

<https://upfront.scholastic.com/issues/2017-18/100917/should-schools-punish-off-campus-cyberbullying.html#1140L>

Should Schools Punish Off-Campus Cyberbullying?

Pro-punishment: Justin Patchin, Co-Director, Cyberbullying Research Center

Experts say cyberbullying is on the rise. And because it can happen anywhere, schools are faced with a dilemma: how to handle cyberbullying that takes place off campus. In recent years, states like CA and IL have passed laws allowing schools to punish students cyberbullying away from school. But free speech advocates have challenged the laws in court. According to a 1969 Supreme Court case (*Tinker V. Des Moines*), educators can restrict students' speech only if it causes "a substantial disruption" of school activities. So should schools be allowed to punish students for cyberbullying when it occurs after hours?

The Cyberbullying Research Center has been collecting data on online harassment for 15 years. During that time, we've surveyed more than 20,000 middle & high school students from across the U.S. We know from that research how significant the problem is and the impact it can have.

At least one in three middle and high school students have experienced cyber bullying. They are tormented online in ways that can make learning at school extremely difficult. Educators can and should respond to these incidents even if they occur away from the classroom.

When students are cyberbullied they're usually being harassed at school. Additionally, research shows when students are cyberbullied, more often than not, they're also being harassed at school. Online abuse, therefore, can indicate school-based bullying which schools are required to respond to.

Our research shows that students who believe schools will punish them for cyberbullying are less likely to torment their classmates than those who don't fear punishment. Teachers and principals are best equipped to deal with issues that come up between students. Of course, it's important that the school's response to online bullying is appropriate and educational. For example, administrators could require students to create anti-cyberbullying materials or give presentation to younger kids about acceptable online behavior. What they shouldn't do is ignore cyberbullying by students, even if it's done out of school.

Anti-punishment: Edwin Yohnka, Director of Communications and Public Policy, ACLU of Illinois

Social media makes it easy for young people to connect with their peers, anytime, anywhere. Unfortunately, some students use the internet to harass and shame their classmates. We can all agree that cyberbullying is wrong and should never be tolerated. However, it's a matter that should be dealt with by parents—not school officials.

Educators have the authority to discipline students when they violate school rules on school grounds. But if students act out off campus, it's up to parents to decide the punishment. The same should go for online activity. If cyberbullying takes place in the afterhours, it should be handled by parents and only brought to the attention of the school administration as necessary, such as if a victim feels unsafe in the classroom.

When schools start to police social media posts it could infringe on students' First Amendment right to free speech. **After all, the First Amendment exists to protect not just speech we can all agree with, but speech that is controversial and impolite.** In more than one case, courts have ruled that schools can't limit students' online posts when they're outside of a class unless the messages cause a "substantial disruption" at school.

Another concern is that when you create an opportunity for schools to punish students for something that happens on their own time, it can be hard to know where to draw the line: There's a real risk that schools could end up punishing students for things they say online that may be inappropriate, but aren't necessarily cyberbullying.

Instead of punishing students, a better way to combat cyberbullying would be for schools to teach appropriate online behavior along with explaining why cyberbullying is wrong and how it can hurt its victims. That way, teachers can be educators, not full-time disciplinarians.

<https://www.aclu.org/blog/free-speech/student-speech-and-privacy/some-schools-need-lesson-students-free-speech-rights>

Some Schools Need a Lesson on Students' Free Speech Rights

School is back in session, and that means school administrators may be back to surveilling students on social media and unjustly disciplining them for what they say on it. Moreover, experience shows that discipline for student expression is not always applied evenhandedly, and can be invoked to silence youth of color and other marginalized students.

Fortunately, the First Amendment protects student speech. While public schools can regulate student speech that substantially disrupts the functioning of the school, as the Supreme Court held in the landmark 1969 case *Tinker v. Des Moines*, students do not lose their First Amendment rights simply by virtue of walking into school. Nor do they give up their right to speak out outside of school simply by virtue of being a student. To the contrary, outside of school, students enjoy essentially the same rights to protest and speak out as anyone else.

In the last five years, more than 100 public school districts and universities have hired companies to monitor the social media of their students. At least one district asked a surveillance company for alerts on any post mentioning “protest” or “walkout.” Another surveillance company offered to help public schools monitor “behavioral information” about specific individuals, including keeping tabs on their conversations with others.

Much like other forms of surveillance, government monitoring of students’ social media accounts — which often includes surveillance of their lives outside of school — can have a disproportionate effect on people of color.

For example, after an Alabama town contracted with a consulting firm to watch students’ social media, more than 85% of the students expelled due to social media posts in a one-year period were students of color, even though more than 60% of the town’s population is white. One student was expelled for wearing a sweatshirt depicting her murdered father, and another was expelled for posting a photo of himself “holding too much money.”

Elsewhere, the ACLU has challenged districts that disciplined students of color over pictures taken while dancing at home, with the schools alleging that these constituted “gang-related messages.”

Schools are meant to teach the Constitution — and follow it. That means respecting equality and freedom of speech. And when students speak out on the political issues of the day, it should lead to engagement, not wrongheaded punishment.

Bullying

Below are some basic facts about the current state of the Pennsylvania law, its limitations and what students and their families can do if faced with a bullying situation.

The Law

Currently 46 states including PA have anti-bullying statutes. These statutes range from very specific laws which contain definitions, requirements for detailed policies, recommended courses of action and mental health treatment for perpetrators and victims, to very basic policies which address the issue but provide very little guidance for schools as to how to implement an anti-bullying program or policies. Pennsylvania's law tends to fall within the "basic" type of legislation. Interestingly enough, although the law is a good starting point, there are many issues it does NOT address – which could potentially lead to problems.

Some Issues with The Law:

1. There is no outright prohibition of bullying – just a requirement that school districts have a policy.
2. The law addresses an "intentional" "electronic" act, but does not specifically address cyberbullying.
3. The law addresses electronic, verbal, written or physical acts, but does not address “relational” bullying such as excluding someone socially, spreading rumors, etc.
4. The law allows school districts to create policies which address conduct outside the school setting or school sanctioned activities, but does not require it. Unfortunately this is something we hear about **more** and more.
5. The law allows school districts to develop prevention and education programs, but contains no requirement to do so.
6. The law contains no reporting requirements for districts to ensure that the policies are being followed and to track their effectiveness.

Pending Legislation

In 2013 The PASS (Pennsylvania Safe Schools) Act was introduced to the Pennsylvania House. The Act attempts to expand the anti-bullying statute. Among other things, it seeks to:

1. Require educators to attend a minimum of 4 hours of bullying and cyberbullying prevention training per year;
2. Identify certain actual or perceived characteristics on which bullying may be based (ie; race, religion, sexual orientation, physical or mental handicap, etc.);
3. Specifically define cyberbullying;
4. Contain a reporting requirement for school districts, and
5. Address conduct that occurs outside the school setting, but still interferes with the student's ability to take advantage of the services offered by the school.

The bill does appear to have significant bi-partisan support, but still must have a vote and then clear the Pennsylvania Senate before it could ever become effective. Bottom line – there's still a long way to go.