

Cyberbullying and School Policy

Introduction

The Commonwealth of Virginia has been concerned with student Internet safety since the General Assembly first enacted legislation on the topic in 2000. In 2006, the *Code of Virginia* (§ 22.1-70.2) was amended to require Internet safety instruction for all students (<http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+CHAP0052+pdf>). By summer 2008, schools throughout the Commonwealth had developed Internet safety policies and programs.

The Virginia Department of Education's (VDOE) *Guidelines and Resources for Internet Safety in Schools* (2007) identified a number of potential Internet safety issues, including cyberbullying. Bullying is an age-old (and worldwide) problem—one that can lead to dire consequences for both the person who has been bullied and the bully. Pervasive technology use among young people has shifted some bullying behavior from face-to-face to technological interactions. Cyberbullying can become extremely vicious, inescapable, and anonymous; additionally, the bullying material can be publicized worldwide (Willard, 2007, April).

In 2005, the General Assembly amended the law (§ 22.1-208.01) on character education to prohibit bullying and to teach antibullying. In 2006, the Virginia Board of Education, with assistance from the VDOE, updated the *Student Conduct Policy Guidelines* to address bullying and cyberbullying and provided each division with a kit to help implement this requirement.

Examples and Impact

The *Student Conduct Policy Guidelines* (2006) defines bullying as “repeated negative behaviors intended to frighten or cause harm” and cyberbullying “as using information and communication

Virginia Department of Education

James Monroe Building
101 North 14th Street
Richmond, VA 23219

804-225-2855 phone
804-371-2455 fax
www.doe.virginia.gov

For more information, contact:

Lan Neugent

Assistant Superintendent for
Technology & Career Education

804-225-2757
lan.neugent@doe.virginia.gov

Tammy M. McGraw, Ed.D.

Director, Office of Educational
Technology

804-225-4429
tammy.mcgraw@doe.virginia.gov

We would like to thank Chip Muir, Assistant Attorney General in the Computer Crime Section of the Office of the Attorney General of Virginia, for his contribution to this information brief.

technologies such as e-mail, cell phone and page text messages, instant messaging, defamatory personal Web sites, and defamatory online personal polling sites, to support deliberate, hostile behavior intended to harm others” (p. 21). The Virginia Governor’s Office for Substance Abuse Prevention (GOSAP) (2007) offers additional details:

Cyberbullying can take many different forms online including sending mean, vulgar, or threatening messages or images; posting sensitive or private information about another person; or intentionally excluding someone from an online group. Most often cyberbullying occurs through emails, instant messaging, text messaging, web pages, blogs and chat rooms (p. 11).

Nancy Willard (2007, April)—a former teacher, a current lawyer, and an expert on the topic—identifies several examples of cyberbullying:

1. Flaming: Online fights using electronic messages with angry and vulgar language
2. Harassment: Repeatedly sending nasty, mean, and insulting messages
3. Denigration: Sending or posting gossip or rumors about a person to damage his or her reputation or friendships
4. Impersonation: Pretending to be someone else and sending or posting material to get that person in trouble or in danger; or to damage that person’s reputation or friendships
5. Outing: Sharing someone’s secrets or embarrassing information or images online

6. Trickery: Talking someone into revealing secrets or embarrassing information, then sharing it online
7. Exclusion: Intentionally and cruelly excluding someone from an online group
8. Cyberstalking: Repeated, intense harassment and denigration that includes threats or creates significant fear (pp. 1-2).

Bullying, via face-to-face actions or technology, has received closer scrutiny in recent years. In the past, it often was shrugged off as unfortunate but normal childhood behavior. New studies, however, show that bullying has a long-reaching impact on the children who are bullied, the children who initiate or participate in bullying, and the whole K-12 school climate. Providing a safe learning environment for all children requires schools to confront bullying.

Cyberbullying has shifted the nature of both the bully and victim with the importance of physical intimidation decreasing because of the remote proximity of the bullier. The traditional stereotype of a small lightweight boy being victimized by a big burly boy is not the norm with cyberbullying. Studies indicate that more girls than boys participate in cyberbullying behavior (Hinduja & Patchin, 2008b). Victims may be anyone from a shy immigrant student to a popular athlete. For an excellent example of how cyberbullies defy traditional stereotypes, see the short video *Let’s Fight It Together* by Childnet International’s Digizen (2007).

Schools increasingly are tackling situations where anonymous students harass educators by using Web sites, videos taken with cell phones, and other aggressive technology-based communications. Complicating the situation, these cyber attacks on teachers sometimes may be protected by the constitutional right of free speech.

An excellent overview of relevant research is found in Kathleen Conn's (2006) *Bullying in K-12 Public Schools: Searching for Solution*.

Legal Issues

This overview is not intended as legal advice to school divisions and boards; however, it may raise the awareness of policymakers about legal issues surrounding this complex topic. Essentially, the courts approach cyberbullying as a free-speech issue. As a result, there are neither clear-cut guidelines nor a strong consensus. Additionally, new decisions constantly offer new interpretations. It is vital for school legal counsel to keep up with new interpretations of free-speech rights and limitations that pertain to schools, especially when the speech occurs off campus.

To date, no legal precedents have been established regarding cyberbullying. Courts generally refer to *Tinker v. Des Moines Independent Community School District* (1969), in which the U.S. Supreme Court upheld the right of free speech unless there was "substantial interference with school discipline or the rights of others." Schools conceivably could prosecute a case by demonstrating *just cause* that a student's cyberbullying interferes substantially with school discipline, but this can be difficult to prove.

Cyberbullying frequently occurs off campus, which further clouds its potential impact on school discipline. Even when students cyberbully on campus but use their own technology-communication devices (e.g., cell phones, BlackBerries, laptops), schools may not be able to take disciplinary action. Furthermore, it remains to be seen if schools can punish students for off-campus Internet communications that can be accessed on campus; for example, schools may or may not have the authority to take action against a derogatory school popularity poll Web site

created off campus—is it on-campus or off-campus speech?

Again, the courts seem to focus on the "substantial interference" argument as the essential issue; however, as public attention focuses on highly publicized cyberbullying incidents and as courts grapple with the capabilities of new communication technologies, the legal interpretations are likely to change. Clear policies and record keeping often are the keys to successful discipline in bullying incidents. In a 2007 case involving a student-produced lewd video of a teacher posted on YouTube (*Requa v. Kent School District No. 415 et al.*), the student's 40-day suspension was upheld because he violated a school prohibition against using unauthorized cell phone cameras or video cameras during school hours. In this instance, free speech was not the essential issue.

Although the above discussion centers on schools disciplining students, teachers and administrators need to be aware that cyberbullying is a crime and must be treated accordingly. Local law enforcement authorities may be contacted to initiate an investigation into cyberbullying or a subsequent prosecution of the offense.

Staff and students should be aware that those involved in cyberbullying behavior may be prosecuted under the following Virginia laws related to cyberbullying:

§ 18.2-152.7:1 Harassment by computer (cyberbullying)

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-152.7C1>

§ 18.2-152.7 Personal trespass by computer

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-152.7>

§ 18.2-60.3. Stalking; penalty
<http://leg1.state.va.us/cgi-bin/legp524.exe?000+cod+18.2-60.3>

§ 18.2-56. Hazing unlawful; civil and criminal liability; duty of school, etc., officials
<http://leg1.state.va.us/cgi-bin/legp524.exe?000+cod+18.2-56>

Recommendations for Policies and Procedures

Because cyberbullying crosses boundaries of school authority, representatives from safe school committees and programs, character education committees and programs, and Internet safety committees and programs must work together to determine appropriate policies and procedures. Cyberbullying should be included in the divisions' character education policies, which already address bullying, per the 2006 *Student Conduct Policy Guidelines*; another option would be to create separate policies specifically addressing cyberbullying. Divisions also should amend their acceptable use policies specifically to prohibit the use of technology for bullying purposes.

Sameer Hinduja and Justin Patchin (2008a) recommend that policies include the following features:

- Specific definitions for harassment, intimidation, and bullying (including electronic variants)
- Graduated consequences and remedial actions
- Procedures for reporting and investigating
- Provisions for disciplining off-campus student speech or behavior that result in a "substantial disruption of the learning environment"

- Strategies (e.g., workshops, staff training, curriculum enhancements) for preventing cyberbullying

Nancy Willard (2007, March) suggests that policies also include:

- Information about supervision and monitoring (the limited rights students have to privacy when using school-owned technology)
- An expectation that students will report cyberbullying behavior
- Specific technology-connected behaviors, including the use of personal communication devices, prohibited in school and at school-sponsored functions

She further recommends that the reporting procedures allow for anonymous contributions and that schools incorporate cyberbullying policy information screens into devices that give access to the school's network. Schools not wanting to take formal disciplinary action can address the cyberbullying situation informally. Willard observes, "The most effective response is to provide the parents of the cyberbully with a downloaded copy of the harmful online material and advise the parents of their potential personal liability if they do not take proactive steps to ensure the harmful activities cease. It is preferable for school officials to seek to intervene informally, rather than to wait until such time that the standard of 'substantial disruption or threat thereof' has materialized" (p. 4).

Another good resource is the California School Boards Association's policy brief on cyberbullying (2007). It outlines various responses that may be appropriate under different circumstances.

MODEL POLICY ON CYBERBULLYING

OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA

This school division provides the electronic infrastructure and supporting software and communication devices to enhance students' education. Other uses of the technology, specifically the harassment or bullying of fellow students, will not be tolerated. To access the school division's technological resources, students must adhere to the following policy.

Cyberbullying in schools is relatively new, paralleling the proliferation of electronic communication devices. Just like traditional bullying, cyberbullying can continue off campus. Bullying and cyberbullying can persist at any time of the day or week and be broadcast to a much larger audience.

School Division Policy on Cyberbullying

Bullying—in any form—will not be tolerated on school grounds. It disrupts the learning environment and adversely affects the quality of a student's education. It harms the victim, the students exposed to it, and, in many cases, the actual bully. Since the advent of the Internet and personal electronic communication devices, bullying has expanded to include cyberbullying.

Cyberbullying is defined as the use of information and communication technologies—such as e-mail, cell phone and page text messages, instant messaging, and defamatory personal Web sites and online personal polling sites—to support deliberate, hostile behavior intended to frighten or harm others. Whereas traditional bullying was limited to direct confrontations, cyberbullying can happen anytime and be much more far reaching. When harassing language or pictures are posted to the Internet, the words and images can stay forever, which affects the victim far into the future. To that end, this school division has adopted the following policy to address this abuse of electronic communication technologies, whether the actions occur at school or off campus.

Virginia lawmakers have criminalized the use of computers and computer networks to harass another person (*Code of Virginia, §18.2-152.7:1*). This school division has adopted a similar policy.

Students must follow three basic rules:

1. Any student who uses a school-provided communication device (including a computer) or computer network (a) with the intent to intimidate, harass, or coerce another person, or (b) to use vulgar, obscene, profane, lewd, or lascivious language to communicate such harassment, or (c) to threaten an illegal or immoral act shall be subject to school disciplinary procedures.
2. Any student who uses a personal communication device on school grounds or at a school-related function (a) with the intent to intimidate, harass, or coerce another person, or (b) to use vulgar, obscene, profane, lewd, or lascivious language to communicate such harassment, or (c) to threaten an illegal or immoral act shall be subject to school disciplinary procedures.
3. In any instance in which cyberbullying creates a climate of fear and/or causes a substantial disruption of the work of the school or impinges on the rights of other students, the person committing the act shall be subject to school disciplinary proceedings.

Consequences for Violation

Any violation of these regulations shall result in loss of computer-system privileges and may also result in appropriate disciplinary action, as determined by school board policy, or possible prosecution through the judicial system.

Reporting and Investigating

Students and staff are required to report to designated staff any incidents of cyberbullying about which they are aware. Reports may be made anonymously. Designated staff will investigate all reports, using any electronic communications records currently kept by the school division, and recommend the school's next course of action.

I ACKNOWLEDGE AND UNDERSTAND MY OBLIGATIONS:

Student Date

Parent/Guardian Date

PARENTS, PLEASE DISCUSS THESE RULES WITH YOUR STUDENT TO ENSURE HE OR SHE UNDERSTANDS THEM.

Additional information can be found at www.cyberbullying.org.

References

All Web sites were available as of 3 August 2008.

- California School Boards Association. (2007, July). *Cyberbullying: Policy considerations for boards*. West Sacramento: Author. <http://www.csba.org/Services/Services/PolicyServices/-/media/Files/Services/PolicyServices/SamplePolicies/Cyberbullying.ashx>.
- Childnet International, Digizen (Producer). (2007). *Let's fight it together* (video). London: Producer. <http://www.digizen.org/cyberbullying/film.aspx>.
- Conn, K. (2006). *Bullying in K-12 public schools: Searching for solutions*. Richmond: Commonwealth Educational Policy Institute. <http://www.cepionline.org/pdf/Policy%20Briefs/Kathleen%20Conn-Bullying%20VCU%20PolicyPaper%202-11-06.pdf>.
- Hinduja, S., & Patchin, J. W. (2008a). *Cyberbullying fact sheet: A brief review of relevant legal and policy issues*. Jupiter, FL; Eau Claire, WI: cyberbullying.us. http://www.cyberbullying.us/cyberbullying_legal_issues.pdf.
- Hinduja, S., & Patchin, J. W. (2008b). *Research*. Jupiter, FL; Eau Claire, WI: cyberbullying.us. <http://www.cyberbullying.us/research.php>.
- Requa v. Kent School District No. 415, Grohe and Albrecht, Washington Western District Court, Seattle Office, 2:2007cv00759 (2007). <http://news.justia.com/cases/featured/washington/wawdce/2:2007cv00759/143664/>.
- Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969). http://www.law.cornell.edu/supct/html/historics/USSC_CR_0393_0503_ZS.html.
- Virginia Board of Education and Virginia Department of Education. *Student conduct policy guidelines: 2006 update*. Richmond: Author. http://pen6.pen.k12.va.us/VDOE/Instruction/Sped/stu_conduct.pdf.
- Virginia Department of Education. (2007). *Guidelines and resources for Internet safety in schools*. Richmond: Author. <http://www.doe.virginia.gov/VDOE/Technology/OET/internet-safety-guidelines-resources.pdf>.
- Virginia Governor's Office for Substance Abuse Prevention. (2007). *Prevention comes first: Parent guide to personal safety for youth*. Richmond: Author. <http://www.gosap.virginia.gov/pdf/PCF-booklet.pdf>.
- Willard, N. (2007, March). *Cyberbullying legislation and school policies: Where are the boundaries of the "schoolhouse gate" in the new virtual world?* Eugene, OR: Center for Safe and Responsible Internet Use. <http://new.csriu.org/cyberbully/docs/cblegislation.pdf>.
- Willard, N. (2007, April). *Educator's guide to cyberbullying and cyberthreats*. Eugene, OR: Center for Safe and Responsible Internet Use. <http://www.cyberbully.org/cyberbully/docs/cbcteducator.pdf>.

Additional Resources

General Information Web Sites

Center for Safe and Responsible Internet Use
<http://csriu.org/>

cyberbullying.us
<http://www.cyberbullying.us/index.php>

Education Commission of the States (ECS), Educational Policy Issue Site: Safety/Student Discipline—Bullying/Conflict Resolution
<http://www.ecs.org/html/issue.asp?issueid=101&subIssueID=153>

National School Boards Association, Technology (see especially News and Recent Cases)
<http://www.nsba.org/MainMenu/SchoolLaw/Issues/Technology.aspx>

Stop Cyberbullying
<http://www.stopcyberbullying.org/index2.html>

Articles

Brady, K. (2008). *Student bullying without borders in cyberspace: The missed legal opportunity of Morse v. Frederick*. Paper presented at the annual meeting of the American Educational Research Association, New York.

Davis, M. R. (2008, June 9). Friend or foe? Balancing the good and bad of social-networking sites. *Education Week's Digital Directions* 2(spring/summer): 15, 17, 20.
<http://www.edweek.org/dd/articles/2008/06/09/01networks.h02.html>

Salvador, R. (2006). What are our children doing in cyberspace? Resolving the conflict between freedom of expression in schools and the use of the Internet. *Children's Legal Rights Journal* 26(1): 62-74.
<http://www.thelizlibrary.org/liz/Hoult-PASarticlechildrenslawjournal.pdf>

Several excellent resources for developing lessons related to cyberbullying are included in the VDOE's *Related Resources for Internet Safety in Schools*:
<http://www.doe.virginia.gov/VDOE/Technology/OET/internet-safety-related-resources.pdf>. Guidelines and examples for writing and updating division acceptable use policies are available at
<http://www.doe.virginia.gov/VDOE/Technology/AUP/home.shtml>.



www.doe.virginia.gov/VDOE/Technology

© 2008 Commonwealth of Virginia Department of Education

The Virginia Department of Education does not discriminate on the basis of race, color, national origin, sex, age, or disability in employment or provisions of service.