

Cyberbullying: Law and Policy

Schoolyard behavior like teasing is often considered to be a normal part of growing up. Everyone seems to have experienced it or witnessed it in their childhoods. When it threatens the safety and well-being of students, however, it crosses the line into bullying. When done on the Internet, bullying poses new challenges for students, parents, schools, and society.

Generally, bullying is purposefully aggressive, antagonistic behavior by one person or group of people against another. It is defined by an imbalance of power, so that the victim is somehow weaker or more vulnerable than the bully. Bullying is usually systematic and ongoing. If severe enough, however, it could occur in a single incident.

Bullying can be physical, verbal, or emotional. It can involve racism and other forms of discrimination. Direct bullying occurs in the presence of the victim. Indirect bullying, like spreading rumors, also can lead to emotional pain and can provoke physical harm.

When Bullies Go Online

In a widely viewed 2015 TED Talk, Monica Lewinsky described herself as the first victim of cyberbullying. Lewinsky became infamous after the news of her 1998 affair with then-President Bill Clinton became public. She stated, “I went from being a private figure to being a publicly humiliated one worldwide. There were mobs of virtual stone-throwers.” Since then, Lewinsky has used her experience to become an advocate for victims of cyberbullying across America. Although Lewinsky may have been one of the first to experience this dark side of social media and technology, she was by no means the last.

The Cyberbullying Research Center has defined cyberbullying as incidents “when someone repeatedly harasses, mistreats, or makes fun of another person online or while using cell phones or other electronic devices.” The key is that a bully will use technology to humiliate or hurt another person.

It is a growing problem among children and teens. According to the Pew Research Center, 95 percent of teens now report they have a smartphone or access to one. Of this group, 45 percent of teens now say they are “online on a near-constant basis.” As of 2018, Tulane University reported that 70 percent of K-12 kids have witnessed cyberbullying take place. There is also overlap between the bullies and the bullied: the i-SAFE Foundation reports that about 50 percent of adolescents have both been cyberbullied and engaged in cyberbullying themselves.

Cyberbullying can be more than harassment or teasing; it may involve threats and hate-speech and can encourage or lead to physical attacks. Many bullies post video clips of themselves harassing or abusing others or publish personal information about their victims. They also might attempt to assume the identity of their victim, publishing embarrassing information that can lead to ridicule or abuse by others.

Another type of cyberbullying is known as “catfishing,” which refers to someone using a fictitious online profile to lure the victim into an online relationship. Catfishing can also be used to trick victims into sending nude photos or videos, which are often used for blackmail or humiliation later. While there are few statistics on how many students have been affected by catfishing, the tragic case of 13-year-old Megan Meier (mentioned below) highlights its very real implications.

Effects Of Bullying

In January of 2018, 12-year-old Gabbie Green committed suicide after being bullied by other students. Fellow students had participated in spreading rumors that Gabbie had sexually transmitted diseases, calling her vulgar names, and threatening to expose personal information about her life, both through cell phones and over social media. After the suicide, two middle school students involved in the cyberbullying faced criminal charges as a result of their behavior.

The Gabbie Green story shows how victims are at great risk of depression. Victims may also experience anxiety, loss of self-esteem, and relationship problems with parents and friends. They may suffer physical pain and gastrointestinal problems due to stress. Bullying can have negative effects on victims’ academic performance and other activities. Tulane University researchers found that cyberbullying victims are 2 to 9 times more likely to contemplate suicide.

Bullying also affects the bully. Students who bully are more likely to get into fights, vandalize property, and drop out of school. Bullies are more likely to be convicted of crimes. It is common for bullies to actually be “bully-victims,” or victims who turn around and bully others.

Schools face increasing pressure to control bullying and cyberbullying. Students who are bullied are more likely to miss school leading to high levels of truancy. Bullying may cause a loss of morale in students and lead to feelings of disrespect towards teachers. Additionally, severe bullying problems can cause dropout rates to rise.

Criminal Laws

Many existing laws already allow criminal prosecution for threats, stalking, identity theft, and many forms of harassment. Some argue that these existing laws are good enough to fight against cyberbullying. Others argue that specific laws making cyberbullying a crime are necessary.

In 2006, Lori Drew believed that her Missouri neighbor, 13-year-old Megan Meier, had spread rumors about her daughter. With the help of one of her employees and her own daughter, Drew created a social-media account for a fictional boy named Josh Evans who befriended Megan online. Megan sent “Josh” personal information, but “Josh” turned on

Megan and posted the message: “The world would be a better place without you.” Later that day, Megan hanged herself.

Despite public outrage, authorities had trouble finding a criminal law under which Drew could be prosecuted. Because Drew violated the social media site’s terms of service, the U.S. attorney general prosecuted her for violating the Computer Fraud and Abuse Act, a law designed to prevent fraud and confront problems of computer hacking. A jury found Drew not guilty of violating that law.

In 2008, in response to backlash over the Megan Meier case, the Missouri state legislature expanded its harassment laws to criminalize harassment from a computer, text messages, and other electronic means. The law also required school boards to create new anti-harassment policies. Many states have followed suit and expanded their laws to include electronic communication.

The Megan Meier Cyberbullying Prevention Act was introduced in Congress in 2009. It would criminalize interstate communications that amount to cyberbullying. The law never passed and died in a congressional committee. As of 2018, there is still no federal law that directly addresses bullying.

In some cases, bullying overlaps with discriminatory harassment which is covered under federal civil rights laws enforced by the U.S. Department of Education and the U.S. Department of Justice. No matter what label is used (e.g., bullying, hazing, teasing), schools are obligated by these laws to address conduct that is bullying based on a student’s race, color, national origin, sex, disability, or religion.

Civil Laws

Even if no crime has taken place, a victim of cyberbullying might file a civil lawsuit against a bully, the bully’s family, a school, or school district, depending on the facts. The difference between civil law and criminal law is that civil law describes private rights, but criminal law describes those actions that are offenses against society as a whole.

In a civil case, there are penalties other than incarceration for someone who violates the rights of others. Monetary penalties are called damages. In a criminal case, however, there is usually a punishment of incarceration, namely jail or prison, and often monetary fines.

Intentional infliction of emotional distress and defamation are examples of causes of action within the civil justice system. Intentional infliction of emotional distress occurs when someone intentionally or recklessly causes severe emotional distress in another. The conduct must be “extreme and outrageous.” Mere insults, annoyances, or low-level threats will not suffice. Nonetheless, perpetrators potentially could be liable for a lot of money in damages.

Defamation occurs when someone communicates false statements that injure another's reputation. If a statement is true, however, it is generally not defamation. Let's say Brenda sends e-mails to all her friends at school falsely accusing Victor of stealing money out of someone's backpack. Again, not only would it be cyberbullying, but Victor has a good claim that his reputation has been smeared. He might be able to sue Brenda for damages.

Schools and Cyberbullying

Schools face a dilemma when it comes to cyberbullying. Schools can regulate student conduct on campus. Much cyberbullying, however, originates off-campus and is done on home computers or from cell phones, even if it relates to events and people at a school.

Some feel that the school should be the primary agent in handling the cyberbullying problem because school authorities are in the best position to observe student conduct. Schools traditionally discipline bullies for their behavior, and they might provide resources for counseling of both bullies and victims. Cyberbullying done on or off campus, however, may not amount to a crime, such as stalking.

Legislatures can help by defining the schools' responsibilities. In 2008, legislation in Florida allowed school administrators to punish cyberbullying that occurs off-campus if it "has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or has the effect of substantially disrupting the orderly operation of a school." A number of states have crafted similar statutes. However, not all states explicitly address what happens when the bullying occurs off campus, leaving it up to school districts to develop their own policies.

The California education code specifically addresses cyberbullying. In that code, a superintendent or school principal may recommend that a student be suspended or expelled for engaging in "bullying committed by means of an electronic act...directed specifically toward a pupil or school personnel." The cyberbullying, however, must be "related to school activity" to be punishable.

The Supreme Court has provided some guidance. In *Tinker v. Des Moines*, the court held that students wearing armbands in protest of the Vietnam War were engaged in protected speech under the First Amendment. Nevertheless, schools could constitutionally regulate student speech or expression that causes a "substantial interference" at the school.

Writing & Discussion

1. What is bullying? Do you agree that the Internet has increased the problem of bullying? Why or why not?

2. Why do schools face a dilemma about punishing a bully when the cyberbullying occurs or originates off campus?
3. In your opinion, what approach to addressing the problem of cyberbullying is the most effective? Should the laws be more or less strict?

Activity: A School Takes on Cyberbullying

Each of the five scenarios listed below involves an allegation of cyberbullying at the hypothetical Kinseytown High School. The school has a policy on bullying:

The administration of Kinseytown High School believes that all students have a right to a safe and healthy school environment. The school will not tolerate behavior that infringes on the safety of any student. A student shall not intimidate or harass another student through words or actions. Such behavior includes: direct physical contact, such as hitting or shoving; verbal assaults, such as teasing or name-calling; and social isolation or manipulation. Any student who engages in bullying may be subject to disciplinary action up to and including expulsion.

This policy applies to students on school grounds, while traveling to and from school or a school-sponsored activity, during the lunch period, whether on or off campus, and during a school-sponsored activity.

In small groups, look at the scenarios and answer these questions:

- (1) Is this an example of cyberbullying? Why or why not?
 - (2) If so, what discipline should the school impose? Why?
 - (3) What are the legal consequences, if any, in this example?
1. Penelope and Rosetta work together on the Kinseytown High yearbook. They are usually friends, but have a heated disagreement over the artwork for the yearbook's cover. During lunch period, Penelope sends a text message to Rosetta stating "I'm so mad I can't even sit near you. Leave me alone today."
 2. Marla is a new student at school. In the school computer lab, William sets up a page on NowPic called "Marla Go Home!" Several students post derogatory messages about Marla's appearance, calling her a "wannabe" and a "slime of a person." Marla sees the page and leaves early. She stays at home for several days.
 3. One Saturday, Herman and Stevie create an Instagram account impersonating Alex, a student they dislike. At Herman's home, the two use Alex's name and a photo of Alex to set up the account. In Alex's name, they post photos and captions insulting other students. When Alex arrives at school on Monday, three students who believe they were insulted by Alex punch and kick him.

4. Robert is a popular “class clown” and often “roasts” other students by making fun of them in front of small audiences during passing periods and after school. On the day after the school election, Robert posts a message about Milton, the new class president, on his Snapchat story. Robert is friends on Snapchat with many other students at Kinseytown High. The message states “I can’t keep it a secret anymore. Milton stuffed those ballots when no one was looking! I SAW him!” There is no evidence that Milton tampered with the election.
5. Arnie and Edwin do not get along. One Sunday afternoon, Arnie sends threatening e-mails to Edwin. One e-mail reads, “I hate your guts! How about I put a bullet in you when I see you at school tomorrow? How do you like that?” Edwin reads the e-mails and informs his parents.