

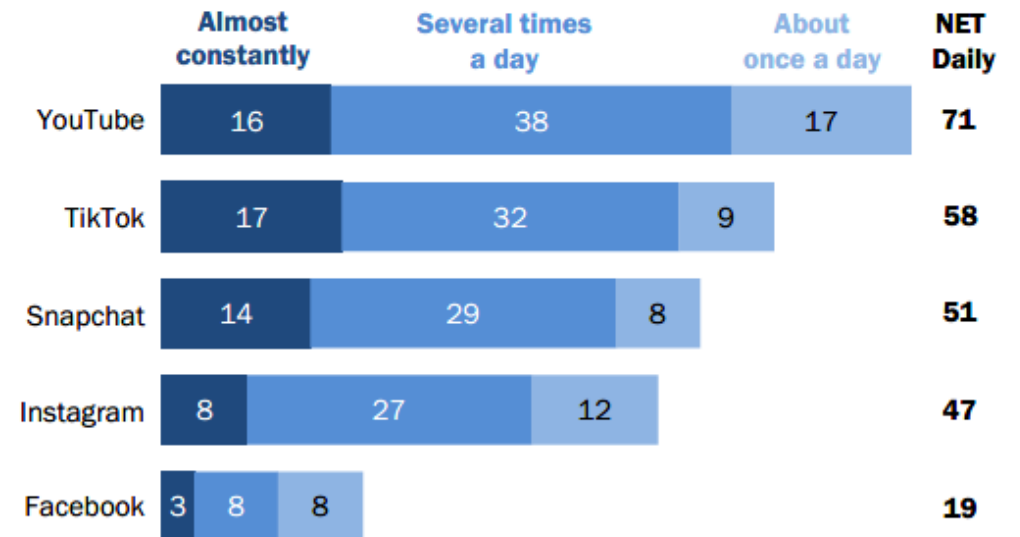
School Districts and the Social Media Litigation

KELLERROHRBACK

LAW OFFICES ♦ L.L.P.

Millions of Youth Use Social Media On A Daily Basis

- 90% of children ages 13-17 use social media
- Youth primarily use five platforms:
 - YouTube – 93% have used, 71% use daily
 - TikTok – 63% have used, 58% use daily
 - Snapchat – 60% have used, 51% use daily
 - Instagram – 59% have used, 47% use daily
 - Facebook – 33% have used, 19% use daily



Note: Those who did not give an answer or gave other responses are not shown.
Source: Survey conducted Sept. 26-Oct. 23, 2023.
"Teens, Social Media and Technology 2023"

PEW RESEARCH CENTER

Research Confirms Social Media Has Harmful Effects on Youth Mental Health

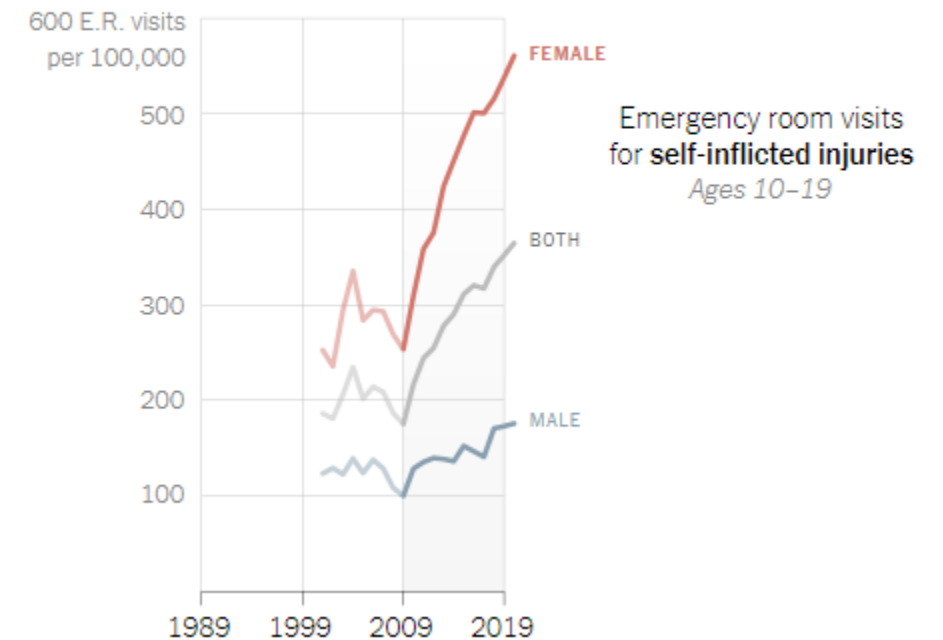
- Social media has a detrimental effect on the psychological health of its users.
- Social media use is associated with increased rates of depression, anxiety, low self-esteem, and suicide.
- Youth who post edited photos of social media are more likely to develop eating disorders.



American Youth Are Facing A Mental Health Crisis

- One in five children ages 3-17 in the United States have a mental health disorder.
- Rates were rising even before the pandemic:
 - From 2009-19, the rate of high school students reporting persistent feelings of sadness or hopelessness increased to 1 in 3 (a 40% increase).
 - 36% increase in high school students seriously considering attempting suicide.
- Youth use and ownership of personal electronic devices, like cell phones, has increased from 45% in 2005 to 95% in 2018.

Emergency room visits for self-harm by children and adolescents rose sharply over the last decade, particularly among young women.



Defendants Engineered Their Platforms to Hook Kids

- Facebook, Instagram, TikTok, Snap, and YouTube offer tailored “feeds” of content curated by complex algorithms designed to keep users on social media for as long as possible.
- Defendants collect data on their users’ viewing habits and behaviors and use that data to sell advertisers access to youth and other users to allow those companies to promote their products.
- Youth are central to Defendants’ business model and advertising revenue as children are more likely than adults to use social media.



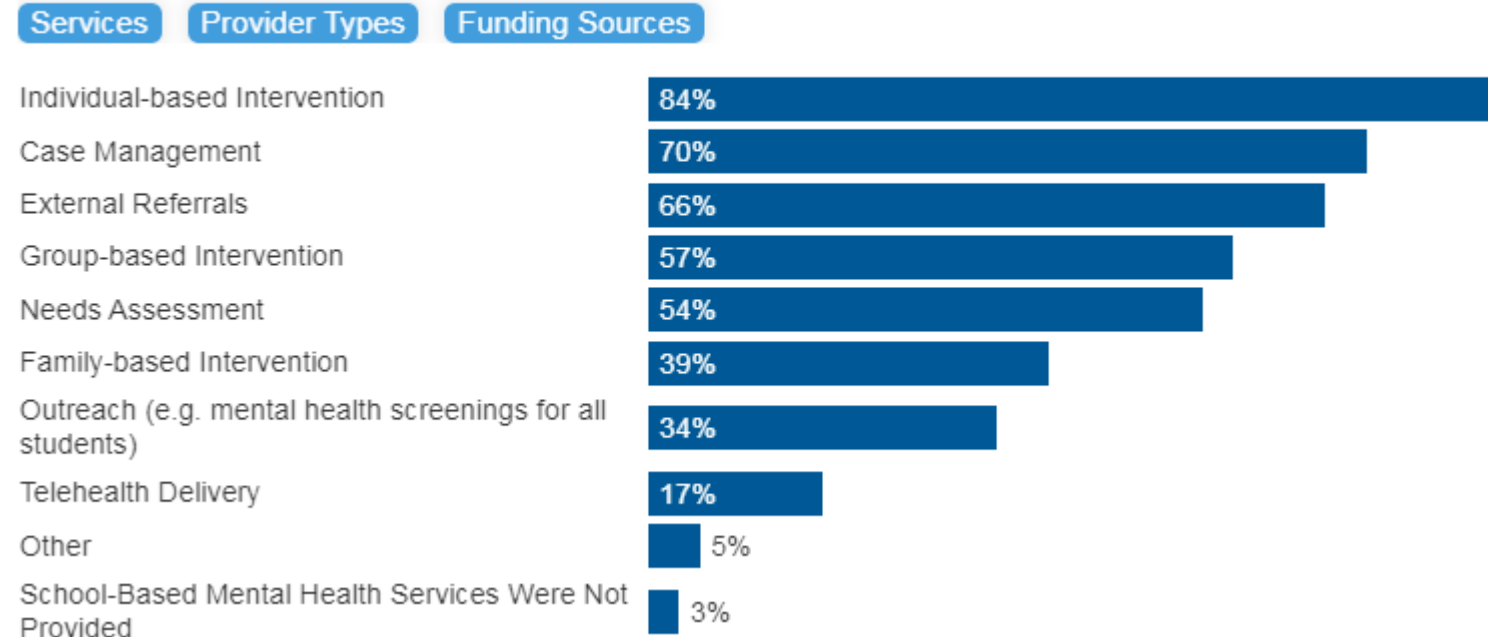
Impact on Schools

- Students in grades 6-12 identify depression, stress, and anxiety as the most prevalent obstacles to learning.
- Student absenteeism and misconduct in schools has increased significantly:
 - 72 percent of public schools reported increased chronic student absenteeism compared to school years before the pandemic.
 - 36 percent of public schools reporting increased acts of student vandalism on school property.

Impact on Schools

- Over 3.1 million children ages 12-17 received mental health services through an education setting, more than any other non-specialty mental health service setting

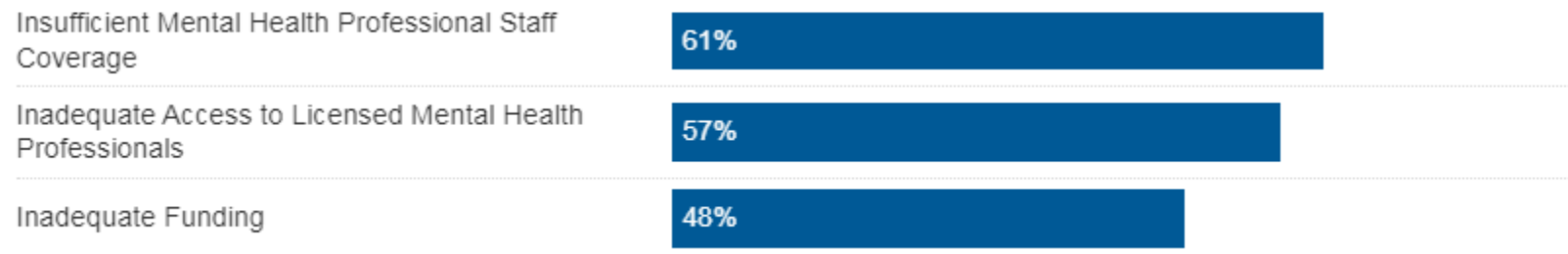
Mental Health Services Offered by Public Schools, 2021-2022



Impact on Schools

- Notwithstanding the immense need, schools face serious barriers to providing effective mental health services.
- Schools need more resources to provide this important service effectively.

Factors Limiting Schools' Ability to Effectively Provide Mental Health Services to Students



Government Entities Are Taking Action

- Seattle Public Schools filed the first school district case in the country. SPS has since been joined by over 800 school districts from 33 different states
- Cases have been centralized in California in two main forums:
 - MDL – Federal Multi-District Litigation in the Northern District of California, Judge Yvonne Gonzalez Rogers
 - JCCP – California State Consolidated Proceeding in L.A. County Superior Court, Judge Carolyn B. Kuhl
 - Government Entities are bringing a similar negligence claim upheld in the JCCP, along with their nuisance claims

Public Nuisance: Tackling Public Health Crises

- Primary claims being asserted by school districts is a public nuisance claim, along with negligence and consumer protection claims
- Public nuisance involves:
 - “an unreasonable interference with a public right”
 - Defendant is a “substantial contributing factor” to the nuisance - does not have to be the only cause
- Relief can be for past damages and *abatement* – what would it cost to the fix the problem going forward
- Successfully used in high profile public health litigation, including to help address the opioid epidemic and the youth vaping crisis (the JUUL litigation)

Solving the Crisis Caused by Youth Social Media Use

- This case is not about ending social media, but about ending the companies' exploitive practices.
- The case also aims to obtain funds to screen, intervene, and treat students struggling with their mental health.
- This could include continuation of existing programs, expansion of programs, and creation of new programs, e.g.:
 - Hiring additional mental health personnel;
 - Developing additional mental health resources;
 - Training teachers to assist students with their mental health; and
 - Providing resources to compensate for the diversion of resources from the schools' educational missions.

Section 230

- Primary obstacle to government claims is Section 230 of the Communications Decency Act
- Certain courts have interpreted Section 230 as providing broad immunity against any claim that treats a social media company as a “publisher”
- Scope and applicability of Section 230 is now being litigated

Court Rulings

- On October 13, 2023, the JCCP (California State) Court issued a ruling permitting personal injury negligence claims to proceed against all Defendants and fraudulent concealment claims to proceed against Facebook
 - Ruled that claims were not barred by Section 230 or the First Amendment
 - Significant victory for plaintiffs
- On November 14, 2023, the Federal MDL Court issued its ruling permitting personal injury product liability and failure to warn claims to proceed
- School district claims being briefed and litigated over the coming months, expect a ruling in Spring 2024
 - School districts are bringing a similar negligence claim upheld in the JCCP, along with their nuisance claims

Status of School District Cases

- State Court (JCCP)
 - Briefing completed in April with expected decision May
 - Four “representative” jurisdictions have been selected: CA, FL, WA, RI
 - Fact sheets to select representative districts are underway
 - Initial discovery of defendants in PI cases has commenced
 - Motion to Dismiss (demurrer) briefing submitted; argument 5/13
- Federal Court (MDL)
 - Initial discovery of defendants in PI cases has commenced
 - Master complaint filed
 - Motion to Dismiss briefing submitted; argument 5/17
 - Representative school districts selected.

Things to consider

- Complex cases are complicated and expensive – best pursued by outside counsel
- What are the burdens in terms of staff time that will be imposed on the district?
- What are the discovery burdens imposed on the district?
- What are the costs to the district?
- Is there a risk of counterclaims?
- Will there be political blow back?

Thank you

Dean Kawamoto

dkawamoto@kellerrohrback.com

Cari Laufenberg

claufenberg@kellerrohrback.com

Chris Ryder

cryder@kellerrohrback.com