

CYBERBULLYING: IDENTIFYING ELEMENTS AND
BOUNDARIES OF EFFECTIVE SCHOOL POLICIES

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	iii
ABSTRACT.....	v
CHAPTER	
I. INTRODUCTION.....	1
Definition of Terms.....	2
Problem Statement.....	3
Purpose.....	4
II. LEGAL BOUNDARIES OF SCHOOL POLICIES	5
On-Campus Cyberbullying.....	5
Off-Campus Cyberbullying	8
Summary.....	10
III. IDENTIFYING ELEMENTS OF EFFECTIVE SCHOOL POLICY	11
Key Elements of Prevention Strategies.....	11
Key Elements of Intervention Strategies	12
Summary.....	15
IV. CONCLUSION.....	16
REFERENCES	18

ABSTRACT

With the advent of smartphones, social media, and other communication technologies, digital media is playing a more significant role in the daily lives of adolescents in the United States. This widespread use of technology among youth has led to new problems for school administration. One such problem is cyberbullying, in which digital media is used to intimidate or threaten others. School administrators now face the demanding task of maintaining a safe environment conducive to learning without overstepping their authority when responding to students' activities in cyberspace. This thesis will examine the elements of effective school policies that have been used to address cyberbullying and explore the boundaries of such policies. By looking at the legal issues faced by school administrators enforcing cyberbullying policies and the core components of successful cyberbullying programs and policies, this thesis will identify which elements are key to developing effective cyberbullying programs and avoiding legal complications when these programs are implemented.

I. INTRODUCTION

Bullying, in general, can be defined as a “specific type of aggressive behaviour that is intended to cause harm, through repeated actions carried out over time, targeted at an individual who is not in a position to defend him/herself” (Langos, 2012, p. 285).

Langos identifies four elements that are necessary to defining bullying: repetition, imbalance of power, aggression, and intention. Repetition requires that an act take place more than once over a period of time. Repetition can be achieved by a bully repeatedly attacking the victim, or with the use of electronic media, by publicly posting something on the Internet that can be viewed by a large number of people (Langos). A power imbalance refers to the victim perceiving the bully to have more power. Physically, this could imply greater strength, height, and status, while, digitally, bullies can exert power over their victims through technological expertise, anonymity, and the availability of a potentially infinite audience (Langos). Aggression and intention allude to the bully’s ability and desire to cause harm to the victim. For bullying to take place, the bully must intend for his or her actions to result in negative consequences for the victim, and for the victim to actually be harmed in some way (Langos). By looking at these four elements, repetition, imbalance of power, aggression, and intention, in the environment of electronic communication, we can create a reasonable definition for cyberbullying.

As defined by Smith, et al. (2008), cyberbullying is “an aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself.” This definition includes the elements of repetition, power imbalance, aggression and intention, but the key component differentiating cyberbullying from other forms of bullying is the use of

electronic forms of communication. By using digital media, cyberbullies gain access to a variety of tools that can be used to target their victims, including phone calls, text messages, e-mails, social media posts, and much more.

Definition of Terms

Because of the numerous forms of electronic communication that are available to cyberbullies, the term “cyberbullying” encompasses a diverse set of activities. Orobko (2009) describes some of these activities to distinguish several types of cyberbullying:

- *Flaming* – arguments involving the use of hostile, angry, or obscene messages to attack another person or group of people; usually brief and in a public environment (such as chat rooms); a “flame war” is an extended series of these messages
- *Trolling* – using argumentative, controversial, or disruptive information to intimidate, harass, or cause distress to another person
- *Harassment* – the continuing sending of offensive messages to an individual target; usually sent through private communications, such as e-mail and text messaging
- *Denigration* – harmful, untrue, or cruel speech about another person that is made available to others; intended to damage to the victim’s reputation and relationships
- *Impersonation* – the impersonation of a victim by a cyberbully who posts material to damage the victim’s reputation and relationships

- *Outing* – the public dispersion of personal communications or images, especially those that contain intimate or potentially embarrassing personal information
- *Trickery* – when a target is tricked into disclosing personal information that the cyberbully intends to share with others or use as a threat
- *Exclusion* – the deliberate exclusion of a person from an online group
- *Cyberstalking* – the repeated sending of detrimental messages that are highly intimidating or extremely offensive, include threats of harm, or involve extortion
- *Cyberthreats* – statements that detail the intent to hurt someone or suggest the writer is emotionally distressed and may be considering harming another person, himself, or herself

Because cyberbullying covers such a wide range of behaviors, it would require a comprehensive set of policies to be able to adequately handle the types of cyberbullying situations faced by middle and high school students. Unfortunately, because technology has advanced and been incorporated into the daily life of many so quickly, school policies have not been able to keep pace, resulting in a confusing mass of regulations that school administrators have to work with.

Problem Statement

Approximately one out of every four middle and high school students is a victim of cyberbullying (Patchin, 2015). Despite the prevalence of cyberbullying, school administrators can find it difficult to reach an effective solution when confronted with the problem of addressing cyberbullies and their victims. School administrators have to be sure they do not overstep the bounds of the authority granted to them by a set of

constantly shifting laws regarding cyberbullying (Hinduja & Patchin, 2011). Because there can be some disparity between what needs to be done to resolve a cyberbullying situation and what academic officials have the authority to do, cyberbullying victims can be pushed into a position in which they are unable to take any actions to put an end to the cyberbullying. Without effective school policies in place to establish the authority for administrators to act when these situations arise, cyberbullying victims have few choices available to them to settle their dilemma.

Purpose

The purpose of this thesis is to examine the effectiveness of school policies at handling cyberbullying incidents in the United States. This thesis will look at literature for developing cyberbullying programs and legal cases involving cyberbullying to determine what methods have been successful when dealing with cyberbullies and the limitations of handling such occurrences from a school administrative perspective. Based on the findings, key elements for developing effective policies will be identified.

II. LEGAL BOUNDARIES OF SCHOOL POLICIES

Before discussing the legal quandaries that can arise from actions taken by school administrators to curb cyberbullying behavior, it is worth pointing out that inaction on the part of schools to ensure the safety of their students can also result in legal complications. As Hinduja and Patchin (2015) point out, school administrators have an obligation to act when they are made aware of harassment, and not taking action can equate to passive acceptance of the behavior. In the case of Anthony Zeno, Zeno was subjected to progressively severe harassment from other students at his school, including threats and racial slurs (Hinduja & Patchin). Although some of the aggressors were disciplined following these events, the harassment continued and reportedly increased in severity (Hinduja & Patchin). Because of these events, Zeno sued the school and was eventually awarded \$1 million plus attorney's fees, with the court agreeing that more should have been done to address the harassment that Zeno was facing (Hinduja & Patchin). This case illustrates the idea that school administrators are not only obligated to act when incidents of harassment come to their attention, but that administrators should ensure that their actions are accomplishing the intended task of reducing the severity of the harassment. Simply taking disciplinary action against the perpetrators, although such action may be warranted, is not enough.

On-Campus Cyberbullying

Although cyberbullying is a relatively recent phenomenon, many of the legal implications of cyberbullying where student speech originates on school grounds have already been explored with precedents in cases that have been decided by the Supreme

Court. In particular, three such cases form the foundation for when student speech can be limited by officials: *Tinker v. Des Moines Independent Community School District*, *Bethel School District No. 403 v. Fraser*, and *Hazelwood School District v. Kuhlmeier*. Each of these cases were significant in determining the boundaries of school officials' authority over student speech and are now crucial to establishing when school administrators can respond to cyberbullying incidents that originate on campus.

In the case *Tinker v. Des Moines Independent Community School District* (1969), three students were suspended after wearing black armbands to school in protest of the Vietnam War, ignoring the warnings of school administrators not to wear the armbands. The students claimed that the school violated their freedom of expression guaranteed by the First Amendment, and the Supreme Court agreed. In the majority opinion, Justice Fortas stated, "It can hardly be argued that either teachers or students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines Independent Community School District*). However, Justice Fortas also noted, "conduct by the student, in class or out of it, which for any reason ... materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech" (*Tinker v. Des Moines Independent Community School District*). In particular, *Tinker* established that schools have the authority to discipline students for their speech or expression if it presents a "material and substantial disruption" to the school environment or impinges on the rights of other students.

The next Supreme Court case involving the limitations of student speech at school is the 1986 case of *Bethel School District No. 403 v. Fraser*. In *Fraser*, school authorities

disciplined Matthew Fraser after he delivered a speech which included graphic sexual insinuations at a school assembly (Myers, et al., 2011). The Supreme Court ruled that, although Fraser's speech did not result in a material disruption of the school's environment, schools play an important role in teaching students what constitutes socially acceptable behavior, and should therefore be able to limit student speech that is inappropriate for the educational environment of public schools (Myers, et al.). This ruling allows for school officials to impose limits on student speech using lewd, vulgar, indecent, or offensive language that takes place in a school setting.

In the third case, *Hazelwood School District v. Kuhlmeier*, a principal chose to remove select pages from the school's newspaper, citing concerns that two of the articles did not protect the identities of the students being described (Shariff & Hoff, 2007). Although the students claimed that their rights to free speech had been violated by the censorship, the Supreme Court determined that because the newspaper was school sponsored speech, the school had the authority to regulate the newspaper's content (Shariff & Hoff). This case is of particular interest in cyberbullying where the bully utilizes school resources to attack the victim. In cyberbullying incidents where school owned computers, email accounts, or other resources are used, the *Hazelwood* ruling would provide the authority for school officials to act.

To summarize the results and implications of significant court cases involving student speech on campus, school officials have the authority to limit the speech of students if it falls in line with the court rulings of *Tinker*, *Fraser*, or *Hazelwood*. In other words, the speech:

- results or is reasonably likely to result in a material and substantial disruption to the school environment,
- infringes on the rights of another student,
- includes offensive language inconsistent with school values, or
- is created or distributed using school resources.

Overall, school officials have a fair amount of authority with which they can impose limits on student speech that occurs or originates on campus or uses school resources.

Off-Campus Cyberbullying

Although on campus cyberbullying has a firm legal foundation among other forms of student speech at school, courts have been reluctant and inconsistent in extending the authority of schools to impose limits over student speech when that speech originates outside school grounds. This is shown in one such case of off campus student speech that was brought before a legal court: *Klein v. Smith*. In *Klein v. Smith* a student was suspended for 10 days after directing an obscene gesture towards one of his teachers in a restaurant parking lot after school hours (Hinduja & Patchin, 2015). When the student sued the school claiming that his free speech rights had been violated, the courts sided with the student because the school had not demonstrated that the student's actions had resulted in a disturbance to the school's environment (Hinduja & Patchin). If the student's actions had taken place on campus, the school's actions likely would have been protected under *Fraser*, but the student's speech originated off campus and there was no demonstrated connection to the school.

Following the point made in the *Smith* decision, it follows that if schools can show that off campus student speech has a negative impact on the school environment, then they have the authority to sanction students. This is demonstrated in the cases: *J.S. v. Bethlehem Area School District* and *Wisniewski v. Board of Education of the Weedsport Central School District*. In *J.S.* a student created a website with threatening statements about one of the school's teachers, including reasons why the teacher should die, after which the student was suspended (Hinduja & Patchin, 2015). As a result, the teacher was unable to continue teaching for the rest of the school year and the school's climate was negatively affected (Hinduja & Patchin). Similarly, in the *Wisniewski* case, a student created and dispersed an imaging showing a teacher being shot (Willard, 2011). After being made aware of the image, the teacher informed school officials leading to the suspension of the student and the teacher no longer taught a class with the student (Willard). Both of these cases upheld the actions of the school using the *Tinker* standard that the incidents resulted in a substantial disruption to the school.

The cases of *J.S.* and *Wisniewski* show that if a school can show substantial disruption under the *Tinker* standard, then the courts will affirm school's authority to discipline students in those situations. However, demonstrating such a disruption has or is likely to occur is not always clear from recent court decisions. In the cases of *Layshock v. Hermitage School District* and *J.S. v. Blue Mountain School District*, the Third Circuit Court of Appeals came to differing decisions on the two cases, despite the similarities between them (Willard, 2011). Both cases involve a student creating parody MySpace accounts of the school's principal and subsequently being suspended for 10 days (Hinduja & Patchin, 2015). This disparity among courts about when schools have the

authority to sanction students for speech originating off campus serves to illustrate the confusion that exists due to the rapid integration of technology into modern culture and how difficult it can be for school administrators to decide whether or not they can act in similar situations.

So far, all of the discussed legal cases involve student that have been suspended or expelled as a result of their off campus speech. In *Doninger v. Niehoff*, a female high school student's language on a blog post directed at her school principal resulted in her being unable to run for school office (Conn, 2010). In this case, the court found that the *Tinker* standard had been satisfied, but further noted that "participation in voluntary, extracurricular activities is a rescindable 'privilege' for students, and not a right" (Conn, p. 96). This suggests that schools may face less strict standards for punishing students through revocation of eligibility for extracurricular activities than by issuing suspensions or expulsions.

Summary

The degree to which schools can discipline students for cyberbullying originating off campus that does not use school resources is still highly contentious. Overall, schools must be able to demonstrate that student actions result in or can reasonably be expected to result in a substantial disruption to school climate and function, although the standards for determining whether such a disruption has or will likely take place have not been clarified. It is worth noting that the type of discipline issued to the cyberbully may affect the result of court decisions, as seen in *Doninger v. Niehoff*.

III. IDENTIFYING ELEMENTS OF EFFECTIVE SCHOOL POLICIES

It stands to reason that the primary goal of cyberbullying programs and policies is to reduce and/or eliminate the amount of cyberbullying taking place. This results in two separate approaches that are used to combat cyberbullying. The first approach is to prevent any additional acts of cyberbullying from taking place, and the second is to resolve new cyberbullying incidents.

Key Elements of Prevention Strategies

To prevent something, there must first be a clear understanding of what it is. Therefore, the first step in developing an effective prevention strategy is to provide a clear, comprehensive definition of cyberbullying and related terms. Hinduja and Patchin (2015, p.11) define cyberbullying as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices,” which captures the essence of cyberbullying in a simple and fairly comprehensive statement. Because cyberbullying encompasses such a wide variety of behaviors, it may also be helpful to provide examples of different types of cyberbullying, such as harassment, denigration, outing, and cyberthreats. Additionally, Wiseman (2011) found that including language about off-campus behavior, and thereby informing students that their actions in cyberspace can have ramifications at school, was important for developing effective cyberbullying policies.

The next step to developing an effective prevention program is to educate students, staff, and parents about cyberbullying and relevant school policies. Each of these groups plays a critical role in the prevention of cyberbullying, so it is necessary that

everyone involved be aware of the problem of cyberbullying and its potential consequences. Staff members, as the ones who will convey the information to students, play a pivotal role in influencing student perceptions about cyberbullying (Hinduja & Patchin, 2015). Students are the primary users of new communication technologies and will decide whether or not to engage in cyberbullying depending on their own experiences and the messages they receive from society. Lastly, because students can access electronic communication virtually anytime and anywhere, it is important to involve the parents so both home and school environments create a climate that will dissuade students from engaging in cyberbullying.

In summary, there are two core elements that are necessary to effectively prevent cyberbullying: clearly defining what cyberbullying and related behaviors are, and educating students, staff, and parents about cyberbullying. Without an appropriate definition of cyberbullying, students may unintentionally engage in cyberbullying and staff members may be unable to sufficiently explain to students when cyberbullying may have occurred. Because technology has permeated so many aspects of daily life, prevention methods must be equally ubiquitous in order to be effective, so educating students, staff, and parents is necessary to create such an extensive anti-bullying climate.

Key Elements of Intervention Strategies

To resolve incidents of cyberbullying, students must first come forward and report cyberbullying. However, there is a low rate of reporting cyberbullying, with about 80% of victims not telling an adult (Hinduja & Patchin, 2015). There are a variety of reasons for why adolescents may not approach an adult when confronted with cyberbullying,

such as the fear of retaliation by bullies, the feeling that there is not much adults can do to resolve the situation, and the fear that technology privileges will be revoked (Cassidy, et al., 2009). To develop effective methods of reporting cyberbullying incidents, school administrators must address these concerns.

There are several actions administrators can take to make reporting cyberbullying more comfortable for students. To address the concern that students will face retaliation from bullies for coming forward, schools can establish anonymous and confidential methods of reporting incidents of cyberbullying, such as creating an online form that students can fill out and submit from the safety of their homes without fear of being seen talking to teachers or counselors about the bully. Another measure that school officials can take to allay student worries is to ensure that all reports of cyberbullying are taken seriously and dealt with appropriately. To make students feel secure that their technology privileges will not be revoked by reporting cyberbullying, school administrators should work with parents to convey the message that “shutting down” is not an effective solution and victims will not be punished for reporting cyberbullying. By taking these actions, school administrators can create a school climate that promotes the seriousness of cyberbullying and the school’s dedication to stopping it.

As demonstrated by the Anthony Zeno case described earlier, after cyberbullying has been brought to the attention of school officials, they have a responsibility to resolve the situation by stopping the bullying behavior. To that effect, school officials must first develop a clear understanding of the situation at hand, so they need a method for collecting evidence and determining the seriousness of the behavior. Therefore, a key

element for intervening in cyberbullying incidents is the implementation of a formal investigative procedure.

There are several goals that need to be addressed during the course of a cyberbullying investigation, such as collecting evidence, identifying who is involved, and determining the severity of the situation. One of the primary goals of an investigation is to collect evidence of cyberbullying, which can be done by saving texts and emails sent by the bully or by taking screenshots of other online behaviors. Then, school administrators must determine who is involved and assess the severity of the situation before they can respond. This can be done by identifying the bullies and victims, which may be difficult due to the anonymity commonly found in cyberspace, and ascertaining the type and duration of cyberbullying.

Once the cyberbully and corresponding behavior have been identified, school officials will have to take appropriate action based on the severity of the behavior and its impact on the victim. Because cyberbullying can present in many ways, shapes, and forms, consequences that are reasonable in one case of cyberbullying will not be suitable for every incident. Wiseman (2011) found and Hinduja and Patchin (2015) agree that establishing a continuum of disciplinary actions is essential to responding effectively to cyberbullying. Therefore, schools should establish a range of consequences extending from mild penalties, such as meeting with a counselor or writing an essay about the effects of cyberbullying, to more serious punishments, such as suspension or expulsion, outlining what type of discipline is appropriate for school administrators to impose on the aggressor, if necessary.

Finally, after identifying and responding to a report of cyberbullying, school officials must ensure their actions have achieved the desired effect of ending the cyberbullying behavior. Without any follow up to check that the bullying has ended, victims may face increasingly severe harassment when aggressors are not deterred by the actions of school administration, similar to what Anthony Zeno endured at his school. Therefore, a procedure for following up with victims after reports of cyberbullying is essential for developing effective school policies.

Summary

To reduce or eliminate the amount of cyberbullying in schools, comprehensive cyberbullying programs will have two main areas of focus: prevention strategies and intervention strategies. For prevention methods to be most successful, clearly defining cyberbullying and educating students, staff, and parents about it are crucial. When intervening in cyberbullying that has already occurred, school administrators need explicitly outlined policies to ensure that every cyberbullying incident is taken seriously and addressed appropriately. Therefore, schools should have specific guidelines in place to establish effective reporting and investigating methods and clearly defined consequences for different severities of cyberbullying behavior. Lastly, a follow up procedure is essential for ensuring that victims are no longer subjected to cyberbullying after school officials have been made aware of the situation.

IV. CONCLUSION

With technology playing an increasingly important part of the daily lives of adolescents, cyberbullying is an issue that school administrators will have to address on a more regular basis. However, cyberbullying presents a difficult problem for administrators because students can engage in cyberbullying outside of school but still disrupt the school environment. Case law in this area is still young and unrefined. While there have been some cases affirming the authority of schools to respond to student speech outside of school, such as *J.S. v. Bethlehem* and *Wisniewski*, the precise limits that schools can impose on off campus student speech has yet to be determined, resulting in confusing court decisions where nearly identical cases receive contradictory decisions, such as *J.S. v. Blue Mountain* and *Layshock*. Until more precise language regarding the extent of administrators' authority outside the school grounds is established, school officials face the troubling dilemma of protecting the victims of cyberbullying without violating the bully's right to free speech.

Currently, the only tests available for determining the validity of school sanctions on cyberbullies for off campus speech are the ones established in *Tinker*, which require a material and substantial disruption to the school environment or the violation of a student's rights by the bully. Many of the existing cases involving cyberbullying focus on the actions of students directed at school staff, so *Tinker's* substantial disruption test is the only frame of reference for school authorities, and the requirements to satisfy this test are still unclear. However, the results of *Doninger* may allow schools more freedom in disciplining cyberbullies with punishments other than suspension or expulsion.

When developing effective cyberbullying policies and programs, it is important that schools establish policies to both prevent cyberbullying and intervene when it is reported. Successful prevention methods require a clear understanding of what cyberbullying is and the education of students, staff, and parents on the topic. Without a specific definition of what types of behaviors the term “cyberbullying” encompasses, students and staff cannot be expected to respond appropriately when confronted with an incident of cyberbullying. Also, because cyberbullying is not confined to the school, parents must be involved in the school’s prevention program to encourage an anti-bullying climate both inside and outside of school.

Before school officials can intervene to stop cyberbullying, it must first be made aware to them. As such, an effective method of reporting cyberbullying incidents to administrators must be implemented. Successful reporting policies should include anonymous reporting methods, and guarantees that all reports will be taken seriously. Then, school administrators must have a specified method for investigating each report by collecting evidence, identifying everyone involved, and assessing the severity of the situation. Finally, a range of consequences for cyberbullying behavior should be established so that each case can be handled appropriately, and school officials should ensure that their actions were effective by checking that the reported behavior stops.

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