

## **Policing Internet Harassment: How Schools Can Combat Cyberbullying**

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In today's tech-saturated society, principals face the difficult task of not only protecting students from traditional bullying (i.e., calling classmates names or stealing lunch money), but guarding against cyberbullying. Unlike traditional bullying, cyberbullying does not necessarily occur in school hallways—it often occurs off school property entirely. Thus, it is no surprise that one of the most challenging tasks for the modern school administrator is attempting to police cyberbullying that occurs outside of school while at the same time not infringe upon the privacy rights of the children at the school.

It is no secret that not only schools, but legislatures and courts across the country are struggling to create policies and laws that address cyberbullying *and* protect the privacy interests of the children at school. Traditionally, our society generally is willing to recognize two types of privacy protections: (1) the right of individuals to express one's self, which is generally protected by the First Amendment's protection of freedom of speech; and (2) the right to be free from unreasonable government intrusion, which is protected by the Fourth Amendment.

The most prominent First Amendment school speech case to date is *Tinker v. Des Moines Independent Community School District*<sup>1</sup>. In *Tinker*, the Supreme Court held that in order for school officials to censor speech, it must be shown that the speech "materially and substantially interferes with the requirements of appropriate discipline in the operation of the school." The Court applied its analysis in *Tinker* to *Hazelwood School District v. Kuhlmeier*<sup>2</sup>, when it held that a school principal could remove certain articles about teenage pregnancy and divorce from the school paper. In *Morse v. Frederick*<sup>3</sup>, the Supreme Court upheld the decision of a high school principal to ban a sign that the principal considered to be promoting illegal drugs.

The Fourth Amendment operates to protect the general public from government searches that are not based on individualized suspicion. However, a much lower standard has traditionally been applied in a school setting. In *New Jersey v. T.L.O.*<sup>4</sup>, the Supreme Court determined that a school administrator may perform an in-school search of a student's belongings absent probable cause. *T.L.O.* was extended in 2002 when the Court held in *Vernonia Board of Education v. Earls*<sup>5</sup> that a school district could perform random suspicionless drug testing on students in all competitive extracurricular activities.

It is apparent that the Supreme Court's First Amendment and Fourth Amendment decisions strengthen a school's authority to discipline student expression. The difference, however, between the cases cited above and cyberbullying is the fact that cyberbullying does not have to occur on school grounds. Unfortunately, it remains to be seen if the Supreme Court is willing to extend the flexible constitutional standards applicable in school to activities that occur off school grounds. Given the lack of guidance from the Supreme Court, states and lower federal courts have been unable to craft a uniform response. Although state legislatures aim at deterrence and prevention of cyberbullying, many of these laws contain potentially unconstitutional provisions.

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<sup>1</sup> 393 U.S. 503 (1969).

<sup>2</sup> 484 U.S. 260 (1988).

<sup>3</sup> 551 U.S. 393 (2007).

<sup>4</sup> 469 U.S. 325 (1985).

<sup>5</sup> 536 U.S. 822 (2002).

Given the uncertainty of the law in this area, perhaps the best way to address the issue is not through arduous rules and regulations, but through education. Schools should educate both students and teachers about responsible Internet use. Administrators and teachers should become familiar with social networking sites, including terms and slang used by social network users. Teachers and administrators should educate students about the importance of using technology responsibly and not as a tool to harass fellow students.

Administrators, teachers and parents should be trained to recognize the signs of cyberbullying. For example, a child may be a target of cyberbullying if he or she is timid or uneasy when using electronic devices, appears angry or depressed after using technology, or avoids discussions about what they are doing online. This, of course, is not an exhaustive list. For more information on cyberbullying in general and its warning signs, visit the [Cyberbullying Research Center](#).

Although the First Amendment may prevent schools from censoring student speech, and the Fourth Amendment may prevent schools from performing suspicionless searches, this does not mean that schools are powerless to combat cyberbullying. In addition to education, schools should emphasize to its students that cyberbullying will be taken seriously. Student speech that substantially interferes with the operation of school can be limited. Moreover, the Fourth Amendment would allow for searches of a student's belongings if there is reasonable suspicion that a crime has occurred. Currently, an overwhelming majority of states have laws against anti-bullying. Thus, administrators and teachers are within their rights to identify acts of cyberbullying and punish the responsible students.

Given the uncertain nature of the law in this area, it is important that schools combat cyberbullying by educating all involved. Education is perhaps the most effective and least problematic solution to combat cyberbullying while at the same time respecting the privacy rights of the students. The best way to police cyberbullying is to promote a culture that condemns it.

### **Resources**

- [“Cyberbullying: What Teachers and Schools Can Do,”](#) by Caralee Adams in *Scholastic Instructor*.
- [“Cyberbullying: Identification, Prevention, & Response,”](#) by Sameer Hinduja and Justin Patchin of the Cyberbullying Research Center.