

WAYS TO COMBAT CYBERBULLYING

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Prepared by Carol Greta, Attorney 3 and Administrative Law Judge
Iowa Department of Education¹
515/281-8661; carol.greta@iowa.gov

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I. INTRODUCTION

Cyberbullying is the intentional infliction of harm by the use of electronic technologies such as Instant Messaging, social networking Web sites, handheld communication devices, cell phones, and the two dozen other media that were just invented as this sentence was typed. Cyberbullies use technology to flame, out, phish, bash, spam, impersonate, threaten, etc.²

Targets of cyberbullies often are reluctant to break a perceived code of silence by complaining because they fear that adults will take away their own access to electronic communication devices, and because we adults just have a lack of understanding of the nature of cybercommunications.

When cyberbullying is reported, educators are sometimes reluctant to investigate. This is unfamiliar territory for many of us. We don't "speak the language" because we are technology immigrants.

So what's an educator to do?

As with any form of misconduct in which other students are harmed, **the worst thing to do is nothing.**

Just because it may be more difficult to gather evidence does not excuse school officials from taking some kind of action. The remainder of this document discusses

¹ It is the policy of the Iowa Department of Education not to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, gender, disability, religion, age, political party affiliation, or actual or potential parental, family or marital status.

² Terms may have more than one definition; the more commonly understood definitions are included here.

Flame: to post an extremely critical or abuse message.

Out: to trick the target into revealing sensitive or confidential information and then to forward that information to others as a "joke."

Phish: same as out.

Bash: to post racist or other extremely offensive remarks online.

Spam: to flood the Internet with multiple copies of the same message.

what steps educators may – and in some cases, must – take in the face of cyberbullying and other forms of electronic misconduct by students.

II. PUNISHING THE CYBERBULLY

ACADEMIC PUNISHMENT

There must be a close connection – a *nexus* – to school for school officials to be able to suspend cyberbullies from class. Examples from caselaw:

1. A high school student created a Web site that used crude and vulgar language in criticizing the school administration. He did not use school resources to create the site, but the site included a hyperlink to the school's official homepage, and the student invited readers of his Web site to contact the school to communicate their observations about the high school. The school imposed a 10 day suspension, which was overturned by the court because the principal testified that he suspended the student because the principal did not like the *content* of the student's Web site. [*Beussink v. Woodland R-IV School District*, 30 F.Supp.2d 1175 (E.D. Mo. 1998).]
2. In this case one student wrote an e-mail about the school's activities director that was very unflattering about his weight (very large) and genital size (not so very large). The student sent the email from his home computer to friends on their home computers, but one recipient brought several copies of the e-mail to school. In ruling in favor of the student, the court stated that the mere desire on the part of school officials to avoid discomfort or unpleasantness did not justify a restriction of private student speech. However, because this student had previously written "poison pen" e-mails about school employees on school computers, the court left the door open for a school to prevail if the school can demonstrate a "well-founded expectation of disruption." [*Killion v. Franklin Regional School District*, 136 F.Supp.2d 446 (W.D. Pa. 2001).]
3. The court upheld the expulsion of a student based upon a Web site the student created at home that contained *threatening* comments against a teacher and a principal. The student attempted to shield himself from school discipline or regulation by putting a disclaimer on his site (which was not password-protected) that viewers promised not to tell any school officials or employees about the site. This attempt proved futile. His site had *many* visitors, so the word got back to the teacher who was threatened that he was actually soliciting donations from site visitors to hire a hitman to take out the teacher. [*J.S. ex rel. H.S. v. Bethlehem Area School District*, 807 A.2d 847 (Pa. 2002).]
4. Comments typed in class and printed off in class alleging that a teacher and principal were having sex were proper grounds to suspend the student who typed and printed the comments. This student was an honor student who went to court to try to get the suspension off her student record. The court denied her request. [*Matos ex rel. Matos v. Clinton School District*, 367 F.3d 68 (1st Cir. 2004).]

5. A senior with no disciplinary history and who was academically successful decided just before the Christmas recess to create a “parody profile” of one of the high school principals on MySpace.com. The profile was juvenile in its conception, vulgar in parts, and crude. It did not provide a flattering profile of the principal. The student did not use school equipment or school time to develop the profile. The court determined that the student’s off-campus speech did not result in a substantial disruption of school operations; therefore, it granted summary judgment to the student. This case is on appeal to the Third Circuit Court of Appeals. [*Layshock v. Hermitage School District*, 496 F.Supp.2d 587 (W.D. Pa. 2007).]

EXTRACURRICULAR PUNISHMENT

Most schools have a “good conduct” policy by which they may govern out-of-school conduct of students who participate in extracurricular activities.

A cyberbully may be punished under a good conduct policy by being suspended from extracurricular activities, including being banned from school dances, prom, being a member of student council, or being elected to class office, as well as suspended from interscholastic activities.

A cyberbully may be punished under a good conduct policy even if any or all of the following are true:

- The school cannot suspend the cyberbully from class because there is an insufficient nexus to school
- Law enforcement does not or cannot prosecute the student or defers prosecution or punishment of the student
- The student is found not guilty of criminal wrongdoing

The standard of proof needed to punish a student under a good conduct policy is NOT the criminal standard of “beyond a reasonable doubt.” In some states, such as Iowa, the standard is not even a preponderance of the evidence. In Iowa, the standard is that there must be “some evidence” of wrongdoing – a very low standard that reflects the law in Iowa that students have no right to participate in extracurricular activities. Check your state laws. In a minority of states (New York, for example), courts have ruled that students do have a property interest in such participation.

III. PROTECTING THE TARGET

Just because it may be more difficult to gather evidence does not excuse school officials from taking some kind of action. And just because a school may not be able to directly discipline a cyberbully does not excuse school officials from taking appropriate steps designated to protect the target.

Here are some steps school officials should consider that are directly related to protection of targeted students:

- Notify the perpetrator and perpetrator’s parents of the allegation

- Just because you may not have a sufficient nexus to discipline the perpetrator doesn't mean that you ignore him/her. Call that student and parents into your office for a heart-to-heart.
- Keep an extra eye on the perpetrator...and let the perpetrator and his/her family know that you will be doing so.
- Give target's family option of notifying law enforcement
 - In Iowa, the crimes of harassment and terrorism can be committed by electronic means. So just because a school may not be able to take action, law enforcement should be contacted if the family is willing to cooperate.
 - If the cyberbullying involves a threat, notify law enforcement directly and inform the families of both students that you have done so.
 - Cooperate fully with law enforcement.
- Do not discourage target's family from exploring civil actions (defamation, invasion of privacy, intentional infliction of emotional distress)
- Gather evidence and investigate
 - Confiscate the electronic device(s) in question for as long as you need to investigate
 - Learn how to do this or find an expert
 - See information about school policy in next section
 - Document, document, document
 - Keep the target and target's family posted as to progress made during investigation, but remember not to tell them what discipline is ultimately imposed against the perpetrator.
- Check with the target often to make sure s/he is not suffering any retaliation from the initial perpetrator or friends of the perpetrator
- Offer counseling/mental health support to the target

IV. OTHER ACTIONS TO CONSIDER

There are other action steps that a school should consider that are proactive and not reactive to situations in which allegations are made. These include the following:

- Professional development for staff
- Parent/Community outreach
- Filter and monitor...but DO NOT rely on filtering software to control Internet activities of students
- Update and post school rules, policies
 - Include the policy, as well as student handbook, a statement that students have a limited expectation of privacy on the school's Internet

system, and that routine monitoring or maintenance may lead to discovery that a user has violated district policy or law. Also, individual targeted searches will be conducted if there is reasonable suspicion that a user has violated policy or law.

- Include an "Internet Acceptable Use" policy to stress that students are prohibited from name-calling, bullying, or harassment online during school on personal or school equipment.
 - Include a statement that the personal electronic devices of any student suspected of violation of the above policy will be confiscated for investigation and may be turned over to law enforcement.
- Implement a prevention-intervention curriculum

V. RESOURCES

Web sites³:

<http://csriu.org>

<http://cyberbully.org>

<http://cyber-safe-kids.com>

<http://www.isafe.org>

<http://look-both-ways.com/stayingsafe/bullying.htm>

<http://www.netsmartz.org>

<http://www.k12.wa.us/Safetycenter>

<http://www.webwisekids.org>

<http://www.ctap4.org/cybersafety/>

<http://www.caabi.org>

<http://www.bullypolice.org>

VI. CURRICULUM

An anti-cyberbullying curriculum is free and available for everyone at these Web sites⁴:

<http://www.seattleschools.org/area/prevention/cbms.html>

<http://www.incredibleinternet.com>

(Either link takes the educator to the same program, which is used in the Seattle school district, and is Olweus-based.)

VII. APPENDICES

³ The inclusion or exclusion of a Web site does not indicate approval or disapproval by the Iowa Department of Education. Any known Web sites regarding the topic of cyberbullying that may be helpful to educators have been included. The educator can determine for himself or herself the helpfulness of the site.

⁴ See footnote #3.

APPENDIX A

SAMPLE ANTI-BULLYING/ANTI-HARASSMENT POLICY

Harassment and bullying of students and employees are against federal, state and local policy, and are not tolerated by the board. The board is committed to providing all students with a safe and civil school environment in which all members of the school community are treated with dignity and respect. To that end, the board has in place policies, procedures, and practices that are designed to reduce and eliminate bullying and harassment as well as processes and procedures to deal with incidents of bullying and harassment. Bullying and harassment of students by students, school employees, and volunteers who have direct contact with students will not be tolerated in the school or school district.

The board prohibits harassment, bullying, hazing, or any other victimization, of students, based on any of the following actual or perceived traits or characteristics: age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status. Harassment against employees based upon race, color, creed, sex, sexual orientation, gender identity, national origin, religion, age or disability is also prohibited.

This policy is in effect while students or employees are on property within the jurisdiction of the board; while on school-owned or school-operated vehicles; while attending or engaged in school-sponsored activities; and while away from school grounds if the misconduct directly affects the good order, efficient management and welfare of the school or school district.

If, after an investigation, a student is found to be in violation of this policy, the student shall be disciplined by appropriate measures up to, and including, suspension and expulsion. If after an investigation a school employee is found to be in violation of this policy, the employee shall be disciplined by appropriate measures up to, and including, termination. If after an investigation a school volunteer is found to be in violation of this policy, the volunteer shall be subject to appropriate measures up to, and including, exclusion from school grounds. "Volunteer" means an individual who has regular, significant contact with students.

Harassment and bullying mean any electronic, written, verbal, or physical act or conduct toward a student which is based on any actual or perceived trait or characteristic of the student and which creates an objectively hostile school environment that meets one or more of the following conditions:

- Places the student in reasonable fear of harm to the student's person or property;
- Has a substantially detrimental effect on the student's physical or mental health;
- Has the effect of substantially interfering with the student's academic performance; or
- Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

"Electronic" means any communication involving the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic" includes but is not limited to communication via electronic mail, internet-based communications, pager service, cell phones, electronic text messaging, or similar technologies.

Harassment and bullying may include, but are not limited to, the following behaviors and circumstances:

- Verbal, nonverbal, physical or written harassment, bullying, hazing, or other victimization that have the purpose or effect of causing injury, fear, or suffering to the victim;
- Repeated remarks of a demeaning nature that have the purpose or effect of causing injury, fear, or suffering to the victim;
- Implied or explicit threats concerning one's grades, achievements, property, etc. that have the purpose or effect of causing injury, fear, or suffering to the victim;
- Demeaning jokes, stories, or activities directed at the student that have the purpose or effect of causing injury, fear, or suffering to the victim; and/or
- Unreasonable interference with a student's performance or creation of an intimidating, offensive, or hostile learning environment.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- Submission to the conduct is made either implicitly or explicitly a term or condition of the student's education or benefits;
- Submission to or rejection of the conduct by a school employee is used as the basis for academic decisions affecting that student; or
- The conduct has the purpose or effect of substantially interfering with the student's academic performance by creating an intimidating, hostile, or offensive education environment.

In situations between students and school officials, faculty, staff, or volunteers who have direct contact with students, bullying and harassment may also include the following behaviors:

- Requiring that a student submit to bullying or harassment by another student, either explicitly or implicitly, as a term or condition of the targeted student's education or participation in school programs or activities; and/or
- Requiring submission to or rejection of such conduct as a basis for decisions affecting the student.

Any person who promptly, reasonably, and in good faith reports an incident of bullying or harassment under this policy to a school official, shall be immune from civil or criminal liability relating to such report and to the person's participation in any administrative, judicial, or other proceeding relating to the report. Individuals who knowingly file a false complaint may be subject to appropriate disciplinary action.

Retaliation against a person because the person has filed a bullying or harassment complaint or assisted or participated in a harassment investigation or proceeding is prohibited. An individual who knowingly files a false harassment complaint and a person who gives false statements in an investigation shall be subject to discipline by appropriate measures, as shall a person who is found to have retaliated against another in violation of this policy. A student found to have retaliated in violation of this policy shall be subject to measures up to, and including, suspension and expulsion. A school employee found to have retaliated in violation of this policy shall be subject to measures up to, and including, termination of employment. A school volunteer found to have retaliated in violation of this policy shall be subject to measures up to, and including, exclusion from school grounds.

The school or school district will promptly and reasonably investigate allegations of bullying or harassment. The *(state the title of the investigator)* or designee will be responsible for handling all complaints by students alleging bullying or harassment. The *(state the title of the investigator)* or designee will be responsible for handling all complaints by employees alleging bullying or harassment.

It also is the responsibility of the superintendent, in conjunction with the investigator and principals, to develop procedures regarding this policy.

[OPTIONAL, BUT STRONGLY SUGGESTED THAT IT BE INCLUDED AND FOLLOWED:] The superintendent also is responsible for organizing training programs for students, school officials, faculty, staff, and volunteers who have direct contact with students. The training will include how to recognize harassment and what to do in case a student is harassed. It will also include proven effective harassment prevention strategies. The superintendent will also develop a process for evaluating the effectiveness of the policy in reducing bullying and harassment in the board. The superintendent shall report to the board on the progress of reducing bullying and harassment in the board.

The board will annually publish this policy and a copy shall be made to any person upon request.

The policy may be publicized by the following means:

- Inclusion in the student handbook,
- Inclusion in the employee handbook
- Inclusion in the registration materials
- Inclusion on the school or school district's web site.

APPENDIX B

ANTI-HARASSMENT/BULLYING INVESTIGATION PROCEDURES

Individuals who feel that they have been harassed should:

- Communicate to the harasser that the individual expects the behavior to stop, if the individual is comfortable doing so. If the individual wants assistance communicating with the harasser, the individual should ask a teacher, counselor or principal to help.
- If the harassment does not stop, or the individual does not feel comfortable confronting the harasser, the individual should:
 - tell a teacher, counselor or principal; and
 - write down exactly what happened, keep a copy and give another copy to the teacher, counselor or principal including;
 - what, when and where it happened;
 - who was involved;
 - exactly what was said or what the harasser did;
 - witnesses to the harassment;
 - what the student said or did, either at the time or later;
 - how the student felt; and
 - how the harasser responded.

COMPLAINT PROCEDURE

An individual who believes that the individual has been harassed or bullied will notify _____, the designated investigator. The alternate investigator is _____. The

investigator may request that the individual complete the Harassment/Bullying Complaint form and turn over evidence of the harassment, including, but not limited to, letters, tapes, or pictures. The complainant shall be given a copy of the completed complaint form. Information received during the investigation is kept confidential to the extent possible.

The investigator, with the approval of the principal, or the principal has the authority to initiate a investigation in the absence of a written complaint.

INVESTIGATION PROCEDURE

The investigator will reasonably and promptly commence the investigation upon receipt of the complaint. The investigator will interview the complainant and the alleged harasser. The alleged harasser may file a written statement in response to the complaint. The investigator may also interview witnesses as deemed appropriate.

Upon completion of the investigation, the investigator will make written findings and conclusions as to each allegation of harassment and report the findings and conclusions to the principal. The investigator will provide a copy of the findings of the investigation to the principal.

RESOLUTION OF THE COMPLAINT

Following receipt of the investigator's report, the principal may investigate further, if deemed necessary, and make a determination of any appropriate additional steps which may include discipline.

Prior to the determination of the appropriate remedial action, the principal may, at the principal's discretion, interview the complainant and the alleged harasser. The principal will file a written report closing the case and documenting any disciplinary action taken or any other action taken in response to the complaint. The complainant, the alleged harasser and the investigator will receive notice as to the conclusion of the investigation. The principal will maintain a log of information necessary to comply with Iowa Department of Education reporting procedures.

POINTS TO REMEMBER IN THE INVESTIGATION

- Evidence uncovered in the investigation is confidential.
- Complaints must be taken seriously and investigated.
- No retaliation will be taken against individuals involved in the investigation process.
- Retaliators will be disciplined up to and including suspension and expulsion.

APPENDIX C

Harassment/Bullying Complaint Form

Is this form being filed because of retaliation for filing an earlier complaint? Yes _____ No _____

Name of complainant: _____
(Student, Parent, Employee, Other – Please Specify)

Date of complaint: _____

Name(s) of student(s) alleged to be responsible for incident: _____

Date and place of incident or incidents: _____

Describe what happened: *(Use back of form or attach additional pages if necessary)* _____

Name(s) of witness(es) _____

Is there any documentation of the incident? Yes _____ No _____ Please attach evidence OR explain why not. _____

Any other relevant information: _____

I feel I was harassed based upon: _____
(LIST ALL THAT APPLY)

sexual orientation, gender identity, physical attribute, race, color, creed, age, national origin, religion, disability, ethnicity, political party preference, sex, marital status, familial status, socioeconomic status, political belief, ancestry

I agree that all of the information on this form is true to the best of my knowledge.

Complainant's signature: _____