

TAKING STUDENT DEBATES & DISCUSSIONS DIGITAL

Topic Two—Cyberbullying: Should our democracy allow schools to punish students for off-campus cyberbullying?

Gonchar, Michael. "How Should Schools Address Cyberbullying?" *The Learning Network How Should Schools Address Cyberbullying Comments*. New York Times, 31 Oct. 2014. Web. 23 Feb. 2015.

How Should Schools Address Cyberbullying?

By MICHAEL GONCHAR OCTOBER 31, 2014 5:00 AM

Room for Debate recently asked readers to weigh in on how schools should deal with online bullies outside of the classroom. Here are excerpts from some of the opinions:

Stina Gumminos says first figure out why kids bully:

In the United States, it is assumed that children do bully, simply because they do. Maybe I have this completely wrong, or it could be a collision between different cultures, but I am from Sweden, and here we ask ourselves: Why do children bully? How can we make people more aware that this is simply not O.K., in any shape or form? Rather than discussing whether or not schools should regulate off-campus behavior, we should try to figure out why these kids bully, and how to make them understand that it is wrong. Problems needs to be fixed, not regulated.

Lilian Grae argues that schools have no authority off campus:

The domain of school stops after the last bell rings. Unless the Internet activity is being done on school time or in the classroom as an extracurricular activity, the school has no authority with what students do outside of school.

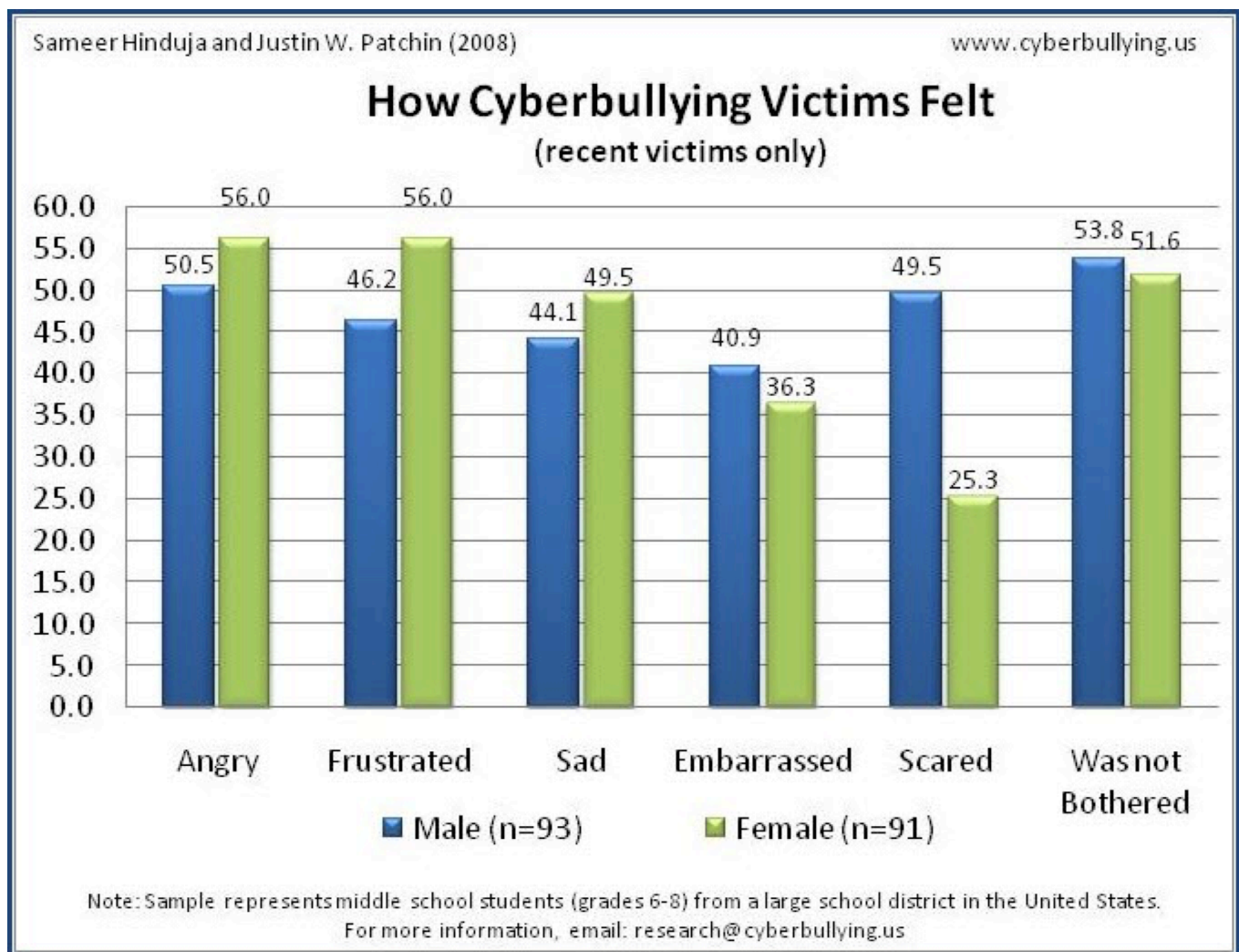
Khalilah L. Brown-Dean makes the case that schools should teach a class on Internet safety and decorum:

Schools should promote healthy interactions between students that strikes an appropriate balance between protecting civil liberties and promoting student safety. Internet safety and decorum are as essential to promoting a student's well-being as requiring physical education and health classes. Many schools have integrated technology into their curricula, and it's irresponsible not to include a component that emphasizes conduct.

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Hinduja, Sameer. *How Cyberbullying Victims Felt*. Digital image. N.p., n.d. Web. 24 Feb. 2015.



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Burger, Chief Justice. "Bethel School Dist. No. 403 v. Fraser." *Bethel School Dist. No. 403 v. Fraser*. Supreme Court of the United States, 7 July 1986. Web. 23 Feb. 2015.

Bethel School District No. 403 v. Fraser

The First Amendment did not prevent the School District from disciplining respondent for giving the offensively lewd and indecent speech at the assembly. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, distinguished. Under the First Amendment, the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, but it does not follow that the same latitude must be permitted to children in a public school. It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board. First Amendment jurisprudence recognizes an interest in protecting minors from exposure to vulgar and offensive spoken language, *FCC v. Pacifica Foundation*, 438 U.S. 726, as well as limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children. *Ginsberg v. New York*, 390 U.S. 629. Petitioner School District acted entirely within its permissible authority in imposing sanctions upon respondent in response to his offensively lewd and indecent speech, which had no claim to First Amendment protection. Pp. 680-686.

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"Cyberbullying Laws and School Policy: A Blessing or Curse? - Cyberbullying Research Center." *Cyberbullying Research Center Cyberbullying Laws and School Policy A Blessing or Curse Comments*. N.p., 28 Sept. 2010. Web. 24 Feb. 2015.

Many schools are now in a difficult position of having to respond to a mandate to have a cyberbullying policy, without much guidance from the state about the circumstances under which they can (or must) respond. When folks ask me if I think there needs to be a “cyberbullying law” I basically respond by saying “perhaps – but not the kind of law most legislators would propose.” I would look for a law to be more “prescriptive” than “proscriptive.” By that, I mean I would like to see specific guidance about *how* and *when* schools can take action in cyberbullying incidents. Many states have taken the easy way out by simply passing laws saying effectively “schools need to deal with this.” Not only have they stopped short in terms of providing specific instructions or even a framework from which schools can evaluate their role, but they have not provided any additional resources to address these issues. Some states are now requiring schools to educate students and staff about cyberbullying or online safety more generally, but have provided no funding... Unfunded mandates have become cliché in education, and this is just another example.

Moreover, school administrators are in a precarious position because they see many examples in the media where schools have been sued because they took action against a student when they shouldn't have or they failed to take action when they were supposed to. Schools need help determining where the legal line is.

Many states already have existing ... remedies to deal with cyberbullying. Extreme cases would fall under criminal harassment or stalking laws or a target could pursue civil action for intentional infliction of emotional distress or defamation, to name a few. Bullying ... that occurs at school is no doubt already subject to an existing bullying policy. To be sure, schools should bring their bullying and harassment policies into the 21st Century by explicitly identifying cyberbullying as a proscribed behavior, but they need to move beyond the behaviors that occur on school grounds or those that utilize school-owned resources. But in order to do this they need guidance from ... so that they draft a policy and procedure that will be held up in court. School, technology, and privacy lawyers disagree about what should (or must) be in a policy. It's no wonder many educators are simply throwing their hands up.

We really like [Next page of evidence], even though like other efforts it demands a lot from schools without a corresponding increase in resources. This section is key:

[See next document]

This puts schools, students, and parents on notice that there are instances when schools can discipline students for their off campus behavior. It will take many years, though, before we will know if this law can be used as a model. Schools will need to pass policies based on the law; a school will then need to discipline a bully based on the new policy; then they will need to be sued; then the case will need to be appealed. Perhaps then the case will get to a significant enough court that it will matter... In the meantime, lobby your legislators to pass meaningful, prescriptive laws instead of laws that simply say “cyberbullying is wrong, now YOU do SOMETHING about it.” It's election time, so I'm sure your local representative will be all ears...

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Pupil Safety and Violence Prevention, §§ 155-155:1-155:6 (General Court of New Hampshire 2010). Web.

HB 1523

AN ACT revising the pupil safety and violence prevention act.

193-F:4 Pupil Safety and Violence Prevention.

I. Bullying or cyberbullying shall occur when an action or communication as defined in RSA 193-F:3:

- (a) Occurs on, or is delivered to, school property or a school-sponsored activity or event on or off school property; or
- (b) Occurs off of school property or outside of a school-sponsored activity or event, if the conduct interferes with a pupil's educational opportunities or substantially disrupts the orderly operations of the school or school-sponsored activity or event.

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"Cyberbullying." *Www.ci.annapolis.md.us*. N.p., n.d. Web. 24 Feb. 2015.

Cyberbullying

What it is

"Cyberbullying" is when a child, preteen or teen is tormented, threatened, harassed, humiliated, embarrassed or otherwise targeted by another child, preteen or teen using the Internet, interactive and digital technologies or mobile phones. It has to have a minor on both sides, or at least have been instigated by a minor against another minor. Once adults become involved, it is plain and simple cyber-harassment or cyberstalking. Adult cyber-harassment or cyberstalking is NEVER called cyberbullying.

Facts about Cyberbullying

1. Nearly 42% of kids have been bullied online and almost one in four have had it happen more than once.
2. Among this percentage, being ignored and disrespected were the most common forms of cyber bullying.
3. Nine out of ten middle school students have had their feelings hurt online.
4. About 75% have visited a Web site bashing another student.
5. Four out of ten middle school students have had their password(s) stolen and changed by a bully who then locked them out of their own account or sent communications posing as them.
6. About 21% of kids have received mean or threatening e-mails.
7. The psychological and emotional outcomes of cyber bullying are similar to real-life bullying outcomes, except for the reality that with cyber bullying there is often no escape. School ends at 3 p.m., while the Internet is available all the time.
8. The primary cyber bullying location where victimizing occurs, at 56%, is in chat rooms.
9. Girls are about twice as likely as boys to be victims and perpetrators of cyber bullying.
10. About 58% of kids admit someone has said mean or hurtful things to them online. More than four out of ten say it has happened more than once.
11. Cyber bullying has increased in recent years. In a national survey of 10-17 year olds, twice as many children indicated they had been victims and perpetrators.



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Gonchar; Michael. "Obama's New Education Proposal: Change, or Changed Subject?" New York Times, New York Times Magazine., 31 Oct 2014. Web. 25 Feb 2015.

Schools should promote healthy interactions between students that strikes an appropriate balance between protecting civil liberties and promoting student safety. Internet safety and decorum are as essential to promoting a student's well-being as requiring physical education and health classes. Many schools have integrated technology into their curricula, and it's irresponsible not to include a component that emphasizes conduct.



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Patchin; Justin. "Cyberbullying Laws and School Policy: A Blessing or Curse?". Web. n.p. 28 Sep 2010. 25 Feb 2015

Many states already have existing criminal and civil remedies to deal with cyberbullying. Extreme cases would fall under criminal harassment or stalking laws or a target could pursue civil action for intentional infliction of emotional distress or defamation, to name a few. Bullying (whatever the form) that occurs at school is no doubt already subject to an existing bullying policy. To be sure, schools should bring their bullying and harassment policies into the 21st Century by explicitly identifying cyberbullying as a proscribed behavior, but they need to move beyond the behaviors that occur on school grounds or those that utilize school-owned resources. But in order to do this they need guidance from their state legislators and Departments of Education so that they draft a policy and procedure that will be held up in court. School, technology, and privacy lawyers disagree about what should (or must) be in a policy. It's no wonder many educators are simply throwing their hands up.



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Hoffman; Jan. "Online Bullies Pull Schools Into the Fray". *New York Times*. Web. N.p. 27 Jun 2011. 25 Feb 2015

Judge Wilson also threw in an aside that summarizes the conundrum that is adolescent development, acceptable civility and school authority.

The good intentions of the school notwithstanding, he wrote, it cannot discipline a student for speech, "simply because young persons are unpredictable or immature, or because, in general, teenagers are emotionally fragile and may often fight over hurtful comments."

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**Patchin; Justin. "Can a School Respond to Off-Campus Cyberbullying?"
Cyberbullying Research Center. Web. N.P. 19 Mar 2012. 25 Feb 2015**

We discuss the legal issues associated with schools responding to cyberbullying incidents quite often in this space. You can find many blog posts which attempt to clarify the variety of issues raised (see here and here) and we have a summary fact sheet that is available here. Of course the law, and our understanding of it, is constantly evolving. So I thought I would post a (relatively) simplified update with the lineage of case law that demonstrates that schools do in fact have the authority to apply reasonable discipline to students who participate in cyberbullying while away from school. Below I provide a brief one or two sentence summary of the ruling, but I encourage everyone to read the actual facts of each case so that you can better understand the unique contexts of each incident.

Kowalski v. Berkeley County Schools (2011): Schools can discipline students for their online speech, consistent with Tinker. "Kowalski used the Internet to orchestrate a targeted attack on a classmate, and did so in a manner that was sufficiently connected to the school environment as to implicate the School District's recognized authority to discipline speech which "materially and substantially interfere[es] with the requirements of appropriate discipline in the operation of the school and collides] with the rights of others."



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Schargel; Franklin. "Bullying: What Schools, Parents, and Students Can Do" The Blog, The Blog Huffpost., 23 February 2013. Web. 25 Feb 2015.

According to the FBI, "Bullying remains one of the largest problems in schools, with the percentage of students reportedly bullied at least once per week steadily increasing since 1999." Additionally, cyberbullying has become more rampant and has contributed to the suicides of multiple children. The Internet has unleashed meanness to a degree unseen before. Thanks to the accessibility to the Internet and the affordability of new technology, bullies now have multiple ways to harass their victims. The current generation has the added ability to use technology to expand their reach and the extent of their attacks exponentially.



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**Stone; Carolyn. "Cyber Bullying: Disrupted Conduct of Free Speech".
ASCA. Web. N.p. 1 May 2013. 25 Feb 2015.**

In *J.S. vs. Blue Mountain School District*, a Pennsylvania middle school student created on her home computer a spoof MySpace profile page for her principal calling him a hairy slut who hit on students, as well as and other vulgar personal attacks. According to the Third Circuit Court of Appeals, the school district failed to demonstrate it could reasonably forecast that the student’s words would cause substantial disruption in school, and, therefore, the student’s suspension was a violation of her First Amendment right to free speech.

The companion case, *Layshock vs. Hermitage School District*, also involved a Pennsylvania high school student who created a profile of his principal on MySpace that was disrespectful and lewd. The Third Circuit Court found that the school district should not have punished the student “for expressive conduct which occurred outside of the school context.”