

LAW WEEK 2014 CURRICULUM

The First Amendment: Free Speech Rights in the Era of Social Media & Cyber-Bullying

PROCEDURE/INSTRUCTION: Attorneys/Judges

1. Each attorney/Judge will be assigned a classroom at a specific high school. The majority of the classes will be juniors and seniors. The attorney/Judge should directly contact the teacher prior to the presentation for additional instructions (i.e., location, specific time, etc.). Contact information is provided on the schedule.
2. Attorney/Judges should read the materials provided prior to the presentation.

NOTE: EVERY PRESENTATION WILL INVOLVE AN OVERVIEW OF ALL THE SUB-TOPICS IN THE CURRICULUM. *Those presenters who have specific sub-topics listed next to their assignments are asked to go into greater depth, and provide additional focus, in these particular areas.*

3. Attorney/Judges will have approximately 1 hour to make their presentation and to facilitate discussions.
4. Attorneys/Judges should spend a little time, either at the beginning or the end of the presentation, discussing the legal profession and their personal careers.

SUGGESTIONS FOR CLASSROOM INTERACTION:

The presenters should feel free to make the presentation in any manner they deem appropriate after discussion with the teachers. The following is provided for guidance only.

1. Suggested Introduction.

Be sure to provide a brief explanation of why you are in the classroom on this particular day. As you do so, remember when you were this age and what would have been of interest to you.

Also, please keep in mind that some of the materials for this program may raise difficult and provocative issues. Any questions about content should be vetted, as best as reasonably possible, with the teacher before the presentation.

2. Suggestions for Presentation of the materials.
- You may want to do an informative lecture-type presentation on the background/history of the First Amendment (*See* Background section, below) and then narrow-in on how the topic

of student speech in the digital age fits into that larger picture. However, the more you get the students to participate early and often, the more interesting it will be for everyone.

- You should structure your presentation in the manner you feel will offer the most engaging approach. In the past, by way of example, presenters have staged mock “debates” between themselves; or have treated the class as a jury, asking them to deliberate after each presenter makes an “oral argument” from opposing positions gleaned from the materials and case law. In other instances, the presenters discuss the background for each sub-topic, and then engage the class in a discussion, before proceeding to the next sub-topic. Suggested discussion questions are provided throughout the materials.
- The case law and other citations are provided for your reference, and not with the intention that you would recite those full citations during the presentation, that would likely (and understandably) be met with glassy-eyes.

On behalf of the Law Week Committee, we would like to thank all of you for participating in this year’s Law Week program, and we wish everyone a good time and great reward in conceptualizing your programs, and in the presentations to the students.

Proceed and enjoy--

Suzanne Babb, SCBA Law Week Chair &
Rebecca Gallagher, Sonoma County Office of Education

Special thanks to: Peter Steiner and Susan Demers, at the Sonoma County Bar Association for their extraordinary and seamless work behind the scenes, and to Judge Nancy Case Shaffer, District Attorney Jill Ravitch and Public Defender Kathleen Pozzi, for their efforts in support of this year’s program.

Background:

1. What rights are protected under the First Amendment?

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

What does this mean? In simple terms, the First Amendment guarantees that people in this country are free to choose their own religion and to freely practice their religious beliefs; and that they are also at liberty—more broadly—to express their opinions, beliefs and thoughts about all topics, including social issues, politics, policies, religion-- really just about anything, without interference from the government.

This program explores the second component of the First Amendment-- freedom of expression. The most basic component of freedom of expression is the right of individuals to “speak” freely, without interference or constraint by the government. Freedom of expression is a broad right; it includes all forms of expression that communicate a message, such as carrying or displaying signs; or wearing clothing with words on it or that by its color or other characteristic conveys a meaning or allegiance or position. The forms of “expression” protected by the First Amendment are too numerous to list. For the purpose of this discussion, we will be focusing primarily on written expressions by students on social media websites, blogs, emails, and text and instant messages.

It has been more than 220 years since the First Amendment became the law of this country. The reality of today is very different than it was back then-- when Americans made their own clothes; grew their own food; and the men and boys hunted and fished for the family’s meals. While most children went to school for at least a short time, girls typically had very little education. Schools were often uncomfortable; students sat on wooden benches in damp rooms heated by a single fireplace. Sometimes all grades “K-8” and even high school were lumped together in one room. Students wrote on bark with chunks of lead or quill pens dipped in homemade ink. Teachers punished ill-behaved boys with whips, dunce caps, and cards hung around their necks reading “Idle Boy” and “Bitefinger Baby.” At 12 or 13, most boys sought work in the form of an

apprenticeship, where they learned a craft or trade from a cobbler, barrel-maker, tanner, fisherman, or other skilled artisan.

Today nearly every high school student has access to multiple electronic devices including cell phones, laptops and hand-held devices. Advances in technology mean that even the smallest devices are capable of taking and storing high-resolution photographs and videos. Those devices, in turn, can pass images and files back and forth, instantly. The internet continues to offer all new opportunities for students to reach out to each other on social media websites, to post their thoughts, opinions, pictures, and videos, and to share them with the world. And students today also have a lot more free time to express themselves, since most aren't learning a life trade, or responsible for helping to ensure that food is on the table every night.

So, how do we apply the First Amendment to these realities of 2014? How do we interpret those few words-- written by men who could never possibly imagine in their wildest dreams what today's world would be like--in order to continue to uphold and protect this timeless and cherished right? The answer to this question begins with: *who?* Who brings this fundamental right into the present day of SnapChat, Instagram, MySpace and Facebook, and tells us what it means through the lens of today?

2. Who decides what the First Amendment means and how is it enforced?

The United States Supreme Court interprets the extent of the protection afforded by the First Amendment. Its decisions are then interpreted and applied, across the country, by state and federal courts.

Long before any of you were born, the U.S. Supreme Court interpreted the First Amendment as applying to the entire federal government even though the original, and still existing words of the First Amendment, only expressly apply to Congress. However, it is now not even open to question that no branch or agency of the federal government may unduly interfere with an individual's free-speech rights.

In fact, the protections of the First Amendment go far beyond that. The U.S. Supreme Court has also interpreted the due process clause of the Fourteenth Amendment as protecting the rights in the First Amendment from interference by state governments. In other words, we are all U.S. citizens, entitled to the protection of our free speech rights under the First Amendment from our government in Washington, D.C., but we are all also citizens of the state in which we live,

which has a separate government structure; the 14th Amendment was ratified to ensure that the individual state governments recognized the same protections for freedom of expression at this local level.

The Supreme Court requires both the federal government, and the individual states, to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech. A less stringent test is applied when the government attempts to enact laws involving content-neutral speech.

Content-neutral restrictions put limits on speech without paying attention to the subject matter or the viewpoint being expressed.¹ The Supreme Court has held that the “government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions ‘are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant government interest, and that they leave open ample alternative channels for communication of the information.’”² Examples of content-neutral restrictions that have been held to be constitutional include laws that restrict the distribution of printed materials to prevent litter in a public space;³ or laws that prohibit the use of loudspeakers in order to reduce noise.⁴

These kinds of rules may be allowed even if they sometimes affect the content of speech in some way, as a side-effect. In such cases, the Court has said that they “pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue.”⁵ However, if a facially-neutral regulation has a disproportionate effect on a particular type of speech or expression, it can be invalid.⁶

The Supreme Court has also recognized that the government may prohibit some speech that may cause a breach of the peace or cause violence. The so-called “fighting words” doctrine

¹ *Ladue v. Gilleo* (1994) 512 U.S. 43, 54–59.

² *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 791 (1989) (full-text) (quoting *Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288, 293.

³ See *City Council of Los Angeles v. Taxpayers for Vincent* (1984) 466 U.S. 789, 804-05 (full-text) (finding that “[t]he text of the ordinance [prohibiting the posting of signs on public property] is neutral — indeed it is silent — concerning any speaker’s point of view. . . . It is well settled that the state may legitimately exercise its police powers to advance esthetic values.”

⁴ See, *Ward*, supra at 781.

⁵ *Turner Broadcasting System Inc. v. FCC* (1994) 512 U.S. 622 at 642.

⁶ *Turner*, supra at 645.

was established by the Court in 1942, in the case of *Chaplinsky v. New Hampshire*⁷. The Court held that “insulting or ‘fighting words’ -- those that by their very utterance inflict injury or tend to incite an immediate breach of the peace” -- are among the “well-defined and narrowly limited classes of speech the prevention and punishment of [which] ... have never been thought to raise any constitutional problem.”

The First Amendment also does not protect “true threats.”⁸ “True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” It does not matter if the speaker doesn’t intend to carry out the threat. A true threat, where a reasonable person would believe he will be physically harmed, is not protected by the First Amendment.⁹

The level of protection speech receives also depends on where the speech takes place. The Supreme Court has created categories of scrutiny depending on the location in which the “speech” (which includes all forms of expression) takes place. Speech gets the most protection (is the most free) in a “traditional public forum” like a street corner or a park and the least protection (can be restricted by law) in a “nonpublic forum” like a military base. Somewhere in between is a “limited public forum” like public school facilities. Courts decide which label to use by looking to “society’s time-tested judgment, expressed through acquiescence in a continuing practice.”¹⁰ In other words, how have we treated these places between and among ourselves over the decades and generations – do we naturally consider them to be more public and open, or do we tend to treat them as having some private characteristics?

Today, we will be discussing speech in the school setting, which is one of those medium-level areas. Students, teachers, school administrators are all entitled to express themselves in the school setting, under the protections of the First Amendment; however the Supreme Court also recognizes that safe and productive learning environments might sometimes justify putting certain limits on that freedom of expression.

⁷ (1942) 315 U.S. 568.

⁸ *Virginia v. Black* (2003) 538 U.S. 343, 358-360.

⁹ *Corales v. Bennett* (2008) 567 F.3d 554, 563-564.

¹⁰ See *Int’l Soc. for Krishna Consciousness, Inc. v. Lee*, (1992) 505 U.S. 672, 680–81.

Free Speech in the School Setting:

The U.S. Supreme Court (and the other Courts across the country that must interpret and apply the law as laid out by the Supreme Court) has held that free speech rights in the school setting must be balanced against the duty of school officials to maintain safety and order on campuses and in classrooms. However, the U.S. Supreme Court has never (yet) addressed the issue of online speech in the school context. So, in facing the new challenges this type of student expression raises, we can only take from those principles the Court *has* already laid-out concerning student speech, generally.

In the landmark case, *Tinker v. Des Moines Independent Community School District* (1969) 393 U.S. 503, the U.S. Supreme Court held that it was a violation of the First Amendment for school officials to punish students wearing black armbands in protest of the Vietnam War because the arm bands did not disrupt school activities. In reaching its decision, the Court wrote, “it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

However, the U.S. Supreme Court has also ruled that student speech can be constrained under certain circumstances. “It is equally the case that the constitutional rights of students in public school are not automatically the same as the rights of adults in other settings.”¹¹ Instead, those rights must be applied in a way that is consistent with the “special characteristics of the school environment.”¹² School administrators may prohibit student expression that will “materially and substantially disrupt the work and discipline of the school.”¹³ That remains the law today.

In addition, since the *Tinker* decision, the U.S. Supreme Court has also carved out three limited, narrow categories of speech that a school may restrict, even without the threat of substantial disruption to school activity.

1) A school may impose limits on lewd, vulgar, indecent and plainly offensive speech at school.¹⁴ The Court reasoned that, given a school’s responsibility for teaching students the boundaries of socially-appropriate behavior, a student’s use of vulgar or offensive speech while at school may give rise to disciplinary action by the school. The determination of what constitutes

¹¹ *Bethel School District v. Fraser* (1986) 478 U.S. 675, 683.

¹² *Tinker*, supra, at 506.

¹³ *Tinker*, supra, at 513.

¹⁴ *Bethel School District*, supra at 683.

what speech is appropriate, however, largely falls to the school board itself. It is also unquestioned that the same conduct could not be prohibited if it occurred outside of school.

2) Limitations may be placed on school-sponsored speech (speech a reasonable observer would view as the school's own speech) on the basis of a legitimate pedagogical concern, i.e. related to teaching/education.¹⁵ This ensures students learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to things that may be inappropriate for their level of maturity, and that the views of the individual speaker are not mistakenly attributed to the school. In one case, the Supreme Court upheld a principal's decision to delete two articles from the school newspaper that addressed teen pregnancy and divorce. The Court held that whether a school must tolerate particular student speech is different than whether the school must actively promote such speech. "[E]ducators are entitled to exercise greater control over speech that might reasonably be perceived to bear the imprimatur of the school."¹⁶

3) Finally, the Supreme Court has recognized restrictions on student expression that can be reasonably regarded as promoting illegal drug use.¹⁷ This exception acknowledges the special nature of the school environment. The Court addressed this issue in upholding the suspension of a student for attending a school-sponsored event with a sign that read, "Bong Hits 4 Jesus." The Court held that, while the statement was not lewd or vulgar, the school had an obligation to dissuade illegal drug use. Public schools may "safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use."

Discussion Ideas:

1. After reviewing these First Amendment "exceptions" in the school setting, which permit schools to limit and punish certain speech, is it clear to you what you can and cannot say or write when you are at school? If not, is that fair? Shouldn't you be able to understand what your rights are, and what is going to get you in trouble?
2. Do you agree that a school should be able to limit student's speech in order to teach "the boundaries of socially acceptable behavior?" Do you agree that the School Board should decide what those boundaries are?
3. Do you agree that students, at least while at school, should have a lesser right to free expression than adults do, generally?

¹⁵ *Hazelwood School District v. Kuhlmeier* (1988) 484 U.S. 260.

¹⁶ *Hazelwood School District v. Kuhlmeier*, supra.

¹⁷ *Morse v. Frederick* (2007) 551 U.S. 393, 396.

Defining Bullying in the Modern Era

Everyone has “drama” in their lives. With friends, boyfriends, girlfriends, family, coaches, teachers. Things can get intense; there are hurt feelings, sometimes people make too big a deal about something, or feel jealous or angry when you know they shouldn’t, and there are also those times when people say things about others as a joke, or just to get back at them for some little thing at first; but then it gets spread around, and the joke becomes serious or anger flares up. So, what’s the difference between normal every day drama, rumors and trash-talking versus actual bullying?

The legal definitions of bullying usually include some or all of the following components:

A desire to hurt to someone + a hurtful action + often a power imbalance (more popular or stronger student versus less popular or weaker student) + repetition (sometimes) + enjoyment by the student who is doing the bullying + a feeling of helplessness, oppression or fear on the part of the target of the bullying.

When we were in school we did not have cellphones. We did not have email. We did not have the internet. We passed written notes to each other. If someone wanted to spread the word about someone else, the cafeteria was the best place to do that. Confrontations, teasing, taunting – all of this happened in the hallways, on the sports fields, or in the parking lots. Advances in technology have changed this. Now, bullying also includes behavior that happens online, which is a totally different and much bigger world, in many ways. We have all heard the tragic stories of students who have taken their own lives after being the target of a humiliating, devastating attack by their peers and classmates on a social media website or by viral messaging.

So- called “cyber-bullying” is often defined using the terms “willful and repeated harm” that is “inflicted through the use of computers, cell phones, and other electronic devices.” See Table included at Exhibit A for various definitions formulated by legislatures across the country.

This newer form of bullying presents unique challenges. One difference is the physical distance or separation between students who bully and those targeted. It is a lot easier to be mean to someone when they aren’t in front of you. In fact, this is true for everyone. Adults are guilty of this when they use email in their jobs or lives, or when they text each other. We often we say

things that we wouldn't if we were in the same room with the other person. That's always a danger for us all, but the point is that this distance factor creates a unique environment for bullying.

With the Internet, it can also be difficult to identify the person (or people) doing the bullying. This can make the bully-er feel more powerful, because he or she believes they won't be caught. This also means that they may be even crueler in the things they say. When you combine that with the "distance" of these communications we just discussed, on-line or other types of "cyber-bullying" can be particularly harsh and painful for the recipient.

Today's technology also means that we can all rapidly transmit whatever we want to say to a wide audience. Each one of you knows how to reach hundreds, maybe thousands, of people in an instant. No matter how loud you talked in the cafeteria back in my day, you would never reach *nearly* as many people, in such a short amount of time, as the Internet and instant and text messaging makes possible now.

Finally, the Internet makes acts of cyber-bullying highly visible, more pervasive, and more permanent. Once something is posted on the Internet, even if the original poster later takes it down, there is no way to unravel all the re-posts, re-tweets, and forwards that have occurred in the meantime. For the most part, Internet posts, in some form, last forever. On top of that, the fact that every cell-phone has a camera, means that damaging, humiliating and hurtful photographs are easily uploaded, blasted out, and remain eternally visible, which can be an awful and haunting thing for someone who is the victim of cyber-bullying.

Discussion Ideas:

1. Do you think bullying using electronic media should or should not be protected by the First Amendment? Why? or why not? Should schools be able to limit what a student may write on a social networking or other online site while the student is at school?
2. Do all acts of cyber-bullying also fall under one of the areas schools are already permitted to regulate? Can you think of any cyber-bullying type behavior that a school would not already be able to restrict on the grounds previously set forth by the U.S. Supreme Court, i.e. it is substantially disruptive, or because it is lewd, offensive or obscene?
3. Is there something different about the Internet that might allow schools to limit speech on-line even if it does not fall into one of the First Amendment exceptions? For example, calling someone a "whore" or a "queer" in person, while it may cause harm, may not necessarily communicate "a serious expression of an intent to commit an act of unlawful violence" (true threat) and may not qualify as "fighting words" but if it is posted on a social media website, does that change things? Should it still be protected?

Nationwide Legislative Response

For obvious reasons, statistics about bullying vary, and are hard to pin down. However, many sources place bullying rates at over 75% by the time students make their way through high school. An estimated 160,000 students miss school every day due to fear of being bullied.

The damaging effects of bullying are widely recognized, and bullying has been directly-linked to tragic outcomes, with young, promising students taking their own lives after being bullied by their classmates. The research reflects that:

- Students who experience bullying are at increased risk for depression, anxiety, sleep difficulties, and poor school adjustment (Center for Disease Control, 2012).
- Students who bully others are at increased risk for substance use, academic problems, and violence later in adolescence and adulthood (Center for Disease Control, 2012).
- Compared to students who only bully, or who are only victims, students who do both suffer the most serious consequences and are at greater risk for both mental health and behavior problems (Center for Disease Control, 2012).
- Students who experience bullying are twice as likely as non-bullied peers to experience negative health effects such as headaches and stomachaches (Gini and Pozzoli, 2013)

Most states now have some kind of legislation that addresses bullying behavior. However, lawmakers all over the country struggle to keep up with the twists and challenges technology has presented in dealing with bullying among students. Thirty-six states include provisions in their education codes prohibiting cyberbullying or bullying using electronic media. Thirteen states specify that schools have jurisdiction over off-campus behavior if it creates a hostile school environment. Some states have laws that make cyber-bullying a criminal offense.

Included as Exhibit A, is a table with a summary sample of the nationwide legislative response to the issue of cyber-bullying.

California's Legal Response

1. The California Penal Code does not squarely address the issue of cyber-bullying.

California has criminal statutes that address some cyber-bullying conduct, but none that address the issue squarely, and few seem to address the real concerns posed to students by cyber-bullies in their schoolyard. California Penal Code § 653m(a), for example, makes it a misdemeanor to contact another by phone or electronic devices using “any obscene language” or “any threat to inflict injury to the person or property of the person.” 635m(b) makes it a misdemeanor for any person who makes repeated calls by telephone or other electronic communication device to another with the intent to harass or annoy.

Penal Code § 646.9 prohibits a person from willfully, maliciously, and repeatedly following or harassing another where the person also makes a credible threat with the intent to place the victim in reasonable fear for his or her safety. Penal Code § 422 criminalizes threats that are likely to result in death or great bodily injury. Section 528.5 criminalizes online impersonation done with the intent to harm, intimidate, threaten, or defraud. And Section 653.2 makes it a misdemeanor to use electronic communication devices to publish or make available ones personal identifying information if done with the intent to place another in reasonable fear for his or her safety from unwanted physical contact, injury, or harassment by a third party.

None of the statutes, however, address the more mundane teasing, harassing, joking, insulting, and name-calling typically associated with cyber-bullying at schools, even though recent events have shown us that such bullying may often lead to devastating results.

Discussion Ideas:

1. Why do you think there are so few criminal statutes that address the issue of cyber-bullying in California?
2. What difficulties do you think drafting such a statute would pose to lawmakers?
3. How would one go about drafting a good statute that criminalizes cyber-bullying behavior? What would it criminalize? What wouldn't it criminalize? What should the punishment be?

2. The California Legislature *has*, however, authorized its public schools to address the issue of cyber-bullying and to dispense discipline accordingly.

Whether a student may be suspended or expelled is governed by California law. Since 2006, that law has allowed for the suspension or expulsion of students “engaged in an act of bullying,” which is defined as “any severe or pervasive physical or verbal act or conduct” that can reasonably be predicted to cause a reasonable pupil to feel threatened to experience a substantial detrimental effect to his or her physical health.¹⁸ [*break-down, and discuss, what all these words mean*].

A school may also suspend or expel a student if the student has engaged in harassment, threats, or intimidation, directed against school district employees or other students, provided the conduct is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder, and invading the rights of others by creating an intimidating or hostile educational environment.¹⁹ [*again -- break-down, and discuss, what all these words mean*].

In recent years, the California Legislature has tried to keep up with all the changes brought about by computers, cell-phones, hand-held devices and the Internet. The original bullying laws, dating back to 2006, were written before social networking had become a major part of teen life.

In 2011, new legislation amended the definition of “bullying” to “communications made in writing or [through] an electronic act.”²⁰ Shortly thereafter, the Legislature expanded the definition of bullying via electronic act to include “a post on a social network Internet Web site.”²¹

In 2013, the Legislature amended the statute again. Now, effective January 1, 2014, California Education Code makes it clear that “bullying” can include an “electronic act” occurring both on and off campus. The statute defines “electronic act” as follows:

2)(A) “Electronic act” means the creation and transmission originated on or off the school site, by means of an electronic device, including, but not limited to, a telephone, wireless

¹⁸ Cal. Educ. Code § 48900(r).

¹⁹ Ca. Educ. Code § 48900.4.

²⁰ See, Stats.2011, c. 732 (A.B. 1156).

²¹ Stats. 2012 (A.B. 1732).

telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, or image.

(ii) A post on a social network Internet Web site, including, but not limited to:

(I) Posting to or creating a burn page. "Burn page" means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). "False profile" means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.

Importantly, the Education Code allows for discipline only where the conduct "is related to a school activity or school attendance."²² The statute expands this term to include prohibited conduct which may occur "while on school grounds, while going to or coming from school, during the lunch period, or during, while going to or coming from, a school sponsored activity."

Discussion Ideas:

1. Do the California laws go far enough? Shouldn't schools be more active and stop bullying before it becomes "severe or pervasive?" What should schools do?
2. What types of student speech do you think should be most protected against the school? What types of speech should be least protected?
3. Could the California law prohibiting bullying apply to adults, or would the First Amendment prevent that? Is it right that it could apply to students but not adults?

²² Section 48900(s).

The Off-Campus Challenges of Cyberbullying

The Supreme Court has consistently held that student speech within “the schoolhouse gate” may be limited or punished if it causes or reasonably may cause a substantial disruption to the normal functioning of the school, or if it is lewd or obscene.²³ However, the development and spread of the Internet and social networking sites have blurred the lines of what constitutes “on-campus” speech. Legislators and educators face difficult challenges based on the “location” of bullying conduct due to the often “remote” nature of that conduct from the school.

Traditional tests for determining whether speech took place on-campus are hard to apply to Internet speech. Previously, courts used the “geographical origination of speech” test or the “directionality of speech” test. Under the first test, the location of where the speech was first said or written is used to determine whether the speech is on-campus student speech.²⁴ The second, directionality test, considers the intended audience and content (whether the speech is likely to come to the attention of the school community) to determine whether it is on-campus speech.²⁵

At the same time, modern technology means off-campus speech can greatly disrupt the normal, day-to-day activity on-campus. Thus, the question becomes, to what extent can public schools regulate the on-line speech of their students that takes place off-campus? Courts facing this issue apply the Supreme Court’s holding in *Tinker* and its progeny (as discussed above). The following are some of the key cases in this area:

J.S. v. Blue Mountain School District (2011) 650 F.3d 915:

Facts: A middle school honors student was suspended for 10 days for creating, from her home computer, a MySpace profile about her school’s principal. The profile contained his official

²³ See *Doninger v. Niehoff* (2008) 527 F.3d 41; (holding that a school may discipline a student for posting offensive remarks on her blog from her home computer); *Morse v. Frederick* (2007) 551 U.S. 393 (holding that a school may discipline speech that is lewd, vulgar, or offensive at school-related or -sanctioned events); *Hazelwood Sch. Dist. v. Kuhlmeier* (1988) 484 U.S. 260 (holding that a school may censor speech at school-sponsored activities as long as the censorship is reasonably related to legitimate pedagogical concerns); *Bethel Sch. Dist. No. 43 v. Fraser* (1986) 478 U.S. 675 (holding that a school may discipline on-campus speech that is lewd, vulgar, or offensive); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503 (holding that speech may be limited if it causes a substantial or foreseeable disruption to the school environment).

²⁴ See *Layshock v. Hermitage School Dist.* (2007) 496 F. Supp. 2d 587, 598.

²⁵ See *Doninger v. Niehoff* (2008) 527 F.3d 41; *Wisniewski v. Board of Educators* (2007) F.3d 34.

photograph from the school district website, and profanity-laced statements insinuating that he was a sex-addict and a pedophile.

Holding: It was a violation of the student's First Amendment rights to suspend her where:

- (1) school district could not have reasonably foreseen a substantial disruption of, or material interference with, normal school activities: the MySpace profile was made private so that only a limited group of people could access it; the fake profile was so ludicrous that no one took it seriously; there was no evidence that the existence of the profile did cause a disruption in classes; and the fact that the principal was unfortunately humiliated and offended is not enough.
- (2) the speech occurred outside the school, during non-school hours (citing *Cohen v. Cal*, 403 U.S. 15 outside of school, a student's free speech rights are coextensive with the rights of an adult).
- (3) the student's lewd, vulgar and offensive speech was not turned into on-campus speech when another student brought a printed copy of that profile to school at express request of the principal.

Kowalski v. Berkeley County Schools (2011) 652 F.3d 565:

Facts: A high school student was suspended for creating and posting to a MySpace page called "Students Against Shay's Herpes," which focused on and ridiculed one particular classmate. Although the student who created the website did not upload any of the doctored photographs of her classmates, she invited approximately 100 other classmates to join the MySpace group, and responded to the posts.

Holding: Suspending Kowalski for creating and posting to the webpage in violation of school district anti-bullying policy did not violate her First Amendment rights, because:

The MySpace page caused a substantial disruption to school activity under *Tinker*. The webpage contained comments accusing Shay, the target, of being a slut and having herpes, as well as doctored photographs, such as one with a sign across her pelvic areas stating "Warning: Enter at your own risk". Comments on the page clearly anticipated Shay finding out about the page and being affected by it. The vast majority of students who joined the MySpace group were students at the same school. The target student was unable to attend classes out of shame and embarrassment.

Further, even though the page was created at her home computer, the speech was targeted at another student and Kowalski knew the page would be discussed at school and that the fallout from the page would reach the school itself.

Wynar v. Douglas County School District (2013) 728 F.3d 1062:

Facts: High school student was suspended, and then expelled for 90 days for sending violent and threatening instant messages from his home to his friends about planning a school shooting. He sent IMs to friends bragging about his weapons, threatening to shoot specific classmates, and invoking previous school shootings, including Columbine and Virginia Tech. His friends grew alarmed and notified school authorities.

Holding: There was no violation of the student's First Amendment Rights where it was reasonable for the County to interpret the messages as a true threat that forecasted a substantial disruption to the school.

Other relevant cases:

-*S.J.W. v. Lee's Summit R-7 School District* (2012) 696 F.3d 771: court denied students' request for preliminary injunction to halt suspension after students created a website and blog containing a variety of offensive, racist and sexist comments about their school and classmates.

-*Nixon v. Hardin County Board of Education*, 2013 WL 6843087 (W.D. Tenn., 2013): Middle school student sued school board and individual administrators for violation of First Amendment rights after he was forced to attend alternative school for 10 days and participate in counseling due to his threats on social media site directed at another student. School board was denied summary judgment because there were triable issues of fact as to whether discipline for off-campus speech violated 1st Amendment where speech had no connection to school other than the fact that both students attended the same school.

Discussion Ideas:

1. What constitutes a sufficient threat of disruption to school activities when speech occurs off-campus? Students merely discussing posts or messages in school is likely not enough (particularly if they aren't doing it during class)- so, where is the line?
2. Should students get more protection based on the type of off-campus speech? Should there be more leeway for political speech or rude comments about a classmate versus threats of violence?

Speech Directed at Teachers and School Administrators

In December 2012, the first law in the nation that criminalizes cyber-bullying of teachers by students went into effect in North Carolina. Under the "School Violence Prevention Act of 2012," students are prohibited from intimidating or tormenting school employees online. Specific offenses often include building a fake profile or website, posting real or "doctored" images of school employees, or posting employees' personal, private, or sexual information on the Internet.

However, the North Carolina law is unique, and the "bullying" cases involving teachers and school administrators have typically turned in favor of the bullying student.

In *J.S. v. Blue Mountain School District* (discussed above), an eighth-grade student who had been twice punished by her principal for violating the school dress code, created a fake profile of her principal and posted it on MySpace using her parents' computer. The MySpace profile accused the principal of having sex in his office, "hitting on students and their parents," and being a "sex addict." She wrote that the principal's wife, a school counselor, "looks like a man" and that his son "looks like a gorilla."

Confronted by her principal, J.S. admitted creating the profile as a "joke." She later sent a written apology to the principal and his wife. J.S. was, nevertheless, suspended for 10 days. She then sued her principal and the school district claiming a violation of her right to freedom of speech. She won.

In a second case, *Layshock v. Hermitage School District*,²⁶ Justin Layshock, a high school senior, also took to MySpace to belittle his principal, Eric Trosch. He used his grandmother's computer to create a profile of Trosch, using a photo of the principal he copied from the school's website. In addition to using vulgar language and homophobic slurs, Layshock accused Trosch of being a "drunk," smoking a "big [marijuana] blunt," using illegal drugs, and shoplifting.

Layshock admitted creating the profile and later apologized. His parents grounded him and took away his computer access. The school district subsequently suspended Layshock for 10 days, transferred him to an "alternative" high school, banned him from all extracurricular activities, and prohibited him from participating in the graduation ceremony. Claiming a free speech violation, Layshock and his parents sued Trosch and the school district. He also won his case.

²⁶ *Layshock ex rel. Layshock v. Hermitage Sch. Dist.* (2006) 412 F. Supp. 2d 502, 505.

In both cases, the Third Circuit Court of Appeal held that school officials could not constitutionally punish the online, off-campus speech of the two students because that speech would not foreseeably cause substantial disruption in school.

“It would be an unseemly and dangerous precedent to allow the state, in the guise of school authorities, to reach into a child's home and control his/her actions there to the same extent that it can control that child when he/she participates in school-sponsored activities,” wrote the Chief Judge of the Third Circuit Court of Appeal in the Court's unanimous opinion in *Layshock*.

However, this very same Court was split 8-6 in making its ruling in *J.S. v. Blue Mountain School District*. The dissenters in the *Blue Mountain* case believed J.S.'s actions caused a substantial disruption to the work and discipline of the school. The dissenters also believed the majority's decision, “allows a student to target a school official and his family with malicious and unfounded accusations about their character in vulgar, obscene, and personal language.” Writing for the dissent, Judge D. Michael Fisher, said: “I fear that our court leaves schools defenseless to protect teachers and school officials against such attacks and powerless to discipline students for the consequences of their actions.”

That question remains open. No Court has yet addressed whether and how student speech against teachers or administrators should—or effectively is—viewed differently than student speech against other students, in the constitutionality analysis.

Discussion Ideas:

1. Do you think the outcome in *Layshock* or *Blue Mountain* might have been different if the target of the MySpace profiles had been another student?
2. Should it make a difference if the speech is targeted at a fellow student or a school administrator?
3. Is speech about an administrator less likely to cause a substantial disruption to school activity?

EXHIBIT A

CYBER-BULLYING: SAMPLING OF NATIONWIDE LEGISLATION [INCLUDING DEFINITIONS]

(if you are interested in a link and the hyperlink does not connect, please copy and paste the url into your search browser—all websites should be functional)

<p>Arkansas</p>	<p>July 2011: cyberbullying crime law took effect (making cyberbullying a misdemeanor): http://www.arkleg.state.ar.us/assembly/2011/2011R/Acts/Act905.pdf Reference to off-campus behaviors: Policies must prohibit bullying: "(B) (i) By an electronic act that results in the substantial disruption of the orderly operation of the school or educational environment." "(ii) This section shall apply to an electronic act whether or not the electronic act originated on school property or with school equipment, if the electronic act is directed specifically at students or school personnel and maliciously intended for the purpose of disrupting school, and has a high likelihood of succeeding in that purpose." H. B. 1072, 2007 Code §6-18-514(a) Anti-bullying Policies; now Act 115 http://www.arkleg.state.ar.us/assembly/2007/R/Acts/Act115.pdf; http://www.arkleg.state.ar.us/assembly/ArkansasCode/6/6-18-514.htm; Policies must state the consequences for engaging in the prohibited conduct, which may vary depending on the age or grade of the student involved.</p>
<p>Connecticut</p>	<p>Signed by governor on 7-13-2011; "An Act Concerning the Strengthening of School Bullying Laws" "Cyberbullying" means any act of bullying through the use of the Internet, interactive and digital technologies, cellular mobile telephone or other mobile electronic devices or any electronic communications..." School policies must "include provisions addressing bullying outside of the school setting if such bullying (A) creates a hostile environment at school for the victim, (B) infringes on the rights of the victim at school, or (C) substantially disrupts the education process or the orderly operation of a school..." http://www.cga.ct.gov/2011/TOB/S/2011SB-01138-R00-SB.htm H.B. 5826 (2008): http://www.cga.ct.gov/2008/ACT/PA/2008PA-00160-R00HB-05826-PA.htm</p>
<p>Florida</p>	<p>HB 609, signed by governor in May 2013, takes effect July 1, 2013. Added "cyberbullying" to bill and includes explicit language allowing schools to discipline students for their off-campus harassment that "substantially interferes with or limits the victim's ability to participate in or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school." http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h0609er.docx&DocumentType=Bill&BillNumber=0609&Session=2013 Related to HB 626, "Imagine Sheterrria Elliot Act" passed (http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=49783& Full law: http://laws.flrules.org/2013/87 H.B. 699 s. 1006.147: School Safety "Jeffrey Johnson Stand Up for All Students Act": Consequences must be made clear by the school district; http://www.myfloridahouse.com/Sections/Documents/loaddoc.aspx?FileName=_h0669_.xml&DocumentType=Bill&BillNumber=0669&Session=2008</p>
<p>Georgia</p>	<p>Proposed: "The End to Cyberbullying Act" – includes off campus and cyberbullying http://www.legis.ga.gov/Legislation/20112012/110632.pdf SB 250 (2010): Students found bullying third time in school year are sent to alternative school, requires that policies against bullying be posted in all middle and high schools, requires that bullying policies be included in student and parent handbooks. O.C.G.A. 20-2-751.4: "...by use of data or software that is accessed through a computer, computer system,</p>

	<p>computer network, or other electronic technology of a local school system..."</p> <p>1999 Georgia Laws, H.B. 84, Chap. 282 (O.C.G.A. § 20-2-751.4 and O.C.G.A. § 20-2-751.5.) Requires the implementation of a character education program at all grade levels that is to include methods of discouraging bullying and violent acts against fellow students. Adds razor blade to the definition of weapon. http://www.bullypolice.org/ga_law.html</p>
Illinois	<p>January 1, 2012, H.B. 3281 "The board may suspend or by regulation authorize the superintendent of the district or the principal, assistant principal, or dean of students of any school to suspend a student for a period not to exceed 10 school days or may expel a student for a definite period of time not to exceed 2 calendar years, as determined on a case by case basis, if (i) that student has been determined to have made an explicit threat on an Internet website against a school employee, a student, or any school-related personnel, (ii) the Internet website through which the threat was made is a site that was accessible within the school at the time the threat was made or was available to third parties who worked or studied within the school grounds at the time the threat was made, and (iii) the threat could be reasonably interpreted as threatening to the safety and security of the threatened individual because of his or her duties or employment status or status as a student inside the school. The provisions of this subsection (d-5) apply in all school districts, including special charter districts and districts organized under Article 34 of this Code." (emphasis added) 2011 proposal references cyberbullying: http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=84&GA=97&DocTypeId=HB&DocNum=1466&GAID=11&LegID=58226&SpecSess=0&Session=0 S.B. 3266 (2010) (105 ILCS 5/27-13.3, 5/27-23.7, 5/10-20.14): http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=010500050HArt.+27&ActID=1005&ChapAct=105%26nbsp%3BILCS%26nbsp%3B5%2F&ChapterID=17&ChapterName=SCHOOLS&SectionID=49363&SeqStart=145600000&SeqEnd=151900000&ActName=School+Code. 105 ILCS 135/1-2 (2008) defines harassment through electronic communications. The definition includes "making any obscene comment, request, suggestion or proposal with an intent to offend," and "threatening injury to the person or to the property of the person to whom the electronic communication is directed or to any of his family or household members." Violation of the provisions of the statute will result in a class B misdemeanor." http://www.olweus.org/public/laws_illinois.page H.B. 6391: a school district must include in the age-appropriate curriculum topics devices, including, but not limited to, the risks and consequences of dissemination and transmission of sexually explicit images and video. The age-appropriate unit of instruction may be incorporated into the current courses of study regularly taught in the district's schools, as determined by the school board.</p>
Indiana	<p>HB 1423, signed by governor on May 11, 2013 (Public Law 285) "'bullying' means overt, unwanted, repeated acts or gestures, including verbal or written communications or images transmitted in any manner (including digitally or electronically), physical acts committed, aggression, or any other behaviors, that are committed by a student or group of students against another student with the intent to harass, ridicule, humiliate, intimidate, or harm the other targeted student and create for the targeted student an objectively hostile school environment." https://docs.google.com/viewer?url=http://static.openstates.org/documents/in/IND00057868&chrome=true HB 1276: Amends the definition of "bullying" to include communications transmitted from an electronic communications device or through a social networking web site. http://www.in.gov/legislative/bills/2010/HB/HB1276.2.html Senate Enrolled Act No. 285: http://www.in.gov/legislative/bills/2005/PDF/SE/SE0285.1.pdf IC 20-30-5.5; IC 20-33-8-0.2; IC 20-33-8-13.5; IC 5-2-10.1-2; IC 5-2-10.1-11.12 See also: http://www.in.gov/legislative/ic/code/title20/ar33/ch8.html</p>
Iowa	<p>S.F. 61, 2007 Code §280.28 Harassment and Bullying Prohibited; http://www.caabi.org/Anti_Bullying_Law_Iowa.html</p>

	<p>"Harassment" and "bullying" shall be construed to 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:</p> <ol style="list-style-type: none"> (1) Places the student in reasonable fear of harm to the student's person or property. (2) Has a substantially detrimental effect on the student's physical or mental health. (3) Has the effect of substantially interfering with a student's academic performance. (4) 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. <p>"On or before September 1, 2007, the board of directors of a school district and the authorities in charge of each accredited nonpublic school shall adopt a policy declaring harassment and bullying in schools, on school property, and at any school function, or school-sponsored activity regardless of its location, in a manner consistent with this section, as against state and school policy."</p> <p>Criminal harassment statute (708.7) includes electronic forms: "A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following: (1) Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm."</p> <p>https://coolice.legis.iowa.gov/coolice/default.asp?category=billinfo&service=iowacode&ga=83&input=708.7</p>
<p>Louisiana</p>	<p>http://la.opengovernment.org/system/bill_documents/000/028/386/original/streamdocument.asp?1302284589 "Cyberbullying is the transmission of any electronic textual, visual, written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen...whoever commits the crime of cyberbullying shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both."</p> <p>H.B. 1458; School board may charge fee to attend conflict resolution class/es, not to exceed \$100 Provides relative to cyberbullying and student codes of conduct adopted by local school boards, not passed for all School before or by August, 1, 2010.</p> <p>Reference to off-campus behaviors: "Cyberbullying (for purposes of writing each policy) means: harassment, intimidation, or bullying of a student on school property by another student using a computer, mobile phone, or other interactive or digital technology OR harassment, intimidation, or bullying of a student while off school property by another student using any such means when the action or actions are intended to have an effect on the student when the student is on school property." (La. Rev. Stat. Ann. §§ 14:40.7, 17:416.13—http://www.legis.state.la.us/lss/lss.asp?doc=81029)</p>
<p>Maine</p>	<p>§6554. Prohibition on bullying in public schools: "'Bullying' includes, but is not limited to, a written, oral or electronic expression or a physical act or gesture or any combination thereof directed at a student or students... 'Bullying' includes cyberbullying. [2011, c. 659, §3 (NEW).] 'Cyberbullying' means bullying through the use of technology or any electronic communication, including, but not limited to, a transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted by the use of any electronic device, including, but not limited to, a computer, telephone, cellular telephone, text messaging device and personal digital assistant." (http://www.mainelegislature.org/Legis/Statutes/20-A/title20-Asec6554.html) "An Act to Prohibit Cyberbullying:"http://www.mainelegislature.org/legis/bills/bills_124th/billpdfs/SP035501.pdf</p> <p>P.L. 2005, Ch. 307: http://www.mainelegislature.org/ros/LOM/LOM122nd/8Pub301-350/Pub301-350-06.htm</p> <p>Statute Title 20-A 1001.15H (2005): School officials must "establish procedures and policies to address bullying, harassment, and sexual harassment" http://www.mainelegislature.org/legis/statutes/20-A/title20-</p>

	<p>Asec1001.html SP035501: Current law requires each school board to adopt a policy that addresses injurious hazing. This bill defines "cyberbullying" as injurious hazing by any verbal, textual or graphic communication of any kind effected, created or transmitted by the use of any electronic device, including but not limited to a computer, telephone, cellular telephone, text messaging device and personal digital assistant. Punishment is up to the School Board.</p>
Maryland	<p>H.B. 199, 2008 Code §7-424, 7-424.1 Bullying, Harassment and Intimidation; http://mlis.state.md.us/2008rs/bills/hb/hb0199e.pdf--Up to the schools to establish policy for punishment. Misuse of Interactive Computer Service (Grace's Law). Passed legislature 4/2013. Named after Grace McComas, a high school student who committed suicide in 2012 on Easter after being cyberbullied by a neighbor. "This bill prohibits a person from using an "interactive computer service" to maliciously engage in a course of conduct that inflicts serious emotional distress on a minor or places a minor in reasonable fear of death or serious bodily injury with the intent (1) to kill, injure, harass, or cause serious emotional distress to the minor or (2) to place the minor in reasonable fear of death or serious bodily injury. Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$500 maximum fine." http://mqaleg.maryland.gov/2013RS/fnotes/bil_0002/sb1052.pdf</p>
Montana	<p>No bullying law. State does have a criminal statute prohibiting harassment via electronic means: "a person commits the offense of violating privacy in communications if the person knowingly or purposely: (a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend." http://leg.mt.gov/bills/mca/45/8/45-8-213.htm</p>
Mississippi	<p>House Bill 552 makes impersonating someone for the purposes of harming, intimidating, threatening, or defrauding another person (online or off) a misdemeanor (http://e-lobbyist.com/gaits/text/213626). Signed by the governor on March 11, 2011. S.B.2015; passed July 2010; http://billstatus.ls.state.ms.us/documents/2010/pdf/SB/2001-2099/SB2015SG.pdf: "...bullying or harassing behavior" is any pattern of gestures or written, electronic or verbal communications, or any physical act or any threatening communication, or any act reasonably perceived as being motivated by any actual or perceived differentiating characteristic, that takes place on school property, at any school-sponsored function, or on a school bus..." S.B. 2390 (2001); "2001 Miss. Laws, S.B. 2390 - Directs the State Board of Education to develop a list of recommended conflict resolution and peer mediation programs that address responsible decision making, the causes and effects of school violence and harassment, cultural diversity, and nonviolent methods for resolving conflict, including peer mediation. Requires the board to make the list available to local school administrative units and school buildings by the beginning of the 2002-2003 school year."</p>
Missouri	<p>Missouri Revised Statutes, Chapter 160 (160.775) – http://www.moga.mo.gov/statutes/c100-199/1600000775.htm "'Bullying' means intimidation or harassment that causes a reasonable student to fear for his or her physical safety or property. Bullying may consist of physical actions, including gestures, or oral, cyberbullying, electronic, or written communication, and any threat of retaliation for reporting of such acts." S.B. 818; http://www.senate.mo.gov/08info/pdf-bill/tat/SB818.pdf; "Currently, harassment is a Class A misdemeanor. Under this act, it is a Class A misdemeanor unless 1) committed by a person twenty-one years of age or older against a person seventeen years of age or younger; or 2) the person has previously committed the crime of harassment. In such cases, harassment is a class D felony."</p>

	http://www.senate.mo.gov/08info/BTS_Web/Bill.aspx?SessionType=R&BillID=147
Nevada	S.B. 163 (chapter 188); "Cyber-bullying" means bullying through the use of electronic communication; "Electronic communication" means the communication of any written, verbal or pictorial information through the use of an electronic device, including, without limitation, a telephone, a cellular phone, a computer or any similar means of communication. Section 7 of this bill requires each school district to adopt the policy for inclusion in its policy on the provision of a safe and respectful learning environment; http://www.leg.state.nv.us/Session/75th2009/Bills/SB/SB163_EN.pdf --penalty of misdemeanor. http://www.leg.state.nv.us/NRS/NRS-388.html#NRS388Sec123
New York	SENATE BILL - S 1987-B (A 3661-C): "Dignity for All Students Act" to afford all students in public schools an environment free of harassment and discrimination based on actual or perceived race, national origin, ethnic group, religion, disability, sexual orientation, gender or sex. (2010). "'Harassment' shall mean the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; such conduct, verbal threats, intimidation or abuse includes but is not limited to conduct, verbal threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex." Requires "instruction in civility, citizenship and character education." Scheduled to take effect July 1, 2012. Takes effect July 1, 2013: "The legislature also recognizes that most cyberbullying originates off-campus, but nonetheless affects the school environment and disrupts the educational process, impeding the ability of students to learn and too often causing devastating effects on students' health and well-being." Includes behavior that "occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment..." http://open.nysenate.gov/legislation/bill/S7740-2011
North Carolina	Senate Bill 707 (effective December 1, 2012) adds as a punishable offense "Cyber-bullying of school employee by student." http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S707v6.pdf Also, unlawful for any person to use a computer or computer network to "Make any statement, whether true or false, intending to immediately provoke, and that is likely to provoke, any third party to stalk or harass a minor." § 115C-407.15. Bullying and harassing behavior. (a) As used in this Article, "bullying or harassing behavior" is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and that: (1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or (2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior. § 14-458.1. Cyber-bullying; (computer-related crime). Outlines specific types of cyberbullying and applies to behaviors directed toward minors or a minor's parents. "Any person who violates this section shall be guilty of cyber-bullying, which offense shall be punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the defendant is under the age of 18 at the time the offense is committed, the offense shall be punishable as a Class 2 misdemeanor"

	<p>http://ftp.legislature.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_14/Article_60.PDF § 14-458.2. Cyber-bullying of a school employee by student; penalty. Unlawful for student to create a fake profile or web site, to post or encourage others to post personal, private, or sexual information, to post a real or doctored image of a school employee.</p>
Oregon	<p>Senate Bill 1555 (July 1, 2012): "Each school district shall adopt a policy prohibiting harassment, intimidation or bullying and prohibiting cyberbullying." Requires a school employee "to report an act of harassment, intimidation or bullying or an act of cyberbullying..." Further, "[s]chool districts must incorporate into existing training programs for students and school employees information related to: (a) The prevention of, and the appropriate response to, acts of harassment, intimidation and bullying and acts of cyberbullying." http://www.ode.state.or.us/opportunities/grants/nclb/title_iv/a_drugfree/ors-339bully.pdf Chapter 647 Oregon Laws 2007 339.351. As used in ORS 339.351 to 339.364[,]:(1) "Cyberbullying" means the use of any electronic communication device to harass, intimidate or bully. (2) "Harassment, intimidation or bullying" means any act that substantially interferes with a student's educational benefits, opportunities or performance, that takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop, and that has the effect of: (a) Physically harming a student or damaging a student's property; (b) Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student's property; or (c) Creating a hostile educational environment. http://www.oregonlaws.org/ors/339.351</p>
South Dakota	<p>Bullying law signed by the Governor on March 22, 2012. "Bullying consists of repeated physical, verbal, non-verbal, written, electronic, or any conduct directed toward a student that is so pervasive, severe, and objectively offensive ..." "Neither the physical location nor the time of day of any incident involving the use of computers or other electronic devices is a defense to any disciplinary action taken by a school district for conduct determined to meet the definition of bullying in section 2 of this Act." http://legis.sd.gov/Legislative_Session/Bills/Bill.aspx?File=SB130ENR.htm&Session=2012</p>
Tennessee	<p>Tenn. Code Ann. § 49-6-1014 (2012) Legislative findings -- Safety and civility. The general assembly finds and declares that: (1) A safe and civil environment is necessary for students to learn and achieve high academic standards; (2) Harassment, intimidation, bullying or cyber-bullying, like other disruptive or violent behavior, is conduct that disrupts a student's ability to learn and a school's ability to educate its students in a safe environment; (3) Students learn by example. School administrators, faculty, staff and volunteers who demonstrate appropriate behavior, treating others with civility and respect and refusing to tolerate harassment, intimidation, bullying or cyberbullying, encourage others to do so as well; and (4) The use of telephones, cellular phones or other wireless telecommunication devices, personal digital assistants (PDAs), computers, electronic mail, instant messaging, text messaging, and web sites by students in a manner that is safe and secure is essential to a safe and civil learning environment and is necessary for students to successfully use technology. Tenn. Code Ann. § 49-6-1015 (2012) Definitions for §§ 49-6-1014 -- 49-6-1019. (a) As used in § 49-6-1014, this section and §§ 49-6-1016 -- 49-6-1019: (1) "Cyber-bullying" means bullying undertaken through the use of electronic devices; (2) "Electronic devices" include, but are not limited to, telephones, cellular phones or other wireless telecommunication devices, personal digital assistants (PDAs), computers, electronic mail, instant</p>

	<p>messaging, text messaging, and web sites; (3) "Harassment, intimidation or bullying" means any act that substantially interferes with a student's educational benefits, opportunities or performance; and: (A) If the act takes place on school grounds, at any school-sponsored activity, on school-provided equipment or transportation or at any official school bus stop, the act has the effect of: (i) Physically harming a student or damaging a student's property; (ii) Knowingly placing a student or students in reasonable fear of physical harm to the student or damage to the student's property; (iii) Causing emotional distress to a student or students; or (iv) Creating a hostile educational environment; or (B) If the act takes place off school property or outside of a school-sponsored activity, it is directed specifically at a student or students and has the effect of creating a hostile educational environment or otherwise creating a substantial disruption to the education environment or learning process. http://www.tn.gov/education/safe_schls/safety_cntr/doc/TennesseeBullyingHarassmentCyber-bullyingLaws.pdf S.B.113; A misdemeanor (up to 1 year in prison and a \$2,500 fine) for making threats made online as well as certain instances of cyberharassment.</p>
<p>Utah</p>	<p>SB 304 – signed March 22, 2011 (http://le.utah.gov/~2011/bills/sbillenr/sb0304.htm): (3) "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication." HB325: Requires local school boards and local charter boards to adopt a policy, on or before September 1, 2009, for reporting and responding to bullying, hazing, or retaliation; http://le.utah.gov/~code/TITLE53A/htm/53A11a010200.htm http://le.utah.gov/~code/TITLE53A/htm/53A11a030100.htm "State Board of Education Policy R277-613-1 (2009) defines Cyber Bullying as "the use of email, instant messaging, chat rooms, pagers, cell phones or other forms of information technology to deliberately harass, threaten, or intimidate someone for the purpose of placing a school employee or student in fear of physical harm to the school employee or student or harm to property of the school employee or student. The policy requires each school district to implement a policy prohibiting bullying and hazing consistent with Code 53A-11a-301 (2008)." http://www.olweus.org/public/laws_utah.page</p>
<p>Vermont</p>	<p>RCS 28A.300.285 (2010): http://apps.leg.wa.gov/RCW/default.aspx?cite=28A.300.285. "By August 1, 2011, each school district shall adopt or amend if necessary a policy and procedure..." "'Harassment, intimidation, or bullying' means any intentional electronic, written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080(3), or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act..." Implicitly includes off campus behaviors because it includes behaviors that have: "...the effect of substantially disrupting the orderly operation of the school." "The Washington state school directors' association, with the assistance of the office of the superintendent of public instruction, shall convene an advisory committee to develop a model policy prohibiting acts of harassment, intimidation, or bullying that are conducted via electronic means by a student while on school grounds and during the school day. The policy shall include a requirement that materials meant to educate parents and students about the seriousness of cyberbullying be disseminated to parents or made available on the school district's web site." S.B. 5288, 2007: Revised Code of Washington §28A.300.285; Adds cyber bullying to the Harassment</p>

	<p>and bullying Act that Schools must have a policy for; terms of penalty are determined by the School; http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Laws/Senate/5288-S.SL.pdf</p> <p>Cyberstalking (RCW 9.61.260): "A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party: (a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act; (b) Anonymously or repeatedly whether or not conversation occurs; or (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household." http://apps.leg.wa.gov/rcw/default.aspx?cite=9.61.260</p>
<p>Washington</p>	<p>RCS 28A.300.285 (2010): http://apps.leg.wa.gov/RCW/default.aspx?cite=28A.300.285.</p> <p>"By August 1, 2011, each school district shall adopt or amend if necessary a policy and procedure..."</p> <p>"'Harassment, intimidation, or bullying' means any intentional electronic, written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080(3), or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act..."</p> <p>Implicitly includes off campus behaviors because it includes behaviors that have: "...the effect of substantially disrupting the orderly operation of the school."</p> <p>"The Washington state school directors' association, with the assistance of the office of the superintendent of public instruction, shall convene an advisory committee to develop a model policy prohibiting acts of harassment, intimidation, or bullying that are conducted via electronic means by a student while on school grounds and during the school day. The policy shall include a requirement that materials meant to educate parents and students about the seriousness of cyberbullying be disseminated to parents or made available on the school district's web site."</p> <p>S.B. 5288, 2007: Revised Code of Washington §28A.300.285; Adds cyber bullying to the Harassment and bullying Act that Schools must have a policy for; terms of penalty are determined by the School; http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Laws/Senate/5288-S.SL.pdf</p> <p>Cyberstalking (RCW 9.61.260): "A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party: (a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act; (b) Anonymously or repeatedly whether or not conversation occurs; or (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household." http://apps.leg.wa.gov/rcw/default.aspx?cite=9.61.260</p>
<p>District of Columbia</p>	<p>D.C. Act 19-384—"Youth Bullying Prevention Act of 2012" - signed by D.C. Mayor on June 22, 2012.</p> <p>"'Bullying' means any severe, pervasive, or persistent act or conduct, whether physical, electronic, or verbal..." ..."Can be reasonably predicted to... (II) Cause a substantial detrimental effect on the youth's physical or mental health..." (IV) Substantially interfere with the youth's academic performance or attendance..." Schools need to have a bullying prevention policy within 365 days of the effective date of the act. The policy is to be enforced when the bullying happens on school property, while using school-owned property, and "Through electronic communication to the extent it is directed at a youth and it substantially interferes with the youth's ability to participate in or benefit from the services, activities, or privileges provided by the agency, educational institution, or grantee."</p> <p>http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?noticeid=2692737</p>