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Cyberbullying: A Review of the Legal Issues Facing Educators

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School districts are often given the challenging task of addressing problematic online behaviors committed by students while simultaneously protecting themselves from civil liability by not overstepping their authority. This is difficult, because the law concerning these behaviors is ambiguous and continuously evolving, and little consensus has yet been reached regarding key constitutional and civil rights issues. In the present article, the authors aim to shed light on some of the critical legal questions faced by school administrators by first reviewing several legislative actions and court cases involving problematic offline and online student speech or expressions. Next, the authors analyze the dispositions and extract principles that can inform and direct prevention and response efforts by educators. They conclude by underscoring the challenges of balancing legal guidance with humane consideration of the context and consequences of cyberbullying victimization among youth.

Keywords: bullying, cases, court, cyberspace, harassment, Internet, law, legal

Cyberbullying among youth is a problem affecting a meaningful number of students each year, and, by extension, the educators and administrators who care for them in the school environment (Hinduja & Patchin, 2009). Not only does experience with cyberbullying undermine youth participation and interaction online, recent research has found that it leads to negative emotions such as sadness, anger, frustration, embarrassment, or fear (Berson, Berson, & Ferron, 2002; Cowie & Berdondini, 2002; Ybarra & Mitchell, 2007), which correspondingly have been linked to delinquency and interpersonal violence among youth (Aseltine, Gore, & Gordon, 2000; Broidy & Agnew, 1997; Mazerolle, Burton, Cullen, Evans, & Payne, 2000; Mazerolle & Piquero, 1998). Cyberbullying has also been tied to low self-esteem and suicidal ideation, school difficulties, assaultive conduct, substance use, carrying a weapon to school, and traditional bullying offending and victimization (Hinduja & Patchin, 2007, 2008, 2009; Patchin & Hinduja, 2010; Ybarra, Diener-West, & Leaf, 2007; Ybarra & Mitchell, 2004).

Given that the majority of cyberbullying instances are known peer-based rather than stranger-based (Kowalski & Limber, 2007; McQuade & Sampat, 2008), the school is implicated in a large number of cases because that is where adolescents interact with peers most often. School districts are given the task of addressing problematic online behaviors committed by students while attempting to protect themselves from civil liability. This is made more difficult because the law concerning these behaviors is continuously evolving, and little consensus has yet been reached regarding key constitutional and civil rights questions. As a result, many school district personnel are justifiably reluctant to get involved in cyberbullying cases, because they fear they will overstep their legal authority (Willard, 2007). Similarly, law enforcement officials are hesitant to intervene in cyberbullying cases unless there are explicit violations of criminal law (e.g., harassment, stalking, felonious assault). It is important to emphasize, however, that inaction may be construed as action. Furthermore, as we discuss in this article, court history seems to demonstrate that school administrators have a legal obligation (notwithstanding a moral duty) to take action when harassment (online or off) is brought to their attention (Shariff & Hoff, 2007; Willard, 2007).

In the present work, we aim to shed light on some of the critical legal questions faced by school administrators through a review of several foundational legislative actions and court rulings that have shaped the way schools intervene and discipline the inappropriate behaviors of students. These can serve as guiding framework through which current legal decisions are being made on cases involving electronic speech and cyberbullying. We summarize a number

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of recent court cases implicating the use and misuse of Internet communications, and we focus attention on the pivotal issues in each while determining what should be learned across their landscape. Then, we attempt to distill these lessons into directives for school administrators with respect to preventing and responding to cyberbullying incidents. Of paramount concern is balancing legal guidance with humane consideration of the context and consequences of cyberbullying victimization among youth.

Harassment, discrimination, and civil rights

Harassment has always occurred among individuals, but it has been explicitly prohibited in U.S. law for only about the past half century. The matter of harassment (in the form of discrimination) in the context of public education first arose in the Civil Rights Act of 1964. Among its other aspects, this law specifically outlawed segregation on the basis of race in the school system but more generally led to the prohibition of harassment on the basis of race, ethnicity, or religion in public places. The Civil Rights Act was followed by the equally important Title IX of the Educational Amendments of 1972, which involved the intersection of sexual harassment and public education in the United States. Specifically, the Educational Amendments of 1972 (Title IX) states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Collectively, these pieces of legislation compel school administrators to take action when they observe or are made aware of behavior that is discriminatory in nature or that violates the civil rights of students or staff members.

Two somewhat recent Supreme Court rulings involving sexual harassment reinforce these principles. In *Gebser v. Lago Vista Independent School District* (1998), a student who had been in a sexual relationship with a teacher sued the school district for sexual harassment because the district failed to provide her with an avenue for reporting the abuse. The court ruled that school districts can be held liable for damages under Title IX if "an employee with supervisory power over the offending employee actually knew of the abuse, had the power to end it, and failed to do so" (*Gebser et al. v. Lago Vista Independent School District*, 1998). Eventually, no evidence was found that a district official with the authority to take corrective action knew about the misconduct and failed to respond. With the decision, though, the court reaffirmed that if deliberately indifferent to harassment or discrimination by a teacher against a student, a school district could be held responsible.

In a related case, the plaintiffs in *Davis v. Monroe County Board of Education* (1999) successfully argued that school officials did in fact know of the sexual harassment of a student by another student and failed to adequately respond. In *Davis*, the court reminded schools that "the common law, too, has put schools on notice that they may be held responsible under state law for their failure to protect students from the tortious acts of third parties" (*Davis v. Monroe County Board of Education*, 1999). *Gebser* and *Davis* have seemingly opened the door for federal and state courts to extend this standard broadly to issues involving other forms of harassment and bullying and, in principle, to cases involving cyberbullying that affect the school. As such, school districts may be subject to private damage actions if they become aware of discrimination or violations of civil rights and fail to take appropriate action (i.e., if they are deliberately indifferent).

Educators' ability to restrict and discipline student behavior and speech

It is apparent that school district administrators have an obligation to protect their students (and staff) from harassment and are compelled to take action to stop all forms of harassment and discrimination when made aware of them. Another key issue facing educators with respect to cyberbullying prevention and response is the extent to which school officials have the right to restrict student expressions or to discipline students for behavior or speech deemed inappropriate. A few landmark Supreme Court cases provide direction toward this end and thereby warrant discussion. First, in *Tinker v. Des Moines Independent Community School District* (1969), the court ruled that the suspensions of three public school students for wearing black armbands to protest the Vietnam War violated the free speech clause of the First Amendment. Specifically, Justice Fortas, writing for the majority, stated:

> A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments. (*Tinker et al. v. Des Moines Independent Community School District et al.*, 1969)

The key phrase in this opinion is "substantial interference," and because the school district in the *Tinker* case could not articulate that such a disruption occurred, the students' behavior could not be restricted. Because "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," for school district personnel to intervene in similar situations they must demonstrate that such behaviors "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school" (*Tinker et al. v. Des Moines Independent Community School District et al.*, 1969). Restricting all forms of student expression, without compelling educational justification, then, is beyond what the school can do under normal circumstances.

Although the quiet, passive expression of a political viewpoint in the *Tinker* case was upheld by the court, an appeals court in a similar and more recent case ruled that school officials can, in fact, regulate clothing that "causes disruption to the educational process." In this situation, students at a Tennessee high school where racial tensions had been enflamed over the past few years wore tee shirts depicting the confederate flag (*Barr v. Lafon*, 2007). The principal of the school instructed students that they would be suspended if they did not remove the shirts or cover up the depicted flag, which led to legal action being filed by the students against the school board, arguing a violation of free speech rights. The upper court rejected the findings of the lower court (which had sided with the students) and found that "appellate court decisions considering school bans on expression have focused on whether the banned conduct would likely trigger disturbances such as those experienced in the past" and pointed to the fact that the high school had even positioned law enforcement officials on campus in previous years to maintain order in an environment of racial hostility and violence. In this case, the school was able to demonstrate the potential for material interference with the delivery of instruction and the safety and well-being of students, and it could therefore restrict the speech that perhaps in other contexts would be upheld as protected.

Similarly, in *Bethel School District v. Fraser* (1986), the Supreme Court reaffirmed that not all student expressions are protected by the First Amendment. The court considered the case of Matthew Fraser, a student who used "an elaborate, graphic, and explicit sexual metaphor" in a nominating speech at a school assembly for a friend who was running for student body vice president (*Bethel School District v. Fraser*, 1986). The school responded by suspending Fraser for 3 days. It is interesting to note that the District Court and Circuit Court of Appeals sided with Fraser, citing the *Tinker* ruling. The Supreme Court, however, reversed the decision, arguing that there is a substantive difference between a nondisruptive expression and "speech or action that intrudes upon the work of the schools or the rights of other students" (*Bethel School District v. Fraser*, 1986). Moreover, the court maintained that schools have an interest in "teaching students the boundaries of socially appropriate behavior" and therefore must play a role in restricting behavior and speech that is considered "highly offensive or highly threatening to others" (*Bethel School District v. Fraser*, 1986). Highly offensive or threatening material communicated electronically from school grounds, then, may fall under the *Fraser* ruling and, therefore, could be restricted.

Another recent incident illustrates that the reach of the school extends beyond the schoolhouse gate. In 2002, students at a Juneau, Alaska, school were released from class for the Winter Olympics torch relay. Students lined both sides of the street as the torch passed through the city. A high school senior named Joseph Frederick displayed a banner that read "BONG HiTS 4 JESUS." Frederick unfurled the sign with the help of other students across the street from the school (not on school property). Upon seeing the act, the school principal confiscated the banner and suspended Frederick for 10 days. Frederick promptly sued, and the case was argued before the U.S. Supreme Court in 2007.

The majority opinion concluded that Frederick's First Amendment rights were not violated. This decision was based on the arguments that (a) the banner was displayed during a school event, which made the expression "school speech" rather than protected off-campus speech; (b) the banner undeniably referenced illegal drugs and could be reasonably interpreted as advocating use of illegal drugs; and (c) that the government (and, by extension, schools) has an important and compelling interest in deterring drug use by students (*Morse v. Frederick*, 2007). As such, the court reaffirmed the school's ability to discipline students for inappropriate speech. Even though the students were off-campus, the court ruled that the activity was a school event (much like a field trip) and they could, therefore, be disciplined.

On the basis of the cases we reviewed, educators have the authority to restrict expressions and discipline students for inappropriate speech or behavior that occurs at school if that speech causes a substantial disruption at school (*Tinker*), interference with the rights of students (*Tinker*), or is contrary to the school's educational mission (*Fraser* and *Morse*). Further, if that speech has created a hostile environment for a student, school personnel have the responsibility to do so (*Davis*). The question many educators ask, however, is whether they can take action against students for speech or behavior that occurs away from school. This question is especially relevant to the current discussion, as most incidents of cyberbullying are either initiated or exacerbated off-campus.

Traditionally, the courts have compartmentalized expressions by students on campus as appropriate for restrictions, while disallowing constraints on off-campus speech:

> When school officials are authorized only to punish speech on school property, the student is free to speak his mind when the school day ends. In this manner, the community is not deprived of the salutary effects of expression, and educational authorities are free to establish an academic environment in which the teaching and learning process can proceed free of disruption. Indeed, our willingness to grant school officials substantial autonomy within their academic domain rests in part on the confinement of that power within the metes and bounds of the school itself. (*Thomas v. Board of Education, Granville Central School District*, 1979)

This principle was clearly illustrated in the case of *Klein v. Smith* (1986), which involved student-on-staff harassment. In a restaurant parking lot after school hours in 1986, a high school student showed one of his teachers his middle

finger. Upon hearing of the incident, the school administration suspended the student for 10 days for "vulgar or extremely inappropriate language or conduct directed to a staff member" (*Klein v. Smith*, 1986). This promptly led to civil action by the student, who claimed that his rights to free speech had been violated.

In an interestingly worded opinion, the court majority ruled that "the First Amendment protection of freedom of expression may not be made a casualty of the effort to force-feed good manners to the ruffians among us." The court concluded that school officials failed to demonstrate that the vulgar gesture had negatively affected the school environment or its orderly operation. That is, school officials cannot discipline students for off-campus speech or behavior with which they simply do not agree unless school discipline or operations are significantly affected.

Several key issues surface when considering the ability of school districts to restrict off-campus student speech. In general, students have a right of free expression, both at school and away from school, but those rights are more easily restricted on campus. Although none of the previously discussed cases specifically involved electronic communication or content, it should be clear how the principles raised can be applied to new technology situations that educators are currently facing. We now turn our attention to a few recent examples that involve districts responding to the electronic behaviors of their students. It is also important to note that the misbehavior in all of these cases was initiated away from school using a home computer and Internet connection.

Recent cases involving electronic harassment and schools

The first major case involving online harassment by a student was *Beussink v. Woodland R-IV School District* (1998), which helped to set some parameters around the outer boundaries of school-initiated discipline. It involved a junior in Marble Hill, Missouri, who created a personal Web site from home that denigrated the school's administration using vulgar but not defamatory or threatening language. After being suspended for 10 days, the student filed suit against the school district. The U.S. District Court then ruled that his First Amendment rights had been violated and that the suspension was unconstitutional because the school district could not show that their disciplinary action was prompted "by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint" (*Beussink v. Woodland R-IV School District*, 1998). School administrators, then, cannot discipline students for off-campus behavior or speech simply because they disagree with it or find it unpleasant. As already articulated, they must demonstrate that the potential for substantial disruption of school activities, discipline, or the school environment.

In *Emmett v. Kent School District No. 415* (2000), the U.S. District Court for the Western District of Washington reviewed a case wherein a senior created a Web page from home entitled the "unofficial Kentlake High Home Page," which included mock obituaries of students and a mechanism for visitors to vote on "who should die next." It is interesting to note that the site included a disclaimer that the page was not sponsored by the school and was for only entertainment purposes. Nonetheless, after an evening news story referenced the page as containing a "hit list," the student was placed on emergency expulsion (although this disciplinary action was later reduced to a 5-day suspension) for intimidation, harassment, disruption to the educational process, and violation of school copyright.

The court reviewing the case ruled that the school had overstepped its bounds because the Web site was not produced at school or using school-owned equipment. Even though the court recognized that the intended audience included members of the high school, "the speech was entirely outside the school's supervision or control" (*Emmett v. Kent School District No. 415*, 2000). Furthermore, the court ruled that the school district failed to demonstrate that the Web site was "intended to threaten anyone, did actually threaten anyone, or manifested any violent tendencies whatsoever" (*Emmett v. Kent School District No. 415*, 2000). That is, the school district was unable to show that anyone listed on the site actually felt intimidated or threatened, or that the site resulted in a significant disturbance at school. It is important to note that in both the *Beussink* and *Emmett* cases, the court rejected the ruling of *Fraser* as the basis on which school officials can respond to off-campus speech because in neither situation did it cause a substantial disruption at school. With these rulings, the court reminded schools to tread lightly when intervening in the off-campus activities of students unless a material interference can be demonstrated (in keeping with the *Tinker* ruling).

That said, many courts have held that school districts are allowed to intervene in situations wherein off-campus speech is clearly threatening to students or staff and therefore disruptive to the learning environment and the educational process. For example, in *J.S. v. Bethlehem Area School District* (2000), the Commonwealth Court of Pennsylvania reviewed a case in which J.S. was expelled from school for creating a Web page that included threatening and derogatory comments about Kathleen Fulmer, an English teacher. The Web page included lists for "why fulmer should be fired" and "why should she die." Reasons listed included "She shows off her fat F—ing legs," "The fat f—smokes," and "She's a bitch." The writer of the Web page also added: ". . . give me $20.00 to help pay for the hitman" (*J.S. v. Bethlehem Area School District*, 2000).

Fulmer indicated she had been traumatized by the incident, which had led to physical problems (headaches and loss of appetite, sleep, and weight), psychological problems (anxiety and depression), and an inability to teach for the

rest of the year. The school district also argued that the Web page "had a demoralizing impact on the school community" and "caused an effect on the staff. . . comparable to the effect on the school community of the death of a student or staff member because there was a feeling of helplessness and a plummeting morale" (*J.S. v. Bethlehem Area School District*, 2000). On the basis of these factors, which demonstrated that the off-campus speech had disrupted the instruction of other students, the court upheld the expulsion of J.S. It is interesting to note that Fulmer also sued the family of J.S. in civil court and was awarded a $500,000 judgment (Conn, 2004). Law enforcement also got involved, as the local police and the Federal Bureau of Investigation conducted investigations to ascertain the validity of J.S.'s threat, and eventually determined it not to be credible.

In an analogous case, eighth-grade student Aaron Wisniewski created a graphic icon of his English teacher's head being shot with a bullet from a gun along with the text "Kill Mr. Vandermolen" (*Wisniewski v. Board of Education of the Weedsport Central School District*, 2007). He then sent the icon via instant message to 15 of his friends, among whom it circulated for 3 weeks before the teacher was informed. After hearing from the distressed teacher, the principal of the school decided to suspend Wisniewski—an action that prompted a lawsuit from his parents. The lower court found in favor of the school district, but the case was appealed by Wisniewski's parents to a higher court. In July of 2007, the U.S. Court of Appeals for the 2nd Circuit upheld the initial decision, arguing that the icon represented a threat that the student should have known would cause a material disruption to the school environment (*Wisniewski v. Board of Education of the Weedsport Central School District*, 2007).

This principle was again exemplified in a 2006 case in western Washington, where a high school senior posted a link from his MySpace page to a video on YouTube that made fun of a teacher's hygiene, organizational habits, body weight, and classroom conduct. The footage, covertly recorded in class, also involved close-up images of her buttocks and a student making faces, giving her "bunny ears," and performing pelvic thrusts in her direction from behind. When administration learned of the misbehavior, the students responsible were immediately suspended for 40 days, with 20 days "held in abeyance" if the students completed a research paper during the suspension. After civil action by one of the students who claimed his First Amendment rights had been violated, the court in this case upheld the suspension, referring to the *Tinker* and *Fraser* decisions:

> The school is not required to establish that an actual educational discourse was disrupted by the student's activity. The 'work and discipline of the school' includes the maintenance of a civil and respectful atmosphere towards teachers and students alike—demeaning, derogatory, sexually suggestive behavior towards non-suspecting teacher in a classroom poses a disruption of that mission whenever it occurs. (*Requa v. Kent School District No. 415*, 2007)

The crux of the argument in favor of the school district involved (a) that covert video recording in the classroom violated school policy and (b) that the video substantially and materially interfered with the work and discipline of the school.

Another case examined "whether a school district can punish a student for posting from his grandmother's home computer a non-threatening, non-obscene MySpace profile making fun of the school principal" (*Layshock v. Hermitage School District*, 2006). Although the court noted that the act of creating the profile page was in fact protected by the First Amendment, it became punishable by the school district when it resulted in an "actual disruption of the day-to-day operation" on campus. According to the district, the page was repeatedly accessed by students at school and forced the school to shut down its computer system for 5 days. The district also argued that some school personnel were required to devote an extraordinary amount of time to this particular problem, that many students were unable to use school computers for legitimate educational purposes, and that a number of classes had to be cancelled. Consequently, the lower court issued the following statement:

> Under these circumstances Plaintiffs' actions appear to have substantially disrupted school operations and interfered with the right of others, which, along with his apparent violations of school rules, would provide a sufficient legal basis for Defendants' actions. (*Layshock v. Hermitage School District*, 2006)

However, a federal district judge in 2007 found that the discipline violated Layshock's First Amendment rights, considering that multiple MySpace profile pages had been created of the school principal and that the school district could not specify exactly which profile led to the disruption on campus, nor that a specific profile (as opposed to the investigative response of administrators) actually led to the disruption at school. In addition, upon more carefully examining the facts of the case, the court found that the disruption was neither substantial nor did it undermine the school's basic educational mission or goals. The school was unable to provide adequate evidence of the disruption and its cause, leading the court to state that "[t]he mere fact that the Internet may be accessed at school does not authorize school officials to become censors of the World Wide Web. Public schools are vital institutions, but their reach is not unlimited" (*Layshock v. Hermitage School District*, 2007).

When can educators intervene?

As should be evident, some of the aforementioned outcomes have actually tended to undermine disciplinary action by school districts because of the threat of civil litigation. Notwithstanding the negative publicity and

reputational damage that then could follow, some districts have even been required to pay tens of thousands of dollars to students who have sued them for overstepping the bounds of their authority in punishing off-campus, online speech (see e.g., *Beidler v. North Thurston School District*, 2000; *Killion v. Franklin Regional School Board*, 2001). This is unfortunate, because as also previously noted, there are a number of situations when it is completely appropriate (and necessary) for school officials to get involved. To summarize lessons learned from the reviewed case law in this piece, U.S. courts are generally oriented toward supporting First Amendment rights of free expression. Certain expressions, however, are not protected and allow intervention and discipline, including those that

- substantially or materially disrupt learning;
- interfere with the educational process or school discipline;
- use school-owned technology to harass; or
- threaten other students or infringes on their civil rights.

Although many school personnel are understandably hesitant to get involved in cases of cyberbullying that occur off-campus, their restrictive response is probably within the boundaries of the law if they can point to the aforementioned exceptions (Shariff & Hoff, 2007).

Implications for school policy

The disciplinary efforts of school districts should also be supported by strong and detailed policies outlining what online behaviors are and are not acceptable, and what penalties will follow if the policy is contravened. This will help the district avoid the appearance of deliberate indifference by demonstrating to third parties that they are anticipating the foreseeable danger of cyberbullying, and are exercising reasonable care to address and prevent incidents. For example, districts should update their bullying policies to account for its electronic variant. For further motivation, a number of states are moving forward with formal legislation that would direct districts to update harassment and bullying policy to include electronic forms (Surdin, 2009). The primary problem that legislators face is how to craft a law that protects students but does not overly restrict speech. For example, the U.S. Circuit Court of Appeals recently ruled that ambiguously defined harassment policies that prohibit too much speech violate the First Amendment (*Saxe v. State College Area School District*, 2001). The ruling requires schools to consider "*Tinker's* substantial disruption test" in articulating speech that warrants prohibition. Simply disagreeing with, or being upset by someone's speech does not give schools the right to prohibit, and subsequently discipline, students for it (see *Sypniewski v. Warren Hills Regional Board of Education*, 2002).

As a final note regarding school policy, it is important to remember that legal issues in this area are constantly evolving. Although the information contained in this article was current when written, new developments in case and statutory law are continually affecting the state of cyberbullying-related precedent. Moreover, the improper use of computers and cell phones by students will continue to evolve as those devices gain additional features and functionality. Vigilance is important in continually modifying and improving the content of school district policies that address electronic harm. Educators who craft and revise such policies should also always consult with an attorney who has expertise in school and/or Internet law to make sure their actions are informed by the latest salient court decisions.

Discussion: Just when you think you have it figured out. . .

Even when considering the "best practices" extracted from the reviewed court cases, the proverbial waters of cyberbullying case law still remain murky. Due to variability in opinions and perspectives across jurisdictions and adjudicators, crystal clear guidance from extant legal decisions still seems elusive. For example, in late 2009 an eighth-grader was cyberbullied through the posting of a YouTube video created by peers denigrating her as "spoiled," "a brat," and a "slut" (*J.C. v. Beverly Hills Unified School District*, 2009; Kim, 2009). The target tearfully reported this to her counselor, and indicated strongly that she was upset, humiliated, and did not feel able to go to class and focus on school. The counselor discussed the matter with administration as well as with school district attorneys, classified the behavior as "cyberbullying," and the student who posted the video online was suspended for 2 days. The perpetrator's family decided to sue and took the case to federal court on the grounds that their daughter's First Amendment right to free speech had been violated.

Even though the case law we have reviewed seems to support corrective action if a target is unable to feel safe and supported to learn without distractions of harassment within a school environment, the federal judge in this case ruled that school authorities overstepped their bounds, (ostensibly) on the basis of the fact that the school could not prove that the offending speech and actions caused a substantial disruption of school activities. Moreover, the ruling judge stated that "the court cannot uphold school discipline of student speech simply because young persons are unpredictable or immature, or because, in general, teenagers are emotionally fragile and may often fight over hurtful comments."

The issue at hand seems to be what constitutes a "substantial disruption." Without question, the ability of the victim in this case to learn was materially affected. Courts have ruled that "the primary function of a public school

is to educate its students; conduct that substantially interferes with the mission (including speech that substantially interferes with a student's educational performance) is, almost by definition, disruptive to the school environment" (*Saxe v. State College Area School District*, 2001), and that school authorities have a responsibility to prevent intimidation by one student on another—including bullying by name calling (*Sypniewski v. Warren Hills Regional Board of Education*, 2002). On its face, it appears that the judge completely disregarded the emotional and psychological well-being of the target in this case, even though any adult who serves youth or works for the best interests of youth is taught that they must not view the internalization of harm in a critical manner, but must empathize with it (Gladstein, 1983; Patterson, 1996; Pope & Kline, 1999). That is, adults must not discount the reality of pain experienced by an adolescent through their experiences with bullying or cyberbullying, because this casts blame on the victim and may lead to strainful feelings that are difficult to resolve (Hinduja & Patchin, 2007; Patchin & Hinduja, 2010). It is possible that this mentality may show youth that their viewpoint is not appreciated, respected, or even valid, and may even indirectly contribute to the phenomenon of cyberbullicide (Hinduja & Patchin, 2010). That is, victims of harassment who feel that they have no appropriate recourse through normal channels may seek to stop the pain using extreme measures.

It is true that demonstrating substantial and material disruption of school activities due to cyberbullying paves the way for formal discipline by educators. However, it should not be the only consideration, as other aggravating factors can impel such action. Another equally important consideration concerns the harm personally and subjectively experienced by victimized youth. It is difficult to dispute that the ability of cyberbullying victims can be compromised by their experiences with harassment. The victim in the *J.C. v. Beverly Hills Unified School District* case is being denied the benefits of, and is subjected to discrimination under, a federally funded educational program (the public school), which therefore undermines her civil rights. The cyberbullying incident and its fallout, then, may have compromised her ability to learn in a safe and secure environment at school and affected her educational performance—and therefore should warrant disciplinary intervention.

This, however, was not the interpretation of the judge in this case. In essence, he asserted that the adolescent victim should have tougher skin, and should not allow hurtful comments to bother her as much. He summarily dismissed the gravity of her pain in one fell swoop and seems to have based his decision on an impersonal, legalistic aspect of the case, rather than the very real, very visceral toll that cyberbullying took on a young girl. This case bears mentioning because school personnel desire laws that they can cite to legitimize their actions, but must never use those laws to invalidate human emotion and elbow out compassionate, humane responses to a population at a tenuous developmental stage. Legal dictates that ignore adolescent development or the reality of peer relationships among teens fail to accomplish a primary purpose of law: to protect the vulnerable and to maintain social order.

The negative outcomes that befall victims of cyberbullying compel educators to restrict and discipline online speech that undermines the institutional goals, activities, and mission of public schools, or that infringes upon the rights of other students. Although perfect direction in every situation is simply not yet available for school professionals who wrestle with these issues, instructive lessons can be learned by considering the specifics of a variety of cases over a number of years. These cases either directly or indirectly have shaped an incipient body of law that will continue to grow as we move deeper into the information age. It will also undergo perpetual refinement as new cyberbullying incidents arise and affect youth and, by extension, the educators who are charged with their care.

Notes

1. As a side note, it is also important to point out that the sexually suggestive "pelvic thrusts" could be construed as sexual harassment and should, therefore, be disciplined on the basis of the relevant district policy. It is especially imperative that schools intervene and discipline students for behaviors that may constitute harassment on the basis of gender or race. Failure to do so may subject the district to liability.
2. Nancy Willard, of the Center for Safe and Responsible Internet Use, provides additional analysis on her Web site of why she feels the judge ruled incorrectly in this case: (http://www.cyberbully.org/).

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Cases of Victimization
Case 2: Ryan Halligan (Vermont, 2003)

Ryan Halligan was a 13-year-old boy who lived in Essex Junction, Vermont. On October 7, 2003, he died of suicide as a result of the pain and suffering he had experienced from his middle school peers. Ryan's father described the difficulties of daily life Ryan had experienced, including one friendship with a young boy whom Ryan thought was a good friend. Ryan experienced considerable learning difficulties from a young age and had met with progressive success as he entered middle school. During his years in middle school, Ryan received physical threats from another student. After reaching what Ryan had thought was a turn for the better and the development of a friendship with the other student, Ryan began to experience a duplicitous relationship. Ryan was outwardly seen as finding a more stable school life; however, the new friendship with the other student had yielded humiliation and threats through instant messaging conversations, which were shared with a number of other students through cell phones and e-mail. The culmination of the emotional stress and anguish had produced what Ryan's father described as "the pile on" effect and led Ryan to end his own life.

—Gerardo Moreno