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HARASSMENT AT SCHOOL- PART III

by Jay C. Howell

“Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools. . .”

Constitution of the State of Florida, Article IX, §1

This article is the third in our series about students being harassed, threatened, or intimidated at school. What can parents, families, and the students themselves do to address this ongoing problem in our community? Regular reports of students being followed, threatened, intimidated, stalked, bullied, touched, and assaulted have resulted in a new level of concern among our citizens.

In our first article we discussed the role of the Student Code of Conduct and its importance in the discipline of students who are perpetrating these acts. Each family should have a copy of the appropriate Student Code of conduct for their school system and be familiar with its contents. In our second article we discussed the importance of Florida Statutes prohibiting the crime identified as stalking. This statute (§784.0048 of the Florida Statutes) makes it a crime to willfully, maliciously, and repeatedly follow or harass another person. The crime becomes a felony if an individual is guilty of the above described conduct and, in addition, makes a credible threat with the intent to place the victim in reasonable fear of either death or bodily injury. In our second article we also discussed an important decision of the Florida appellate courts which applied the stalking statute to protect a student in an Orlando school.

Before we address the specific steps that families and student should take if they are being victimized at school, we must mention the basic provisions of additional Florida Statutes that define crimes and criminal conduct that may victimize students at school. Florida law defines **assault** (Florida Statutes, §784.01 1) as an intentional, unlawful **threat** by word or act to do violence to another person, coupled with

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an apparent ability to do so. The perpetrator must commit some act which creates a well-founded fear in the other person that violence is imminent. The crime of **battery** (Florida Statutes, §784.03) occurs when a person either actually and intentionally touches or strikes someone against their will, or, intentionally causes bodily harm to another person.

Some threats may be communicated in writing. Florida has a statute on written threats. It is Florida Statutes, §836.10, and in substance, it states if any person writes and also sends any written communication containing a threat to kill or to do bodily injury to the person or to any member of the family of the person to whom such correspondence is sent, that person shall be guilty of a felony crime. The written communication can either be signed or be anonymous, but, of course, there must be evidence establishing that the sender did in fact commit the crime.

It is critical for any family who is dealing with harassment at school to understand the specific provisions of these various laws. School personnel and even law enforcement officials may or may not be aware of what exact conduct constitutes a crime and how our appellate courts have applied these laws to real life situations. While the Student Code of Conduct is available from every school board, the Florida laws we have described are also readily available on the internet. Any of these statutes can be produced by statute number or general title on the website that is located at <http://www.leg.state.fl.us>. Click on "Laws" in the center of the page, then go to Florida Statutes.

The issue of harassment at school is particularly difficult because, even in our free society, children are **required** to attend school. Florida Statutes, §1002.20, states that the compulsory school attendance laws apply to all children between the ages of 6 and 16 years of age. It seems only fair that if we, as a society, are requiring young people to attend school, then we must also assure them of a safe school

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environment. That is why our state Constitution now contains the language at the top of this article, providing a constitutional right to a safe education. These two legal principles go hand in hand. When our appellate courts are called upon to make decisions regarding the fundamental rights of school children, they often cite the mandatory attendance provisions to emphasize that children do not have a choice. Florida courts also recognize that the school has a **legal duty** to reasonably **supervise** the children. This duty of supervision also applies to private schools.

The previous two articles on Harassment at School can be found at www.andersonandhowell.com/jay. In our next article we will address the specific steps which students, parents, and their families can take if they are victims of harassment at school.