A Comprehensive Approach to Bridging the Gap between Cyberbullying Rules and Regulations and the Protections Offered by the First Amendment for Off-Campus Student Speech

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I. **INTRODUCTION**

“She is a slut!” “She is spoiled!” “She is the ugliest piece of shit I’ve ever seen!”

These are just some of the words directed at one high school student, who one evening after coming from school, watched four of her peers take turns, giggling and laughing, as they berated her on a handy-cam video posted on the publicly open social networking website YouTube.¹

The bully² – a timeless villain of childhood and young adolescence, and both the product of and predator to the troubled youth³ – continues to daunt victims through the medium of bits and bytes in the cyber-world. Whether it is a YouTube video, a Facebook⁴ posting, or a “tweet” on Twitter⁵, the advent and seamless integration of user-generated content on websites, has spawned avenues of verbal attack and hostility which are now more accessible, pervasive, and versatile than ever. Hence, the term “cyberbullying” – defined as the use of information and communication technologies such as e-mail, cell phones, instant messages, web-sites, and other electronic forms, to support deliberate, repeated, and hostile behavior by an individual or group that is intended to harm another individual or group.⁶

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² In California, traditional bullying is defined by statute as “any severe or pervasive physical or verbal act or conduct . . . including one or more acts committed by a pupil or group of pupils . . . directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following: (A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property. (B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health. (C) Causing a reasonable pupil to experience substantial interference with his or her academic performance. (D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.” CAL. EDUC. CODE § 48900 (West 2012).
³ The term “youth,” as used throughout the instant paper, refers to children and teenagers collectively.
⁴ See www.facebook.com, a social networking service launched in February 2004.
⁵ See www.twitter.com, an online social networking service and microblogging service that enable users to send and read text-based messages of up to 140 characters, known as "tweets".
By virtualizing speech, blurring the brick-and-mortar confines of the traditional school environment, and thereby adding another wrinkle to the on-campus and off-campus distinction, advances in technology prompt reconsideration of the legal analyses used to evaluate limits on speech protected by the First Amendment when faced with the gravity of cyberbullying implications upon the youth.

Had the verbal bullying in the above YouTube incident occurred on campus, legal authority would clearly support the school’s decision to impose punitive consequences and limitations against the perpetrating students. After all, the video humiliated the victim, and she felt tormented. She was even forced to miss her classes, and started psychological counseling because her classmates, who viewed the video, were talking about it on campus the very next day.

However, in that case, the Beverly Hills Unified School District administrators did not know how to address such off-campus cyberbullying without violating the First Amendment right to free speech. Ultimately, the United States District Court for the Central District of California found that school officials lacked the authority to suspend the student who had posted the video clip on YouTube since it was created off the school campus, and did not result in a “substantial disruption” to the school environment.

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7 U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech.”); see also, Gitlow v. New York, 268 U.S. 652 (1925) (The First Amendment, through the Fourteenth Amendment, prohibits the States from abridging the freedom of speech).
8 See Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986) (holding that the First Amendment does not prevent school officials from determining that to permit a vulgar and lewd speech such as respondent's would undermine the school's basic educational mission).
9 Id.
10 Id.
11 Id.
12 Id. at 1122.
Thus, how can schools protect students’ “right . . . to be secure and to be let alone” against bullying in the form of cyber-speech in an atmosphere of youth who thrive and are driven by interacting socially in cyberspace communities?

This paper addresses the extent to which the “substantial disruption” standard, traditionally applied against on-campus speech and articulated in the progeny of cases following the United States Supreme Court’s seminal *Tinker v. Des Moines Independent Community School District*, falls short of curbing off-campus cyberbullying, and the resulting need to apply said standard in a manner which comports with the unique underpinnings of bullying in the pervasiveness of a cyber-world, as part of a more comprehensive approach.

Even though cyberbullying currently tops the agendas of government officials, school administrators, and parents alike, a tug-of-war has emerged between free speech advocates and those urging for more protection for cyberbullying victims. On one side, states and school administrators have attempted to enforce rules and regulations regarding off-campus cyberbullying. On the other side, those that have been disciplined for their speech in cyberspace are bringing suit for civil rights violations.

Section II of this paper sets forth the preliminary understanding of cyberbullying, towards which any legislative or judicial approach should keenly look in order not only to appreciate its psychological danger and primary targets, but to understand how

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14 *Id.*
16 42 U.S.C. § 1983 (2006) (“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .”).
cyberbullying is fostered. With the nuances of cyberbullying in mind, Section III explores and reveals the current inadequacy of legal precedent, and the lack of clarity that has misguided lower courts grappling with the “substantial disruption” standard in the absence of guidance from, and gaps left behind by, the Supreme Court. In the midst of Circuit decisions taking opposite positions, the Fourth Circuits application of the “substantial disruption” standard in *Kowalski v. Berkeley County Schools*\(^\text{17}\) emerges as most conducive to encompassing cyberbullying.

Section IV provides a comprehensive package of potential remedies, which in concert can bridge the gap between cyberbullying rules and regulations that push for safety and privacy and the protections offered by the First Amendment for off-campus student speech. With respect to the approach needed in the legal realm, the solution begins with properly applying the “substantial disruption” standard pursuant to the approach recognized by the Fourth Circuit, coupled with enactment of cyberbullying legislation. Additionally, equally important are psychological and social support programs for youths to help both victims and bullies negatively affected by cyberbullying. Finally, the comprehensive approach also calls for shifts in policy approaches, specifically relating to the manner which schools and states regulate cyberbullying, including the creation of community programs and enforcement of responsibilities shared by parents and children with respect to the Internet.

Section V concludes by looking forward to how the solution of curbing cyberbullying may be implemented.

\(^{17}\) *Kowalski v. Berkeley County Schools*, 652 F. 3d 565, 573-74 (4th Cir. 2011) (holding that “regardless of where her speech originated, because the speech was materially and substantially disruptive in that it interfered with schools’ work and collided with rights of other students to be secure and to be let alone”).
II. CYBERBULLYING: ITS TARGETS, CAUSES, AND EFFECTS

A. The Victims of Cyberbullying

Given the urgency in curbing cyberbullying, it is imperative to understand the youth affected by cyberbullying, the ways in which cyberbullying is harmful, and how cyberbullying is fostered. Recent surveys have found that anywhere from thirteen\(^{18}\) to thirty-three\(^{19}\) percent of teenagers are victims of cyberbullying. Some surveys have even found astonishing forty-three\(^{20}\) percent of teenagers are victims of cyberbullying. Other studies suggest these numbers could even be higher due to underreporting,\(^ {21}\) because victims’ fear of parents restricting or completely cutting them off from the Internet.\(^ {22}\)

Those in the youth perceived more different than the majority are the usual targets of cyberbullying.\(^ {23}\) Singling out these members in the group triggers the initial exclusion to which bullies are attracted.\(^ {24}\) Exclusionary reasons include, among others, ethnicity, religious affiliation, gender, and socioeconomic class.\(^ {25}\)

The most notable targets of cyberbullying are members of the lesbian, gay, bisexual and trans-gendered (LGBT) youth.\(^ {26}\) As a group, they are overrepresented in the


\(^{22}\) Nancy Willard, Cyberbullying and Cyberthreats: Responding to the Challenge of Online Social Aggression, Threats, and Distress 1 (1st ed. 2007).

\(^{23}\) Shariff, supra note 15, at 29.

\(^{24}\) Id.

\(^{25}\) Id.

entirety of youth who report being cyber-bullied. A study done by Iowa State University researchers in 2010, found that fifty-four percent of LGBT youth who had been surveyed reported being victims to cyberbullying in the past thirty days either because of their sexual identities or identification with LGBT individuals. Of those students, forty-five percent reported being depressed because of cyberbullying and twenty-eight percent reported being anxious about attending school. Perhaps most telling and demonstrative of the gravity and debilitating effect of cyberbullying is that one in four LGBT youth reported having suicidal thoughts because of cyberbullying.

B. How Cyberbullying is Fostered

Cyberbullying is fostered mainly in four ways: (1) immaturity of youth accompanied by adult ignorance as to what their children are doing on the Internet; (2) lack of adult supervision of children on the Internet; (3) anonymity on the Internet; and most importantly (4) lack of clarity in cyberbullying rules and regulations.

The fundamental differences between the minds of adults and that of the youth, including their lack of maturity, are especially magnified by parents’ lack of familiarity with the cyber-world, and failure to monitor their children activity therein. Parents, often not equipped with an understanding of the potential of the Internet, are unaware that their

27 Id.
29 Moore, supra note 26.
30 Id.
31 Shariff, supra note 15, at 120.
32 Id.
33 Id.
34 Id.
children are bullying by typing away at a computer keyboard. Adults who did not grow up with the same technology and resources that are in the hands of their children are most especially prone to such ignorance. For instance, those parents who happen to be teachers and lawmakers are less likely to understand what their children are doing in cyberspace. Tech-savvy parents who are active on the Internet are the minority.

Lack of supervision by parents and teachers is another way cyberbullying continues. As technology continues to advance and the cost of using it decreases, more children attain access to the Internet and become more proficient and comfortable with communication in cyberspace. On the opposite side of the spectrum, parents continue to find themselves limited to e-mail and word processing, and therefore experience feelings of unfamiliarity. Unfamiliarity leads to discomfort, which leads to fear of the unknown, and fear of the unknown leads to loss of control. This snowball effect often results in a desire by parents to regain control and power over their children. Unfortunately, it comes out in ways that are counterproductive to helping children appreciate how their conduct affects others.

At least with the current generation gap, children view cyberspace as fluid, while parents tend to see cyberspace as something that can be controlled in the same way as

35 Id.
36 Id.
37 Id.
38 Id.
39 Id.
40 Id.
41 Id. at xvi.
42 Id.
43 Id.
44 Id.
physical space. What some parents fail to realize is that new and infinite spaces have been created where children can explore without many boundaries. This is the result of rapid technological advancements in cell phones and the Internet over the last decade, which has connected individuals globally through social networking sites. The problem with these spaces is that they are difficult to monitor and supervise, especially when teenagers are online approximately three hours a day.

Anonymity in cyberspace is another problem, which fosters cyberbullying. Through anonymity, the cyber-bully is allowed to continuously torment the victim through various sources without the victim having any protective shield. Anonymity allows cyber-bullies to remain unidentified in that they can hide behind fake usernames, under the guise of which they are less reserved about what they say. Anonymity, coupled with federal statutes, which shield Internet Service Providers (ISPs) from liability, further encourages cyberbullying because ISPs are not mandated to disclose identities of wrongdoers except in cases where victim can prove defamation. As such,

46 Rick Hampson, Donna Leinwand & Mary Marcus, Suicide Shows Need for Civility, Privacy Online, USA TODAY (Sept. 30, 2010), available at http://www.usatoday.com/news/nation/2010-09-30-rutgers-suicide-sex-video_N.htm (quoting Rutgers University Dean Richard Ludescher as stating that “part of what’s out there on the Internet is the Wild Wild West. An entire generation is growing up on the Web”).
48 Id.
49 Melissa McNamara, Teens Are Wired ... And, Yes, It's OK, CBS News (Feb. 11, 2009), http://www.cbsnews.com/2100-500695_162-1698246.html.
50 NAT’L CRIME PREVENTION COUNCIL (NCPC), What is Cyberbullying?, (last visited Nov. 30, 2012) http://www.ncpc.org/topics/cyberbullying/what-is-cyberbullying (the student has nowhere to escape to after he or she is bullied on the Internet).
51 Id.
52 Shariff, supra note 15, at 45.
54 Cohen v. Google, Inc., 887 N.Y.S. 2d 424, 429 (Sup. Ct. 2009) (“The protection of the right to communicate anonymously must be balanced against the need to assure that those persons who choose to abuse the opportunities presented by this medium can be made to answer for such transgressions.”).
the basic deterrent factor of being caught, in stark contrast to the readily identifiably bully in the real world, is often non-existent for the cyber-bully in the cyber-world.\textsuperscript{55}

Finally, as news spreads of cyber-bullies successfully shielding themselves under the First Amendment—indeed the very problem addressed in this paper—the lack of sufficient legislation and its resulting confusion for school administrators in putting in place rules and regulations to prevent cyberbullying, itself fosters cyberbullying, as discussed in further detail in Section III.

C. The Effects of Cyberbullying

Today, approximately ninety-five percent of teenagers in the United States are connected to the Internet.\textsuperscript{56} The Internet therefore plays a huge part a teenager’s life,\textsuperscript{57} during a psychologically vulnerable time of development.\textsuperscript{58} It is during these years where social environment and interaction with peers heavily influences the development of an individual’s sense of identity.\textsuperscript{59}

Unfortunately, this constant dose of cyber-space has lead to cyberbullying and its side effects include mental anguish and depression,\textsuperscript{60} loss of confidence,\textsuperscript{61} decreased performance in school,\textsuperscript{62} thoughts of suicide,\textsuperscript{63} and even a culmination of suicide for

\begin{footnotesize}
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\item[55] NCPC, supra note 50.
\item[56] Helen Leggatt, Teens: Connecting online increasingly face-to-face. BIZ REPORT (May 7, 2012), http://www.bizreport.com/2012/05/teens-connecting-online-increasingly-face-to-face.html.
\item[57] Roy F. Baumeister & Mark R. Leary, The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation, 117 PSYCHOL. BULL. 497, 497-529 (1995) (identifying that the abundance of evidence shows individual’s basic desire to form social attachments and feel a sense of belongingness, and that deficits in belongingness tend to lead to both psychological and physical health problems).
\item[58] Id.
\item[59] Sameer Hinduja & Justin W. Patchin, Cyberbullying and Self-Esteem, 80 Am. Sch. Health Ass’n. 616, 617 (2010).
\item[60] Shariff, supra note 15, at 37.
\item[61] Id.
\item[62] Id.
\end{enumerate}
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some teenagers. Researchers continue to find that victims of cyberbullying experience greater psychological problems than those not involved in cyberbullying.

The culprit behind the mental anguish is the social exclusion that occurs during cyberbullying. This is understandable since social exclusion can easily destroy the confidence of any adult, let alone a teenager. This type of mental anguish turns into depression that can have even more serious effects on teenagers, including feelings of hopelessness, crying, and over and under-eating. Such depression often leads to anger and being easily irritated. Depression from cyberbullying can also lead to teen pregnancies, as well as alcohol and drug abuse.

Moreover, cyberbullying yields adverse socio-economic consequences, as affected teenagers are often forced to stop attending school altogether, especially following admission into psychiatric facilities or other mental health rehabilitation programs and institutions. At the minimum, cyberbullying creates a disruption of the educational environment when classrooms go unregulated by school administrators out of legal liability fears. This fear results in schools failing to protect the victims of

63 Id.
65 NIH, supra note 18.
67 Shariff, supra note 15, at 37.
69 Id.
70 Id.
71 Alex Pasternack, After Lawsuits and Therapy, Cyberbullied “Star Wars Kid” Returns, HUFFINGTON POST, (June 1, 2010), http://www.huffingtonpost.com/alex-pasternack/after-lawsuits-and-therap_b_596325.html.
72 Daniel, supra note 66, at 22.
cyberbullying, who in turn avoid participating in scholastic activities because they feel that their torment will continue on-campus.\textsuperscript{73}

Cyberbullying victims tend to continue experiencing feelings of mental anguish, loss of confidence, low performance and depression for many years into adulthood.\textsuperscript{74} One contributing factor is that cyberbullying victims are more likely to feel and become isolated, dehumanized, and helpless during attacks.\textsuperscript{75} These feelings are due to the fact that they may not see or be able to identify their harasser.\textsuperscript{76} Cyberbullying victims, having been exposed to such psychological problems, tend to seek out deviant peers, as well as experiencing greater social dissatisfaction.\textsuperscript{77}

The worst effect of cyberbullying is the culmination of teenage suicide.\textsuperscript{78} In fact, approximately 19,000 teenagers try to commit suicide each year because of bullying, which equates to two every hour.\textsuperscript{79} Given the paradigm shift in web-based social networking, a large part of the statistics are likely attributable to cyberbullying.\textsuperscript{80} What is even more unsettling is that teenage victims of cyberbullying are twice more likely to attempt suicide than those teenagers who are not victims to this type of behavior.\textsuperscript{81}

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  \item \textsuperscript{73} Gabrielle Sherman, Cyberbullying and Its Effects on Teenagers, YAHOO!, (Aug. 29, 2011), http://voices.yahoo.com/cyberbullying-its-effects-teenagers-9032507.html.
  \item \textsuperscript{74} Learn to Stop Bullying, American Society for the Purpose of Prevention of Cruelty to Children (last visited Nov. 30, 2012), http://americanspcc.org/lp/bullying-01.
  \item \textsuperscript{75} NIH, supra note 18.
  \item \textsuperscript{76} Id.
  \item \textsuperscript{77} Shariff, supra note 15, at 37.
  \item \textsuperscript{78} Sherman, supra note 73.
  \item \textsuperscript{79} Id.
  \item \textsuperscript{80} Id.
  \item \textsuperscript{81} Id.
\end{itemize}
Suicide is a common response to cyberbullying as a result of the profound difficulty victims feel in trying to escape their torment.\(^{82}\) For instance, Phoebe Prince, a high school student hung herself after nearly three months of routine torment by students at her high school via text message and through Facebook.\(^{83}\) The officers investigating her case revealed that the continuous torment Phoebe suffered consisted of verbally assultive behavior on and off-campus, which turned into threats of physical harm that were intended to humiliate her.\(^{84}\) The continuous torment made it impossible for her to remain at school.\(^{85}\) Phoebe was not the only one to end her suffering via suicide. There have been other widely publicized cases and more are bound to occur.\(^{86}\)

Cyberbullying of individuals also has negative effects on society as a whole. Cyberbullying destroys the confidence of teenagers at such a crucial time in their lives, which leads to drops outs and enrollment into treatment facilities, instead of continuing their education and become a contributing member of society.\(^{87}\)


\(^{83}\) Goldman, supra note 64.

\(^{84}\) Id.

\(^{85}\) Id.


\(^{87}\) Sameer Hinduja & Justin Patchin, Cyberbullying and Self-Esteem, 80 AM School HEALTH ASS’N 616, 617 (Dec. 2010).
performance subsequently equates to poor performance later in life. Therefore, over time, cyberbullying inhibits socio-economic growth.

III. THE PROBLEM: THE ABSENCE OF APPROPRIATE LEGISLATION, AND MISAPPLICATION OF TINKER’S “SUBSTANTIAL DISRUPTION” STANDARD IMPROPRLY PRECLUDES PROTECTIONS AGAINST CYBERBULLYING

Currently, forty-nine states have laws against bullying, but most of those states neither mention nor define cyberbullying. In fact, only fifteen states mention cyberbullying as part of their bullying statutes or have an independent cyberbullying statute. Moreover, only six of those fifteen states mention off-campus behavior. Conceivably, states have been slow in adopting cyberbullying legislation due to the lack of clear guidance from the United States Supreme Court, and the conflicting Circuit decisions addressing how schools may regulate safety and privacy of teenagers in an educational context without violating the First Amendment right to free speech.

The historical development of the judiciary’s approach to regulating free speech in the school setting, as discussed below, demonstrates the scattered decisions and gaps left behind by case law. Moreover, as will also be revealed in this Section, while the “substantial disruption” standard emerges as the benchmark to weigh off-campus speech against the First Amendment, a split amongst Circuit courts in its application leaves lower courts in confusion, and ultimately, results judicial paralysis with respect to addressing cyberbullying appropriately. Without legislative action, or the Supreme

88 Id.
89 Id. at 616.
91 Id.
92 Id.
Court’s adoption of a broadly applicable interpretation of the “substantial disruption,” as for instance engaged by the Fourth Circuit, the legal ingredients which serves the hallmark of any comprehensive remedy to cyberbullying, is left fragmented at best.

A. The “Substantial Disruption” Standard under Tinker and its Progeny of United States Supreme Court Decisions Regarding Students’ Free Speech

The first United States Supreme Court decision to address a student’s free speech rights in a school setting was Tinker v. Des Moines Independent Community School District, which involved a group of students who wore armbands in school to express their objections to the Vietnam War. Upon the students’ suspension from school for refusing to comply with the school’s request to remove the armbands, their parents sued the school district on First Amendment grounds. The Court held that students do not shed their constitutional rights to free speech at the schoolhouse gate. However, the decision further stated that the right to free speech was not absolute. Where student speech “substantially disrupts a school’s ability to carry out its mission in an orderly fashion or infringes on the rights of others to be free from harassment,” that conduct may be prevented. The Court still uses this standard as it was laid out in Tinker.

The second Supreme Court case to address a student’s free speech rights in a school setting was Bethel School District v. Fraser, where the Court extended their

94 Id.
95 Id. at 506.
96 Id.
97 Id. at 511.
98 Id. at 514 (emphasis added).
holding in *Tinker*. In *Bethel*, a student delivered a speech during a school assembly that included explicit sexual metaphors. When the student was suspended, the student’s parents brought suit against the school district for violating their child’s First Amendment right to free speech. The Court determined that school administrators may prohibit speech that “undermines their basic education mission.”

The *Bethel* decision addressed the concern that schools need to retain control over student behavior and noted that “schools are not the type of arena for the type of lewd, vulgar, and plainly indecent speech” expressed by the student. The decision held that public schools should not have to tolerate speech that is “wholly inconsistent with the fundamental values of a public education.” Even though the Court stated student speech should not be curbed simply because it is “unpopular speech,” it stated that schools have a “vital role in preparing students to participate in a democratic society, by teaching students appropriate forms of civil discourse.” *Bethel* also went on to express that “schools must teach students what is and what is not socially acceptable behavior.”

The third Supreme Court case to address a student’s free speech rights in a school setting came in *Hazelwood School District v. Kuhlmeier*. In *Hazelwood*, students in charge of the school newspaper wrote potentially damaging material that included information about specific instances of student pregnancies and about a student’s parents

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100 Id. at 678.
101 Id. at 679.
102 Id. at 685.
103 Id. (“[A] high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students.”).
104 Id.
105 Id. at 681.
106 Id.
who recently divorced.\textsuperscript{108} When the school principal deleted said information before it was distributed, the students’ parents brought suit against the school district for violating their children’s right to free speech.\textsuperscript{109} The Court added to \textit{Tinker} and \textit{Bethel} by holding that “[a] school must be able to set high standards for the student speech that is disseminated under its auspices.”\textsuperscript{110} The Court continued by requiring schools to “take into account the emotional maturity of the intended audience in determining whether to disseminate student speech.”\textsuperscript{111}

The fourth and final Supreme Court student speech case to address a student’s free speech rights in a school setting was decided in 2007. In \textit{Morse v. Frederick}, off-campus student speech was addressed for the first time.\textsuperscript{112} In \textit{Morse}, students had raised a banner that read “BONG-HiTS 4 JESUS” at a school-sponsored off-campus event.\textsuperscript{113} After the student refused to comply with the principal’s request to take the banner down, he was suspended from school and brought suit against the school district for violating his right to free speech.\textsuperscript{114} Through \textit{Morse}, the Court further expanded upon \textit{Tinker}, \textit{Bethel}, and \textit{Hazelwood}, holding that while children assuredly do not shed their constitutional rights at the schoolhouse gate and even though the school has a compelling interest in banning the promotion of illegal drug use, the nature of those rights depends

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\item \textsuperscript{108} \textit{Id.} at 263.
\item \textsuperscript{109} \textit{Id.} at 264.
\item \textsuperscript{110} \textit{Id.} at 271-72.
\item \textsuperscript{111} \textit{Id.} at 272.
\item \textsuperscript{112} \textit{Morse v. Frederick}, 551 U.S. 383 (2007).
\item \textsuperscript{113} \textit{Id.} at 396.
\item \textsuperscript{114} \textit{Id.} at 398.
\end{enumerate}
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on what is appropriate for teenagers in school.\textsuperscript{115} The Court essentially looked at the content of the speech within the context of an ideal school environment.

The \textit{Morse} decision became vital to curbing off-campus student speech, specifically cyberbullying, because the Supreme Court recognized the ability of school administrators to exercise control over student speech outside the strict boundaries of the school and is somewhat of a departure from the usual emphasis of free speech over governmental authority control that marked previous decisions on student speech.\textsuperscript{116} In addition to said departure from previous cases, \textit{Morse} recognized the importance of free speech in a school setting, but was willing to limit free speech when another more compelling interest was involved.\textsuperscript{117} The Court believes “education of the nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges.”\textsuperscript{118} Accordingly, “states have a compelling interest in their educational system, and a balance must be met between the free speech rights of students and preservation of the educational process.”\textsuperscript{119}

B. The Gaps Left Behind by the Supreme Court

Despite the Supreme Court’s showing of a willingness to increase support to school administration where free speech may be further limited, the Court has, however, created several gaps for states and school administrators.\textsuperscript{120} The Court has failed to address: (1) the extent of free speech protection against student speech which originates

\begin{thebibliography}{99}
\item \textsuperscript{115} \textit{Id.} at 410.
\item \textsuperscript{116} Shariff, \textit{supra} note 15, at 120.
\item \textsuperscript{117} Jamie Wolf, \textit{The Playground Bully Has Gone Digital: The Dangers of Cyberbullying, The First Amendment Implications, and Necessary Responses}, CARDOZO PUB. L., POL’Y & ETHICS J. 576, 582 (2012).
\item \textsuperscript{118} Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 208 (1982).
\item \textsuperscript{119} Karp v. Becken, 477 F.2d 171, 174 (9th Cir. 1973).
\item \textsuperscript{120} Daniel, \textit{supra} note 66, at 22.
\end{thebibliography}
off-campus and eventually reaches campus, or has an impact on-campus;\textsuperscript{121} (2) whether the consequences of student speech that originates off-campus and reaches the campus constitute a substantial disruption.\textsuperscript{122}

For the last two decades, school administrators have had to ask themselves how much authority do they have in acting against off-campus online speech by its students.\textsuperscript{123} The inability to clearly answer this question has resulted in school administrators experimenting with different rules and regulations in order to prevent off-campus student speech from disrupting the educational environment on-campus.\textsuperscript{124} However, as students have been suspended for their conduct off-campus, some have protested and challenged their schools for infringing their right to free speech.\textsuperscript{125}

While school administrators should have authority to regulate online speech that equates to cyberbullying, the Supreme Court has refused to grant certiorari on these cases and lower courts have been far from unanimous.

C. Split in Circuit Courts As Lower Courts Attempt to Fill the Gaps

Lower courts in the United States Appellate Courts and District Courts have had to play within the constitutional guidelines set by the Supreme Court in the aforementioned cases. However, they have gone in different directions in addressing the question of how much protection the right to free speech offers student speech which

\textsuperscript{121} Id.
\textsuperscript{122} Id.
\textsuperscript{123} Shariff, supra note 15, at 99.
\textsuperscript{124} Id.
\textsuperscript{125} Id.
originates off-campus and eventually reaches campus or has an impact on campus.\textsuperscript{126} They have also gone in different directions in defining substantial disruption.\textsuperscript{127}

In grappling with the apparent gaps left by the Supreme Court, Circuit courts have bridged the “substantial disruption” standard with respect to off-campus speech by undertaking a search for a nexus between off-campus speech and the school, through the concept of foreseeability, and whether it is foreseeable that otherwise protected speech may reach the school, disrupting or otherwise affecting the school’s maintenance of peace, order, and protection of the students’ well-being and educational.

1. Finding The Nexus between Off-Campus Speech and School

Even though the Supreme Court has not answered whether off-campus student speech can be regulated because it makes its way to campus, Appellate Courts have readily found a sufficient nexus exists where student speech over the Internet is involved.\textsuperscript{128} Recent cases in the Second, Third, and Fourth Circuits have addressed the nexus between off-campus speech and the school campus.\textsuperscript{129}

Two weeks after \textit{Morse} was decided, the Second Circuit held in \textit{Wisniewski v. Board of Education}, that “a student may be disciplined for expressive conduct, even conduct occurring off-campus, when this conduct would foreseeably create a risk of substantial disruption within the school environment, at least when it was foreseeable that the off-campus speech might also reach campus.”\textsuperscript{130} The Second Circuit confirmed its

\textsuperscript{126} \textit{Id.}
\textsuperscript{127} \textit{Id.}
\textsuperscript{129} \textit{Id.}
\textsuperscript{130} Wisniewski v. Board of Educ. of Weedsport Central Sch. Dist., 494 F. 3d 34, 40 (2d Cir. 2007) (showing eighth-grade student was suspension for sharing with friends via the Internet while off-campus a small drawing crudely, but clearly, suggesting that a named teacher should be shot and killed).
decision the Wisniewski in Doninger v. Niehoff, a year later. These cases were petitioned to the Supreme Court by the parents of the students who believed their right to free speech were violated, but they were denied certiorari.

The Third Circuit followed in the Second Circuit’s footsteps in J.S. ex rel. Snyder v. Blue Mountain School District by holding that off-campus speech that causes or reasonably threatens to cause a substantial disruption on-campus need not satisfy any geographical technicality in order to be regulated pursuant to Tinker. Again, this case was petitioned to the Supreme Court, but was denied certiorari.

The Fourth Circuit also fell in line with the Second and Third Circuits, with the most recent decision on student speech in Kowalski v. Berkeley County Schools. In Kowalski, a student was suspended for a targeted attack on a classmate on a popular social networking website. The suspended student in Kowalski argued school administrators violated her right to free speech by suspending her for speech that occurred off-campus. She argued that her case involved off-campus, non-school related-speech, and therefore, school administrators had no power to discipline her.

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131 Doninger v. Niehoff, 527 F. 3d 41 (2d Cir. 2008) (showing a student posted a vulgar message on her blog, urging classmates to complain to the “douchebags who were responsible for the event change.” The administration heard about the blog two weeks later, and at that time, the principal asked the student to apologize to superintendent and to withdraw her candidacy for senior class secretary. When the student refused to withdraw from the election, the principal did not allow her to run).

132 McCarthy, supra note 128, at 4-5.

133 J.S. ex rel. Snyder v. Blue Mountain Sch. Dist., 650 F. 3d 915, 929 (3d Cir. 2010) (“[T]he School District suspended [student] for creating, on a weekend and on her home computer, a MySpace profile making fun of her middle school principal . . . .”).

134 McCartney, supra note 128, at 8.


136 Id. at 572-73 (finding the website “functioned as platform for Kowalski and her friends to direct verbal attacks” towards their classmate, because the “webpage contained comments accusing [classmate] of having herpes” and being a “slut,” as well as “photographs reinforcing those defamatory accusations.”).

137 Id. at 570.

138 Id. at 570-71.
The suspended student relied on the Supreme Court’s unwillingness to expand upon *Tinker, Bethel, Hazelwood, and Morse* by stating, “[t]he Court has been consistently careful to limit intrusions on students’ rights to conduct taking place on school property, at school functions, or while engaged in school-sponsored or school-sanctioned activity.”

She also maintained that “no Supreme Court case addressing student speech has held that a school may punish students for speech away from school—indeed every Supreme Court case addressing student speech has taken pains to emphasize that, where the speech in question to occur away from school, it would be protected.”

However, *Kowalski* recognized the grave effects of cyberbullying on teenagers and noted in its holding the importance of school personnel being “able to prevent and punish harassment and bullying in order to provide a safe school environment conducive to learning.”

The Fourth Circuit upheld the suspension and emphasized that, “where such speech has a sufficient nexus to the school, the [United States] Constitution is not written to hinder school administrators’ good faith efforts to address the problem,” and held in favor of the school. The Supreme Court again declined certiorari.

2. **Factors Complicating the “Substantial Disruption” Standard**

Despite the willingness of the Circuit Appellate Courts to provide guidance beyond the Supreme Court’s decisions in dealing with off-campus speech, lower courts are reluctant to find a substantial disruption on the basis that the public’s interests are best

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139 *Id.* at 571.
140 *Id.*
141 *Id.* at 572.
142 *Id.* at 577.
143 *McCartney, supra* note 128, at 11.
served when wide dissemination of ideas are allowed.\textsuperscript{144} Courts are concerned that any further limits on student speech would cause speech worthy of expression to remain unexpressed, against the intent of the fundamental right to free speech.\textsuperscript{145}

However, such reticence appears to be misplaced given that \textit{Tinker} was based on the salience of students’ rights to express opinions about political issues.\textsuperscript{146} While the First Amendment was designed to protect unpopular but valuable ideas and opinions, e.g. the protest of a war that was at issue in \textit{Tinker}, that rationale is far from encompassing the valueless cyberbullying speech that is now a modern epidemic.\textsuperscript{147}

Still, the Supreme Court’s unwillingness to provide clear guidelines for the “substantial disruption” standard is understandable given that determination of “disruption” and “foreseeability” in cases is driven by the specific facts of each case.\textsuperscript{148}

Unfortunately, the “substantial disruption” has been pulled and pushed into an amorphous concept, rendering it almost useless against cyberbullying. For example, in \textit{J.C. v. Beverly Hills Unified School District}, with which this paper opened regarding a YouTube video recorded off-campus, the trial court found insufficient substantial disruption on the basis that only one student was disrupted by off-campus student speech.\textsuperscript{149} Although the video eventually made its way to campus, where students discussed the contents of the video,\textsuperscript{150} the trial court held the student’s conduct did not equate to a substantial disruption because other students merely discussed the online

\begin{footnotes}
\item[145] Id.
\item[146] Wolf, supra note 117, at 587.
\item[147] \textit{See Tinker}, 393 U.S. at 526.
\item[148] \textit{Beverly Hills Unified Sch. Dist.}, 711 F. Supp. 2d at 1111.
\item[149] Id. at 1118.
\item[150] Id. at 1098.
\end{footnotes}
video, generating only a general “buzz” about the video on campus.\textsuperscript{151} The court held that the angst of a single bullied student was not sufficient and protected the bullying student’s speech.\textsuperscript{152}

Yet, some courts have stated there is no specific number of students that must be affected by the student speech to equate to a substantial disruption.\textsuperscript{153} And some have held that a substantial disruption requires something more than “a mild distraction or curiosity created by the speech,” but need not rise to the level of “complete chaos.”\textsuperscript{154}

As such, part of the off-campus student speech problem lies in the gap between “mild distraction or curiosity” and “complete chaos.” Some courts have held that mere chatter amongst students is not considered sufficient to create a substantial disruption.\textsuperscript{155} For example, in \textit{Blue Mountain}, the Third Circuit concluded that the substantial disruption standard was not met on the basis of general discussion or student comments,\textsuperscript{156} because a mere “buzz” about an online profile, standing alone, was not sufficient to constitute a substantial disruption.\textsuperscript{157}

Further, other lower courts have also been able to lean more towards protection of student off-campus speech by using the substantial disruption standard to raise questions

\textsuperscript{151} \textit{Id.} at 1122.
\textsuperscript{152} \textit{Id.}
\textsuperscript{153} \textit{Id.}
\textsuperscript{154} J.S. ex rel. H.S. v. Bethlehem Area Sch. Dist., 807 A.2d 847, 868 (Pa. 2002) (The Supreme Court of Pennsylvania upheld the suspension of students under the substantial disruption standard used in \textit{Tinker}. The students had written hurtful and threatening comments on a website about their teacher after the teacher had to take a medical leave of absence for a year and suffered physically and emotionally as a result of what the students wrote about her).
\textsuperscript{155} \textit{Beverly Hills Unified Sch. Dist.}, 711 F. Supp. 2d at 1111.
\textsuperscript{156} \textit{Blue Mountain Sch. Dist.}, 650 F.3d at 951.
\textsuperscript{157} \textit{Id.} at 949.
about whether a school's decision to discipline is based on evidence or facts indicating a foreseeable risk of disruption, rather than fears or mere disapproval of the speech.\textsuperscript{158}

For example, in \textit{Beussink v. Woodland R–IV School District}, a Missouri District Court held in favor of a student on a free speech claim after finding that the principal's disciplinary measure was based on an emotional reaction to the student's speech, rather than because of a substantial risk of disruption.\textsuperscript{159} The student in \textit{Beussink} discovered a website criticizing the school administration, and accessed the website at school to show it to his teacher.\textsuperscript{160} The principal of the school then viewed the website on campus and became upset.\textsuperscript{161} The principal testified to making the decision to discipline the student “immediately upon viewing the homepage” because he was “upset that the homepage's message had been displayed” in one of his classrooms.\textsuperscript{162} The website was accessed twice more by students, and teachers discussed it with students; however, there was no disruption to class work.\textsuperscript{163}

The foregoing lower court cases demonstrate how different jurisdictions have applied the “substantial disruption” standard by finding ways, often too creatively, to lean either towards protecting free speech or protecting cyberbullying victims. The complexity of these competing objectives seems incurable without further clarification from the Supreme Court as to the “substantial disruption.” There have not been enough

\textsuperscript{158} \textit{Beverly Hills Unified Sch. Dist.}, 711 F. Supp. 2d at 1115.
\textsuperscript{159} \textit{Beussink}, 30 F. Supp. 2d at 1182.
\textsuperscript{160} \textit{Id.} at 1177-78.
\textsuperscript{161} \textit{Id.} at 1178.
\textsuperscript{162} \textit{Id.}
\textsuperscript{163} \textit{Id.}
cases to reach Appellate Courts that address off-campus student speech, especially those involving cyberbullying which targets a single student.\textsuperscript{164}

3. \textit{Kowalski}'s Broad Application of a “Substantial Disruption”

One way school administrators have been able to get around the substantial distraction standard is by using the fact that school administrators are interrupted from their ordinary tasks of educating to address a student's speech.\textsuperscript{165} For example, in \textit{Doninger v. Niehoff}, the Second Circuit found a student's e-mail message and blog posting about a cancelled school event created a substantial disruption because school administrators were required to deal with a “deluge of calls and e-mails” related to the student’s speech.\textsuperscript{166} Perhaps the calls and e-mails did not substantially disrupt the educational environment because school administrators conducted these tasks outside of the classroom where the students were being educated. However, the Second Circuit re-centered its focus on the administrative efficacy of the school, and found a way to protect the privacy and safety of students without avoiding a substantial disruption analysis.

Another way courts have been able to curb off-campus student speech has been by addressing the school’s legitimate interest in maintaining order.\textsuperscript{167} \textit{Kowalski}, involving a student suspended from school for targeting an attack on another student online,\textsuperscript{168} as already discussed above, laid out the groundwork for future analysis of off-campus student speech and whether speech substantially disrupts the school

\textsuperscript{164} \textit{See Beverly Hills Unified Sch. Dist.}, 711 F. Supp. 2d at 1111.
\textsuperscript{165} \textit{Id.} at 1113-14.
\textsuperscript{166} Doninger, 527 F.3d at 51.
\textsuperscript{167} Kowalski, 652 F.3d at 567.
\textsuperscript{168} \textit{Id.}
environment.\textsuperscript{169} Squarely embracing the fundamental problem regarding off-campus cyberbullying, \textit{Kowalski} framed its overarching issue as whether the student’s off-campus online activities fell within the outer boundaries of the high school’s legitimate interest in maintaining order in the school and protecting the well-being and educational rights of its students.\textsuperscript{170} Thus, at its outset, by framing the issue in broader terms of cause and effect, rather than one geographically tied to the location of speech, \textit{Kowalski} took a step towards broadening the “substantial disruption” standard.

Relying on \textit{Doninger}, the court in \textit{Kowalski} held that school officials “may regulate off-campus behavior insofar as the off-campus behavior creates a foreseeable risk of reaching school property and causing a substantial disruption to the work and discipline of the school,” where school administrators are interrupted from their task of education and have to deal with such disciplinary issues.\textsuperscript{171} The School District noted, and the Fourth Circuit agreed, that the student created online content that singled out a fellow student for harassment, through cyberbullying and intimidation.\textsuperscript{172} It was foreseeable that off-campus conduct of the student would reach the school, thereby creating a substantial disruption on-campus, which the school needed to address.\textsuperscript{173} Accordingly, the Fourth Circuit held that the School District was allowed to punish the student because her online activities were executed with the purpose of inviting

\footnotesize{\textsuperscript{169} Id.  \\
\textsuperscript{170} Id. at 570.  \\
\textsuperscript{171} Id.  \\
\textsuperscript{172} Id.  \\
\textsuperscript{173} Id.}
classmates to indulge in disruptive and hateful conduct towards a fellow student, which caused an on-campus disruption and school administration’s involvement.\footnote{174}{Id. at 576.}

In \textit{Kowalski}, the court made a conscious effort to protect students by using the substantial disruption standard more broadly and described it in more detail, than was previously done by other Appellate Courts or the Supreme Court. The \textit{Kowalski} court looked at the context of how cyberbullying negatively affects students against the positive effects of free speech and showed a willingness to provide more protection for cyberbullying victims, falling in line with the evolution of the Supreme Court’s willingness to limit free speech overtime where a compelling reason calls for it.

\section*{IV. A COMPREHENSIVE SOLUTION TO CIRCUMVENT CYBERBULLYING}

Given the pervasiveness of cyberbullying, and complexity of tailoring the appropriate legal measures to address it in the form of off-campus speech, the solution must be comprehensive, and as set forth below, is in part manifested in bringing the legal standards and statutes up to date to the current technology, and in part dependent on interdisciplinary social infrastructures rooted in psychological counsel and awareness.

\subsection*{A. \textit{Kowalski} As A Model Approach for Application of \textit{Tinker}'s “Substantial Disruption” Standard}

The Supreme Court has not clarified issues associated with off-campus student speech, leaving states and school administrators playing a guessing game when creating cyberbullying rules and regulations as the fear of violating students’ free speech rights hovers over their decision.\footnote{175}{Daniel, supra note 66.} However, the evolution of the First Amendment right to free speech has been one of limitation. From the days of \textit{Tinker} to the recent decision of
Morse, there have been limitations put on the right to freely speak. It is now time again for the Supreme Court to take the next step in keeping up with the nuances of speech in the cyber-world.

The most effective remedy to the off-campus student speech problem would be the Court directly addressing the issue, by granting certiorari upon the appropriate case concerning student speech which originates off-campus and eventually reaches campus or has an impact on campus, as well as defining what constitutes a substantial disruption worthy of curbing off-campus student speech. In so doing, the Court should keep cyberbullying mind, with the following statement in Kowalski’s reasoning:

\[
\ldots\text{even though Kowalski was not physically at the school}\ldots\text{, it was foreseeable in this case that Kowalski’s conduct would reach the school via computers, smartphones, and other electronic devices,} \ldots\]

Thus, the Supreme Court, in taking a liberal approach, should find it foreseeable that off-campus speech in cyber-space will reach the school such that limitations on such speech are justified.

Moreover, the Kowalski decision looked at the landscape of off-campus student speech decisions in the United States lower courts and analyzed the evolving language of the Supreme Court. It leaned toward protecting teenagers from cyberbullying because it realized that while free speech is essential to a democratic society, that same notion of democracy requires individuals, especially youths, to obtain an education without harassment from classmates.

\[176\text{Kowalski, } 652 \text{ F. } 3\text{d at 574 (emphasis added).}\]
\[177\text{Id.}\]
\[178\text{Id.}\]
Kowalski focused on the language of prior cases like Doninger to emphasize that students have the right to obtain an education without simultaneous harassment and that school administrators must focus efforts on education, rather than having to divert attention to disciplinary efforts of what is happening off-campus.\(^{179}\)

As victims of cyberbullying are often single targets, there needs to be clarity in how the angst of one student can be sufficient for a substantial disruption. While Kowalski did not directly address the issue of whether the interruption of one student is sufficient to reach the level of a substantial disruption, it did suggest it. As such, the appropriate standard is one that takes into account a single students’ ability to receive an education.

B. Legislation Addressing Cyberbullying Must be Enacted

Until the Court or Congress decides to step in, state legislative efforts are needed to make sure all fifty states have cyberbullying laws.\(^{180}\) Currently, only fifteen states have a cyberbullying statute, and those statutes have significant problems in their language that require correction.\(^{181}\) Still, it is not simply enough for states to have cyberbullying statutes.\(^{182}\) The key is to have the appropriate cyberbullying statute.\(^{183}\)

A model cyberbullying statute must adequately define cyberbullying to encompass the use of information and communication technologies such as e-mail, cell phones, instant messages, websites, and other electronic forms, to support deliberate,

\(^{179}\) Id. at 571.

\(^{180}\) Id. at 642.

\(^{181}\) Id.

\(^{182}\) Hinduja, supra note 90.

\(^{183}\) Id.
repeated, and hostile behavior by an individual or group that is intended to harm another individual or group.\textsuperscript{184}

Further, a model cyberbullying statute must also require public schools within the state to have school policies that follow the state statute.\textsuperscript{185} Currently, all but one state, Montana, has successfully included language about schools being required to have policies against either cyberbullying directly, or in the form of harassment or bullying.\textsuperscript{186} States have also done a good job of allowing public schools to sanction students who violate the school policies and state laws.\textsuperscript{187} While seven states have yet to join the majority, the adverse effects of inaction will continue to be felt by students who are victims of cyberbullying.

However, while such a statute should require schools to sanction students who violate the school policies and state laws, it should not impose criminal sanctions.\textsuperscript{188} What the majority of states have gotten right, when it comes to cyberbullying, is that they have not required criminal sanctions where a cyber-bully is caught in the act.\textsuperscript{189} While the objective of anti-cyberbullying advocates is to deter cyber-bullies from victimizing their peers, even anti-cyberbullying advocates agree that criminal penalties for teenagers are not effective in preventing cyberbullying.\textsuperscript{190} Scholars agree that criminal harassment

\textsuperscript{185} Hinduja, supra note 90.
\textsuperscript{186} Id.
\textsuperscript{187} Id.
\textsuperscript{188} Id.
\textsuperscript{189} Id.
\textsuperscript{190} AMERICAN BAR ASSOCIATION, Commission on Youth at Risk, Report to the House of Delegates, Resolution 107A (last visited Nov. 30, 2012), http://www2.americanbar.org/SiteCollectionDocuments/107A.pdf.
charges against teenagers rarely solve the problem of teenagers mistreating each other.\textsuperscript{191} Moreover, criminalizing teenagers is not the answer where such conduct has traditionally and successfully been handled through counseling and rehabilitation.\textsuperscript{192} Therefore, laws that criminalize cyberbullying should apply only against adults perpetrating against a member of the youth.\textsuperscript{193}

Most importantly, a model statute must include and discuss off-campus speech.\textsuperscript{194} Currently, only eight states include language in their state bullying or cyberbullying statutes that address whether off-campus student speech is prohibited.\textsuperscript{195} Of those eight states, some do not have sufficiently specific language addressing off-campus speech.\textsuperscript{196} This has created Due Process Clause problems where parents and counsel for bullies have argued that the student was not provided sufficient notice of the school’s ability to suspend the student for inappropriate behavior. Therefore, the statute should expressly grant the state the authority, through its schools, to punish certain off-campus speech which has caused a substantial disruption on-campus.\textsuperscript{197}

Lastly, a model statute should include Teen Court as an initial source of dispute resolution. Teen Court provides an opportunity for victims, bullies, and their peers to


\textsuperscript{194} Id.

\textsuperscript{195} ABA, supra note 190.


\textsuperscript{197} Id.
learn from the incident through positive peer influence.\textsuperscript{198} The advantage of Teen Court is that the bully is put in front of the victim where the bully sees how his or her conduct has affected the victim.\textsuperscript{199} The bully hopefully learns from the conduct and is given a sentence consisting of community service by his or her peers or the adults supervising the hearing.\textsuperscript{200} In addition, fellow students are present and actively participating in the process and learn how cyberbullying is damaging and should not be tolerated.\textsuperscript{201}

C. Psychological and Social Support

In addition to a legislative response, there must also be more psychological and social support for both victims and the bullies involved in cyberbullying.\textsuperscript{202} This includes psychological counseling on and off-campus, social avenues where teenagers have guidance from adults with a sufficient understanding of how cyberbullying is fostered and its effects on both victims and the bullies, and forums for teen court where both victims and bullies come together to mediate their issues and stand trial by peers.\textsuperscript{203}

With or without further clarity in off-campus cyberbullying laws, there needs to be more support for victims through psychological and social avenues that help counsel teenagers in dealing with cyberbullying the right way. Where teenagers suffer serious mental harms because of cyberbullying, psychological support both on and off-campus is

\begin{flushright}
\textsuperscript{199} Id.
\textsuperscript{200} ABA, supra note 190.
\textsuperscript{201} Id.
\textsuperscript{202} ABA, supra note 190.
\textsuperscript{203} LOS ANGELES SUPERIOR COURT, Our Community Outreach Initiative: Bringing Judges to the Communities We Serve (last visited Nov. 30, 2012), http://www.lasuperiorcourt.org/outreach/ui/#teencourt.
\end{flushright}
an important tool before the victims lashes out violently.\textsuperscript{204} Such lashing out has often resulted in suicide or mass shootings, while innocent bystanders are hurt in the process.

Social support is another way our society can take responsibility for what is taking place in cyberspace.\textsuperscript{205} Program should be enacted in which students are involved in out-of-school activities with other students and adults who are welcoming and supportive, no matter what their faults, differences, or reputations are among their classmates. Teenagers have a constant need to be welcomed and accepted by others, so social support should aid those teenagers who are victims and should aim at showing them that the torment will not continue forever.

D. Shift in Policy Approach

A shift in the way anti-cyberbullying policies are approached needs to be addressed as well.\textsuperscript{206} States and school administrators understand that zero tolerance policies do not work in this context.\textsuperscript{207} Early indications suggest that zero-tolerance policies that result in suspension and discipline do not curb cyberbullying,\textsuperscript{208} but rather perpetuate the problem by removing the focus from its underlying systemic causes.\textsuperscript{209} In addition, punishment such as home suspension should be used with proper consideration of the likely outcome that a student who bullies classmates online will likely have access to the Internet, and continue torment of the victim as a reaction to the suspension.

Additionally, educators must take responsibility for their students by teaching them civility, the boundaries of free speech, and the effects of cyberbullying both on

\textsuperscript{204} Id.
\textsuperscript{205} Id.
\textsuperscript{206} Daniel, supra note 82, at 642.
\textsuperscript{207} Shariff, supra note 15, at 15.
\textsuperscript{208} Id.
\textsuperscript{209} Id.
victims and the bullies.\textsuperscript{210} Public schools should develop programs that teach students about civility toward their peers.\textsuperscript{211} Public schools should also educate their students on legal issues, ranging from torts, human rights, constitutional law, to free speech. Students need to learn the confines of protected speech, and how their conduct can seriously harm others even though they may not realize it. The goal of these educational tasks is to “create a culture of responsibility online.”\textsuperscript{212}

Further, parents need to start taking more responsibility for their children’s conduct.\textsuperscript{213} Parents can accomplish this by first educating themselves on the Internet and recognizing that children may be harmed while sitting in front of a computer. When parents become aware that their child is the victim of cyberbullying, they need to address the issue with school administrators. More importantly, when parents find out that their child is the one bullying in cyberspace, they need to make sure that the victim of their child’s behavior is also addressed, including speaking to the victim’s parents and school administrators to make sure future harmful conduct is not continued.

Finally, there needs to be more Internet responsibility.\textsuperscript{214} Specifically, social networking websites need to recognize and put in place outreach and preventive measures against cyberbullying. They have the ability to control how content is used and moved around on their websites and have the ability to prevent users from using their services. The most effective way social networking websites can do this is by implementing

\textsuperscript{210} ABA, \textit{supra} note 190.
\textsuperscript{211} Caitlin Heaney, \textit{Valley View Hosts Anti-Bullying Program}, (Sept. 21, 2010) (creating an anti-bullying program by the school district called “Box Out Bullying” where children are taught that bullying is wrong, what they can do to prevent it, and how they can help victims), available at http://newsitem.com/valley-view-hosts-anti-bullying-program-1.1022951.
\textsuperscript{213} ABA, \textit{supra} note 190.
\textsuperscript{214} Id.
reporting devices that allow users to report abuse and bullying. If the social networking website’s computers software detects continuous abuse and bullying, they can look into the individual user’s activities and either warn the user or block the user from further using their services. This will create the anti-cyberbullying culture that is necessary to sufficiently protecting cyberbullying victims.

V. CONCLUSION: A CALL FOR ACTION

The rise in cyber social activity makes it likely that the Supreme Court will face off-campus student speech and decide how to apply the “substantial disruption” standard. However, until then, cyberbullying continues to be a public concern, which prompts more protection for victims.215 In addition to legislation, and a broad application of the “substantial disruption” standard as adopted in Kowalski, educators, parents, social networking web sites, and Internet Service Providers need to come together, to raise awareness and engage in a proactive approach to preventing cyberbullying.