.
2004-05 8 killed	March 21 – Red Lake (Minn.) High School	Student killed 5 students, 1 guard, 1 teacher, then committed suicide.
2005-06 1 killed	Nov. 8 – Campbell County High School, Jacksboro, Tenn. March to April – <i>More than 10 plots were foiled.</i>	A student killed 1 assistant principal, wounded 2 administrators.
2006-07 11 killed	Aug. 24 – Essex (Vt.) Elementary School. Sept. 27 – Platte Canyon High School, Bailey, Colo. Sept. 29 – Weston High School, Cazenovia, Wis. Oct. 2 – Amish School, Nickel Mines, Pa. Jan. 3 – Henry Foss High School, Tacoma, Wash.	Intruder killed 1 teacher. Intruder took six hostages, killed 1, committed suicide. Student killed 1 principal. Intruder took 10 hostages, killed 6, committed suicide. Student killed 1 classmate.