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**CYBER-BULLYING POLICIES IN K-12 PUBLIC EDUCATION: AN ANALYSIS OF  
THE LEGAL IMPLICATIONS OF SCHOOL INTERVENTIONS**

A Dissertation in

Educational Leadership

by

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## ABSTRACT

In many K-12 public schools across the United States, interventions in cyber-related incidents are very contentious. Intrigued, I sought to understand the sources of the contention through a qualitative analysis of cyber-bullying issues. This study consists of a combination of legal analysis and content analysis. The goal was to examine the legal implications of school interventions by answering four questions: 1) did the school districts mentioned in several court cases litigated between 1998 and 2011 had specific policies addressing cyber-bullying; 2) to what extent the school officials mentioned in the court cases followed the disciplinary recommendations in their school policy; 3) were specific elements of legal precedents reflected in school policy documents; and 4) to what extent can the presence of legal precedents explain the legal uncertainty that plagues school interventions in cyber-related issues. To answer the aforementioned questions, past court opinions/cases, state statutes, and school policies were retrieved from the appropriate authorities (see Appendix K: The study in a nutshell).

Contrary to popular assumptions, the findings suggest that a great majority of the school districts mentioned in the selected court cases did not have any clear policy addressing cyber-bullying. A little more than half of the school districts that had policies, which addressed either traditional bullying or online communications issues, took disciplinary actions that were aligned with the recommendations stipulated in their policy documents. Similarly, legal standards or precedents were reflected in several schools' policy documents. Though, the extent to which those policies could be considered as cyber-bullying policies was discussed in depth. To answer the last question, the themes and patterns identified from the court cases were analyzed. The study concludes with recommendations for policymakers and future researchers.

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## Chapter 1

### INTRODUCTION

*“A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.”*

—Oliver Wendell Holmes

Why cyber-related interventions are so contentious in many K-12 public schools? The answer may lie in the types of policies that guide and inform such interventions. In many school districts, interventions in online incidents are often the subject of intense legal battles, especially when it comes to the types of disciplinary actions taken by administrators against the student(s) involved. Most experts in school law or school leadership are bewildered about the reasons why courts seem to limit school districts’ attempts to address, what many perceive as, an exacerbation of cyber-related incidents (Hoder, 2009). While most school officials have broad latitude to discipline on-campus infractions, they cannot, however, restrict student online expressions simply because such expressive conduct are deemed controversial or offensive (*Tinker*, 1969).

Currently, many schools of thought have sought to understand school interventions and have argued avidly about the best approaches to intervene in online issues. Legal scholars frequently articulate some of the most fervent views. Those that are in favor of a plenipotentiary authority for school districts to intervene tend to argue that current laws are inefficient and, in most cases, irrelevant. Erb (2008) argues that most courts have denied school districts the power to discipline students for speeches that are oftentimes sexually explicit, vulgar, threatening, and cruel. Yet, as of 2011, approximately 46 states had adopted bullying laws (Stuart-Cassel, Bell, & Springer, 2011), which also gave school officials the authority to discipline online misconduct.

Others, on the other hand, have a more positivist point of view on the importance or the usefulness of current laws. While acknowledging that school districts should enjoy some peremptory authorities, opponents of school interventions believe that such activities should be guided by sound school policies; that is to say, policies that take into account the bearing of existing laws. Most adamantly believe that current laws are effective; the statutes that created them followed the dicta set forth by the United States Supreme Court. The conventional wisdom on this side of the debate is that poorly designed and implemented school policies are the reasons why the courts are reluctant to sympathize with school officials; school districts should bear all the blame. Some have argued that inadequate policies and misguided or insensitive punishments can explain the litigious nature of school interventions. The crux of the argument is that most school districts' current policies are misconstrued and do not align with legal precedents (Lane, 2011). Intrigued by the complexity of the debate, at first, I adopted a neutral stance, but the findings are so compelling. That being said, in lieu of taking sides, I opted to let the data speak.

Legal commentators have contended that bullying laws are incoherent. But the enactment of bullying laws, is a state issue. Because of widespread concerns about school violence, several state legislatures have either introduced new laws or amended existing educational or criminal statutes to include bullying or other forms of violent behaviors in schools (Stuart-Cassel, Bell, & Springer, 2011). Arguably, current state laws are not that problematic; rather they are constantly evolving. As more students interact online, this could create more problems; as school policies are getting more pervasive and are disputed, this could also lead to more legal issues. Thus, state laws could fluctuate accordingly; and state laws may differ greatly in their implementation requirements and language. This disparity does not necessarily mean that the laws are imperfect.



At first glance, it does not appear that school districts are devoid of a clear legal guidance as to how and when to intervene in online issues; rather, all indications seem to suggest the contrary. Most state laws require school districts to develop and implement their own policies, which, arguably, tend to provide school officials with a false sense of confidence. State laws have also established clear limitations over the jurisdiction of school districts to punish bullying conduct, be it on or off school grounds. Similarly, most court opinions generally lay out what the courts are more or less likely to tolerate in terms of school interventions. Even though the laws, at the state level, are incongruent, the courts usually invoke much narrower standards, which normally come from landmark cases. School districts, one would contend, armed with that knowledge, should be in a better position to determine when and how to address online-related issues. Why do most observers believe that the courts are not really helping school districts? A plausible explanation is that the courts seem resolute about the need to protect student rights.

In school settings, student online issues are not always easy to decipher; it is not often clear when an online activity becomes unlawful. Any school intervention has the potential to turn into a much bigger legal hurdle than previously anticipated. It is worth pointing out that the nature of the educational system does not always facilitate universally acceptable outcomes in many issues, namely student discipline. Student speech issues are notoriously very controversial. But most importantly, administrative approaches to solving such issues often exacerbate further the controversy. Rarely, student speech issues are viewed from a single prism; and there are few exceptions to this rule. Not surprisingly, school interventions in online speech issues are not among these exceptions. Consequently, when a student is involved in an online incident, particularly in a cyber speech activity, the right approach is often subject to intense debate.

Many observers are taken with the fact that most definitions about the very act of bullying differ greatly across state lines and, in many instances, among school districts within the same state (Zande, 2009). To that effect, disciplinary consequences for violations of school policies often differ substantially across the country. Observers interpret this plethora of contradictions as some of the reasons why legal uncertainties have plagued school interventions (Erb, 2008). It could also be argued that, because cyber-bullying, as a phenomenon, is evolving, existing laws pertaining to online bullying in general are in an embryonic stage. It seems evident that state legislative activities are evolving as lawmakers replace or improve their approaches. For that reason, it should not come as a surprise to see that existing rules on these issues fluctuate accordingly (Stuart-Cassel, Bell, & Springer, 2011).

When it comes to bullying misconduct on school grounds, most school districts are proactive and some have adopted stringent measures in order to deal with perpetrators. But there is a growing sense that more actions must be taken by local governments and school districts to come up with a better way to dealing with bullying behaviors, regardless of the location such conduct originated (Stuart-Cassel, Bell, & Springer, 2011). While most people agree that school interventions are necessary, the right formula for the intervention is seldom cogently articulated.

This study was based on two important, but contradictory, perspectives. The first one argues that online incidents, particularly cyber-bullying, are increasing and, there is an urgent need to address them. Conversely, the other perspective notes that, there is no effective way to address online issues because current laws are inconsistent. Therefore, school interventions are often seen as a forbidden alternative, which only brave school administrators can contemplate. This study sought to answer some of the most salient questions addressed in this debate.

The issue is whether the courts should do more to assist school districts in legal disputes pertaining to online incidents. Some commentators have contended that while countless students are victimized by cyber-bullies, the courts offer no tangible remedy to school districts in order to discipline the students engaged in such activities (Erb, 2008). Within that perspective, school districts must be given the authority to punish students. While most observers see no distinction between cyber-bullying and cyber-speech, the courts appear to see a clear demarcation, which must not be ignored by school officials when they decide to intervene in these online issues.

Many state laws have also established a clear distinction between traditional bullying and cyber-bullying. As noted earlier, many states have amended their existing traditional bullying legislations in response to the emergence of cyber-bullying incidents in public schools. Stuart-Cassel, Bell, and Springer (2011) note that most state statutes on traditional bullying also address cyber-bullying, however, a school authority to intervene is restricted to on-campus incidents. In most cases, a school can intervene in off-campus issues only when such activities disrupt school operations by creating a hostile environment for school personnel and students. In most instances, it is unambiguous that only in situations where there is a clear disruption can school officials exert their authority to take disciplinary actions against the student(s) involved.

While the concept of disruption is often articulated in many court opinions, it is generally omitted or perhaps minimized in the debate. This study, however, examined school interventions within the context of online disruptive activities. The goal was threefold: (1) the study sought to identify the existence of specific school policies on cyber-bullying; (2) it sought to determine any possible alignment between school policies and disciplinary actions; and (3) it sought to determine the presence of specific keywords from legal precedents in school policy documents.

The overarching goal of this study was chiefly to understand the extent to which certain online activities, which are often consisted of students making fun of others (i.e., other students and school staff) by creating or posting off-color comments or parodies, were disruptive enough to warrant school interventions. It was also important to determine whether those activities should be regarded as freedom of speech or cyber-bullying. Functionally, this study peeled away the many layers of online speech issues and online incidents in general to expose how cyber-bullying, as a phenomenon, has been reified to levels that diminish the effect of school policies and at the same time undeservedly shifted all the blames onto the courts as the sole culprits that prevent school administrators from disciplining unruly students or rowdy online behaviors.

This dissertation is divided in six chapters. Within the next few pages, a brief overview introduces the salient issues pertaining to cyber-bullying and online speech issues, while outlying the research questions and the significance of the study. Subsequently, the following are also presented (within that particular order): (a) an overview of the laws that govern cyber-bullying policies, along with the rationale and the conceptual framework, which guided this inquiry; (b) a detailed review of the literature regarding the prevalence online incidents and the impact of cyber-bullying incidents is also laid out; (c) the methodology and the data collection procedures are explored in depth; (d) the results are reported, along with tables, figures, charts, and illustrations; and (e) an analysis and the subsequent discussions about the implications of the findings are also presented. Finally, the dissertation concludes with policy recommendations for policymakers and made specific suggestions for future researchers in this particular area of public education and school law.

## Overview of Cyber-bullying

Unlike traditional bullying, cyber-bullying is described as the use of technology to embarrass or humiliate others (Dickerson, 2009). Hinduja and Patchin (2010) state that it is a willful and repeated harm, which is inflicted using electronic devices. Despite those definitions, the true nature of cyber-bullying remains elusive. Zande (2009) notes that there is not even a consensus as to the proper spelling of the phenomenon commonly referred to as ‘cyber-bullying’<sup>1</sup>. Currently, there are multiple ways of spelling the name of this emerging, but popular, phenomenon. The most commonly used epithets are: “Cyber bullying” (with a space in between), “Cyberbullying” (in one word), and “Cyber-bullying” (with a hyphen in between). In this document, however, the hyphenated version is heavily used throughout the different chapters, except in places where other versions are required or specified in citations.

In part because of a lack of specificity as to what traditional bullying entails, what constitutes cyber-bullying is equally confusing. Possibly, this is one of the reasons why most school districts are having difficulties differentiating between online bullying activities and online expressive conduct. Swearer, Limber, and Alley (2009) note that a clear legal definition of the act of bullying is important when it comes to understanding how such behaviors are viewed and approached by the school community, including school staff and students. While there are limitations in the types of speech permitted in educational settings, many aspects of the right to freely express one-self, fortuitously, are protected under the First Amendment of the United States Constitution. The U.S. Supreme Court has frequently upheld those rights in legal disputes.

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<sup>1</sup> The hyphenated spelling (Cyber-bullying) is used throughout this document.

The National Crime Prevention Council (also known as the NCPC) denotes that cyber-bullying is similar to other types of bullying, with the exception that, it usually occurs through online activities, notably by sending text messaging and/or disseminating pictures to harass others. Slonje and Smith (2008) note that there is a significant incidence of cyber-bullying cases in lower secondary schools. Still, those claims are often scrutinized and vehemently challenged by critics since they are not generally raised by unanimous voices. Hertz and David-Ferdon (2008) are convinced that there is a lack of information about the true incidence of cyber-related incidents in public schools. It must be noted, however, that most observers agree that cyber-bullying is a real issue and should not be ignored on the basis that interventions are complicated.

While some people believe that school policies are incompatible with court rulings, others have argued that school administrators are simply “out-of-sync” with the effects of new technologies, which, within the last few decades, have outpaced existing laws. The next few pages provide an overview of the salient points of contention pertaining to cyber-bullying in public education and the different arguments raised in the debate about the role of the courts, including the policy and the legal arguments.

### **Background**

Recently, the availability of Information Technology (also known as IT<sup>2</sup>) has increased considerably. The impact of those technological advances can be witnessed in our daily chores. Almost every activity in today’s society has an “on-line” component attached to it. As Jacobs

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<sup>2</sup> Dennis & Shain (1985) describe the term IT as, the acquisition, processing, storage and dissemination of vocally define information, including pictorial, textual and numerical information by means of a microelectronic-based combination of computing and telecommunications.

(2010) notes, the Internet (also known as an immense web of network of computers) has revolutionized the way communication is carried out in modern societies. The pervasiveness of the Internet is forever present in our daily routines; most people have a username or a password.

Nowadays, communication among people is mostly conducted through a medium that often entails wireless technologies (Willard, 2007). Between emailing and texting, social media such as Facebook, MySpace, Twitter, and blogging websites are vastly popular. But many people are concerned about the influence of the Internet. Some have contended that the Internet could become a hub for anti-social behaviors (Harman, Hensen, Coghan, & Lindsey, 2005).

Although most observers see the progress in information technology as a good thing for society in general, and possibly, for the human race, countless others have questioned its wisdom. King (2010) questions the need for such technologies by asserting that the Internet could be both a curse and a blessing, alluding to the fact that, its costs often outweigh its benefits. The argument is that while most people use the Internet for legitimate purposes, others use it as a means to carry out certain misdeeds that would have otherwise been severely sanctioned, had they occurred on a public square. Kowalski (2008) asserts that people will say or do certain things to others anonymously that they would probably refrain from saying or doing directly or face-to-face. For that reason, the virtual domain that the Internet, as an important technological tool, has created, carries with it real and unpleasant consequences (King, 2010).

Within the realm of education, school officials, teachers, parents, and students are not immune from the effects of the Internet. In most school districts, students are allowed to use the Internet for both personal and pedagogical purposes. The accessibility and the use of internet-based technologies are very common among elementary, middle school, and high school students

(Beale & Hall, 2007). Many young people use the Internet as a means to communicate with friends, to seek information, and to post blogs (Willard, 2007). That being said, it must also be noted that most online harassment or bullying activities tend to occur through e-mail, chat rooms, cellular phones, and instant messaging (Kowalski, 2008).

There is an alarming trend in the manner in which most students, particularly elementary and secondary students, are using the Internet to interact with one another. While schoolyard bullying—also known as traditional bullying—is still a major concern in K-12 public schools, because of the Internet, a new form of bullying, known as cyber-bullying, has emerged and it is causing numerous administrative and legal problems. Stefkovich, Crawford, and Murphy (2010) note, “cyber-bullying is a modern adaptation of traditional bullying, which uses technology as a means to demean, harass, or threaten an individual or a group of students” (p. 139). Yet, from both a legal and a managerial perspective, it is not clear as to when an online communication becomes a cyber-bullying act or a free expressive conduct. In other words, there is not a clear distinction between cyber-bullying activities, free speech, or out right childish behaviors.

According to the National Crime Prevention Council, in 2007, 43 percent of teens had experienced some form of online bullying. In 2011, the National Center for Injury Prevention and Control also found that, almost half of all American adolescents were victimized by cyber-bullies. As inferred above, instant messaging is the preferred way of communication among adolescents (Kowalski, 2008). Willard (2007) notes that whether on or off school grounds, many students have used the Internet to bully and harass their peers. Similarly, some students have also used the Internet to post and share lewd materials about themselves and others. It is widely believed that these kinds of behaviors are very frequent among middle and high school students.



Sexting is one of the many issues school administrators routinely address. Since such activities are also illegal in most states and often fall within the realm of child pornography, minors could be arrested, fined, or both, and charged with felonies (Willard, 2010). The National Conference of State Legislatures (2011) notes, in 2010, at least 16 states introduced legislations or were considering bills that would address sexting. In most cases, a minor could be sentenced as a sex offender, if found guilty of sending sexually explicit photos or videos electronically.

Many observers, including prominent legal commentators, scholars, and educational practitioners, view cyber-bullying intervention as a controversial issue. For that reason, cyber-bullying laws are currently at the center of a debate over the use of the First Amendment (U.S. Constitution) to address off-campus incidents. As noted earlier, this study was chiefly concerned with understanding the legal implications of school administrators' interventions in disruptive online situations, namely cyber-bullying, regardless of the location of the incident.

Surprisingly, the findings suggest that school interventions are not so much the problem; rather the way school policies are worded and the manner in which school administrators tend to approach online incidents are often the root cause of the legal disputes. To illustrate this assertion, it could be said that in a legal dispute pertaining to an online incident, a court might decide in favor of a student, a school district, or both parties, whether school administrators took into account certain legal considerations before the intervention. In other words, if the school district could not effectively articulate any substantial disruption of the school environment, as a result of the incident, most likely, that school would not prevail in courts. Conversely, a clear articulation by the school district of any disruptive effects on school operations, as a result of student's activity, most likely, that student would not prevail in courts.

### *The Policy Arguments*

In 2010, the case of Phoebe Prince<sup>3</sup> caught national attention when she hanged herself after being harassed constantly by several students at her high school, primarily via text messages and Facebook. It is alleged by Phoebe's relatives that many school administrators were apprised of an ongoing situation, but they did nothing to stop it. While school authorities denied any wrongdoing in this case, in 2011, it was discovered that the school district had privately settled a civil lawsuit<sup>4</sup> with Phoebe's parents.

Observers have also argued that cyber-bullying activities extend beyond peer-to-peer harassment. School administrators and school staff, including teachers and school principals often find themselves victimized by cyber-bullies (Stefkovich, Crawford, & Murphy, 2010; Conn, 2009). Students routinely create fictitious websites and post offensive comments about teachers and school personnel. School officials are quick to react by taking disciplinary actions against the students involved when such incidents occur. In the absence of a clear disruption of school operations, the courts seem to disagree with those kinds of interventions. To that effect, many school districts are scrambling to find the right approach to dealing with such online problems. Sadly, there are conflicting views as to the right approach to school interventions.

In the wake of the Columbine shootings,<sup>5</sup> the top priority of many school districts

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<sup>3</sup> Phoebe Prince was a 15-year-old girl, an Irish immigrant, who hanged herself after nearly three months of routine torment by students at South Hadley High School, via text messages, and through the social networking site, Facebook (Goldman, 2010).

<sup>4</sup> The parents of Phoebe Prince settled a lawsuit with their daughter's school district for \$225,000. The settlement was reached over a year ago, but the details were only disclosed on Tuesday when a journalist won a court order to release the information that had previously been sealed, according to the Associated Press (<http://abcnews.go.com/blogs/headlines/2011/12/phoebe-princes-parents-settled-school-district-lawsuit-for-225000/>).

<sup>5</sup> In 1999, two high-school seniors, Dylan Klebold and Eric Harris, enacted an all-out assault on Columbine High School during the middle of the school day, killing twelve students, one teacher, and injured 21 others. The two assailants were found dead. Retrieved April 13, 2012 from: <http://history1900s.about.com/od/famouscrimesscandals/a/columbine.htm>

converged onto keeping schools as safe as possible. Initiatives to restore order within the schools have led to a rapid proliferation of litigation pertaining to free speech and due process rights (Lee & Adler, 2006). Still, many school districts maintained the course by adopting stringent policies. For instance, most school districts have adopted broad zero-tolerance policies.

Legal commentators have argued that because of cyber-bullying, the safety of students is more threatened outside school grounds than it is inside the schools. Sabella (2009) argues that cyber-bullying of peers represents a more serious danger for students than traditional bullying, which often occurs within the boundaries of school grounds. Furthermore, Li (2006) notes that the pervasiveness of cyber-bullying is more widespread than any other types of school violence. Within the last few years, several states have adopted statutes that clearly identify bullying as a bad behavior, which will not be tolerated (Hartmeister & Fix-Turkowski, 2005). Similarly, scores of school districts have also enacted policies that address traditional bullying at its core.

Although the language in most state statutes requires school officials to update current policies or develop new ones, which would address cyber-bullying, the presumption is that most schools have policies that clearly addressed such activities. While several school policies include the term “online communications” in their language, which is not necessarily related to cyber-bullying activities, but are often used to address such incidents, observers are convinced that those policies are simply inadequate and they do not take into account the jurisprudence established by the courts, particularly when it comes to off-campus incidents (Lane, 2011). One of our expectations was that inadequate school policies could be part of the reasons why countless legal complications have ensued from school officials’ decisions to intervene in incidents that many considered as borderline online expressive conduct.

### *The Legal Arguments*

The U.S. Supreme Court has established certain parameters for school districts to consider when addressing freedom of speech issues. Legal precedents have articulated the following: (a) in the absence of any disruptions, students have a right to freedom of speech (*Tinker*, 1969); (b) a lewd and/or plainly offensive speech is not permissible (*Fraser*, 1986); (c) school officials can restrict students' speech if deemed inappropriate (*Hazelwood*, 1988); and (d) speech that promotes illegal drug use is not guaranteed or protected under the law (*Frederick*, 2007). Jacobs (2010) notes that the courts have also emphasized that students can be disciplined for activities that are substantially and materially disruptive to school operations. The extent to which those standards should apply to online speech situations is part of the ongoing debate.

While some are convinced that legal precedents, such as the ones aforementioned, do apply to cyber-related issues in general, others vehemently believe that they do not apply, and the courts should probably refrain themselves from using such legal standards to adjudicate in issues that are not necessarily analogous to the issues that prompted those laws in the first place. Thus, the bulk of the argument is that the courts need to find a new approach to adjudicate in online speech issues and they should give schools the broad authority to intervene by disciplining students. But the courts seem to disagree with those who subscribe to that kind of reasoning.

Generally, freedom of speech disputes are initiated by students and/or parents who believed that their fundamental constitutional rights had been violated because of school administrators' decision to punish them for online activities that they considered protected under the First Amendment (Stefkovich, Crawford, & Murphy, 2010). During court proceedings, school administrators are expected to justify their actions, particularly the types of disciplinary

sanctions they took against students (Stefkovich, Crawford, & Murphy, 2010). But it can be very hard to document students' online activities, which is necessary in order to prove disruption or malicious intent. Online speeches are notoriously difficult to document due to the inherent limitations of monitoring students' online activities (Stefkovich, Crawford, & Murphy, 2010).

Many legal commentators have argued that school administrators have limited options to dealing with online speech matters. The types of situations in which maintaining school order may trump students' rights are not clear. Stefkovich, Crawford, and Murphy (2010) argue "legal precedent has not adequately clarified where those distinctions lie, leaving school practitioners in the uncertain position of how to control for and discipline incidents of cyber-bullying" (p. 144). Nevertheless, limiting student speech is not a prerequisite to maintaining order in schools. Arguably, maintaining an orderly climate in schools could also be accomplished with well-designed and carefully implemented school policies, school rules, and school regulations. Presumably, when school rules are enforced properly, they can provide administrators with the necessary tools to maintain a safe and orderly climate on school grounds, which can also boost their confidence during interventions in any types of issues.

Although, the U.S. Supreme Court has established that students have rights; in the absence of school disruptions those rights should not be restricted (*Tinker*, 1969), scholars in both education and law have consistently vied in favor of better cyber-bullying laws; rather than advocating for corrective cyber-bullying policies. This approach seems misguided, for it overlooks the possibility that current laws are improperly enforced through inappropriate school policies. Sadly, such arguments could potentially influence persuasive authorities in school law, which, in turn, could potentially lead to more unduly objections against cyber-bullying laws.

### **Research Questions**

Onwuegbuzie and Leech (2006) and Creswell (2006) argue that one of the most important steps in a study is determining the research questions, for they can narrow the scope of the research purpose and research goals. Cyber-bullying is a complex issue, which can take many forms (McLeod, 2008). While there are several questions and problems that permeate this phenomenon in public schools, this study maintained a narrow focus about the legal and policy implications of school officials' modes of intervention in cyber-related incidents.

The assumption is that in K-12 public schools, state laws are the only guiding principles of school policies, particularly in matters pertaining to bullying or harassment (Stuart-Cassel, Bell, & Springer, 2011). But state laws or statutes on this issue, in most instances, are the direct results of court decisions in student speech disputes. One can reasonably conclude that any state law on cyber-bullying would also reflect aspects of the jurisprudence in this domain. Hence, in order to determine whether legal precedents established a clear path for school officials to follow and the implications of schools' interventions in cyber-bullying incidents, this qualitative study was conceived as a combination of legal analysis and content analysis of both school policies and state laws or statutes, which specifically addressed such issues in their language.

It is worth noting that this study is mostly a legal analysis, rather than a policy analysis. While school policies played an important role in this inquiry, the legal dimensions of those policies were the center of the analysis. Thus, the legal analysis is mostly emphasized throughout the study. The content analysis, however, was mainly used to decipher themes and patterns within the data. Court cases, state statutes, and school policies were collected and analyzed in order to determine the extent to which legal precedents informed and guided school policies.

The study focused on the following four research questions:

1. Did the school districts mentioned in several court cases between 1998 and 2011 have specific policies addressing cyber-bullying?
2. To what extent the school administrators mentioned in the court cases followed the disciplinary recommendations stipulated in their schools' policy documents?
3. To what extent specific elements of legal precedents were reflected in the schools' policy documents on cyber-bullying?
4. In what way legal precedents can explain the legal uncertainty that plagues cyber-related school interventions in K-12 public schools?

### **Statement of the Problem**

Many school administrators are familiar with traditional bullying situations on school grounds; it is assumed that most schools have some form of policy in place that addresses such conduct. Cyber-bullying, on the other hand, is more recent and more pervasive. The argument is that because the courts have consistently granted First Amendment protection to students, school districts are limited in their authority to discipline cyber-related off-campus matters (Erb, 2008). Arguably, there is a misconception about cyber-bullying incidents, cyber-speech, and cyber-bullying laws, which gives the perception that school officials and/or school districts are vulnerable when attempting to discipline the students involved. Cyber-bullying laws is a state issues. Currently, no federal or state laws condone bullying conduct in schools. Therefore, while the common belief is that cyber-bullying laws are inadequate to helping school districts, the extent to which those laws have been applied to the right problems (i.e., cyber-bullying incidents) was one of the issues this study sought to assess and understand.

Conn (2009) argues that because the laws are not clear, educators are unsure about how to address cyber-related situations. Similarly, Stefkovich, Crawford, and Murphy (2010) argue that, “school practitioners are largely left on their own to determine both how to discipline cyber-bullies and deter future incidents” (p. 142). Conn (2009) further notes that, because current laws do not clearly define the terms ‘*materially and substantially disruptive*,’ which are often used as the basis for disciplining students, disgruntled students and parents tend to assail school districts with costly and time-consuming lawsuits.

While these arguments reflect the common belief about cyber-bullying laws, two important phenomena are worth mentioning in this dissertation. First, the courts have consistently used similar legal arguments to adjudicate in matters pertaining to online speech. For instance, landmark cases such as *Tinker*, *Fraser*, and *T.L.O.* usually form the legal standards upon which many courts have based their reasoning in online-related disputes. Second, while most school administrators seem reluctant to intervene in off-campus incidents, particularly in situations where students targeted other students, when school staff or school personnel were targeted, the intervention was almost certain. More often than not, school administrators tended to overreact and assessed harsh punishments to the student(s) involved when they intervened.

Willard (2010) suggests that school administrators would intentionally miss the opportunity to respond or investigate an issue, particularly if they perceived it as ‘off-campus.’ The author also notes that the common motto many school administrators have unofficially espoused is that: ‘if it is off campus, it is not my job.’ Willard (2010) further asserts that there is a misconception about off-campus incidents. Thus, it could be argued that most school officials fervently believe that off-campus incidents are outside the realm of their professional



responsibilities. As a result, they do not have to intervene in those incidents. Initially, I presumed that there is a discrepancy in the way school administrators approach online incidents. As the study progressed and as the data analysis began, this presumption was irrefutably reinforced.

Throughout the course of this inquiry, however, it was not possible to determine whether this incongruence was the result of current laws. Hence, for a good portion of this study, the real issue remained elusive. As I started to delve into the data and began analyzing the findings, it became apparent that a double standard clearly existed in the way online incidents were handled, not only amongst school districts, but also amongst school administrators. While in many cases online incidents are approached with cautions, in other instances, it appears like some incidents may have been handled with little or no considerations for existing rules, policies, or laws.

McLeod (2008) points out that when it comes to cyber-bullying, school administrators should “tread carefully before attempting to discipline students” (p. 214), particularly in speech situations that occurred off campus. In recent years, however, there has been a push for school districts to reduce the incidence of bullying on school grounds. In many school districts across the country, the training of administrators and teachers has been integrated as an important component of professional development (McLeod, 2008). Despite those efforts, partly because of new technologies, bullying continues to be one of the biggest administrative and perhaps the most important legal challenges facing many school districts across the country, particularly when it comes to cyber-bullying and online speech. As alluded to previously, there is a clear contrast between online free speech and cyber-bullying incidents. Understanding whether school administrators recognized the difference when they decided to intervene in an incident was also an important aspect of this study.

### *The Balancing Act*

With the advent of technology, educators are forced to strike a balance between the rights of students and school safety (Stefkovich, Crawford, & Murphy, 2010). While cyber-bullying matters are usually litigated from several legal perspectives, the issues often raised are: freedom of speech, search and seizure, due process, and tort liability. In most cyber-related court cases, either school administrators were defending their authority to protect student safety by maintaining a climate that fosters student growth (Smith et al., 2008; Shariff & Johnny, 2007; National Crime Prevention Council, 2007; Stefkovich, Crawford, & Murphy, 2010) or they were justifying their failure to intervene. The case of Phoebe Prince is a perfect example where school administrators had been on the defensive, explaining the reason why they failed to intervene when they had knowledge that a student was constantly tormented both on and off campus.

The issues that are often associated with cyber-bullying are neither necessarily analogous nor clearly distinguishable from the very act of bullying. But cyber-bullying laws and/or school policies are generally derived from the notion that certain behaviors are bad and they will not be tolerated. For example, most school districts have stringent policies against harassment, stalking, and hazing. Similarly, conduct such as fighting in school, bringing contraband in school, including guns, alcohol, or possessing illicit substances on school grounds are not acceptable. Alternatively, engaging in sexual behaviors on school grounds is not permissible under any circumstances. Not surprisingly, many students are familiar with the “Do’s and Don’ts” on school grounds. Then again, online activities often take place outside of school jurisdiction, in most instances, from the comfort of a student’s home computer. The extent to which school officials can and should restrict off-campus student activities is murky, to say the least.

The types of behaviors that are generally characterized as cyber-bullying and punished under school rules are very similar to behaviors that could be associated with expressive conduct, which are protected under the law. No one can claim freedom of speech on the issue of bullying, be it in the cyber-space or face to face. Bullying, just as stalking or harassment, is a reprehensible act, which, in most instances, is considered illegal or even criminal. Bullying activities, if proven, cannot be justified by the prerogatives of the First Amendment (i.e., freedom of speech). Therefore, understanding cyber-bullying laws within the context of their application was very important in order to understand the true nature of the incongruence observers have pointed out.

#### *Overhauling Cyber-bullying Laws*

While the major arguments suggest that cyber-bullying laws are unclear, inadequate, and, in most cases, ineffective, it has not been demonstrated that these laws are imperfect or useless to the extent that their complete overhaul is necessary. It is equally uncertain as to the reason why cyber-bullying laws appear incapable of providing school administrators with the proper tools and guidance to be successful in their attempt to discipline students. One valid argument is worth reiterating here; that is, cyber-bullying laws are not defective; rather, they are not being used to tackle the right problems. For instance, the laws that are often used to address online incidents, which do not necessarily contain the very act of bullying, were not necessarily designed to curb online harassment or bullying activities. Oftentimes, harassment or bullying is not the issue that led to legal disputes. When a school district that has a policy against online harassment that does not necessarily mean that any online misconduct can be defined as harassment. Certainly, that conduct could be reprehensible enough to be disciplined. However, the punishment must fit the crime, so do speak. From a legal standpoint, I would contend, the crime must be clearly defined.

As this dissertation unfolds, the salient issues surrounding the phenomenon called cyber-bullying are unraveled and the study questions are answered, it might appear obvious that most of the arguments against the courts' use of legal standards such as *Tinker*, *Fraser*, and *T.L.O.* are not persuasive enough to admonish existing cyber-bullying laws. Arguably, the calls for better laws could be seen as a false issue, which are simply based on a misinterpretation of the real issues.

As I ponder on the true nature of the debate on cyber-bullying issues, I also find it very difficult to not to agree with those who believe that there is a need for a better approach in school policies. In the end, cyber-bullying laws are vindicated as being effective, particularly within the context the issues they were designed to address; the mythical notion that the lower courts are without a clear legal guidance is debunked as being egregiously inaccurate; and the depiction of court rulings as being inconsistent and the sole culprit in school districts' incapacity to address online incidents is refuted, as the role of school administrators is highlighted in conjunction with inadequate school policies.

### **Significance of the Study**

The presumption is that because of the availability of internet-based technologies, cyber-bullying incidents are on the rise. Such an increase, if true, is alarming and should be of concern for educators, scholars, and parents alike. While the consensus is that cyber-bullying incidents are legion and are wreaking havoc in many school districts across the country, aside from a few media sensationalized cases, pinpointing the exact incidence of cyber-related issues or litigation in recent memory is not an easy task. In fact, it seems like cyber-bullying is non-existent, at least from a legal standpoint. Most cyber-related legal disputes had been litigated at the lower courts

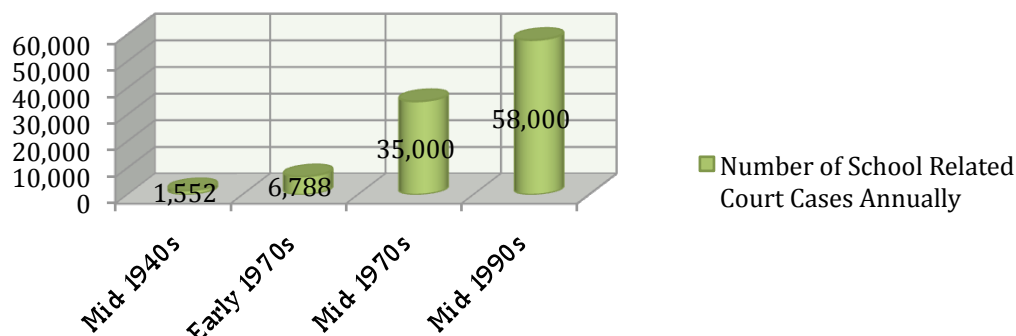
level and a great majority of them was not always published (Stefkovich, Crawford, & Murphy, 2010). Hence, the perception that cyber-bullying is a major legal issue appears misguided.

Alternatively, the act of bullying is seldom on trial. Put another way, the term cyber-bullying is rarely mentioned in cyber-related court cases. As noted earlier, legal claims emanating from online incidents generally addressed fundamental and constitutional issues such as free speech, due process, equal protection, and search and seizure. Currently, there are no case laws or scholarly articles, which address the right of a person to cyber-bully others. Conversely, there are no major arguments in the literature, which suggest or advocate for a person's rights to be stalked, harassed, bullied or cyber-bullied. No one seems to think that bullying conduct should be accepted in any way shape or form. From that, one could infer that most people agree that cyber-bullying laws are necessary to address cyber-bullying issues. Within that perspective, it could also be inferred that cyber-bullying laws are not directly hindering school interventions in cyber-related incidents. Therefore, it appears like the impediment that several commentators have attributed to cyber-bullying laws is simply misconstrued, for they have overlooked other possibilities, including the fact that school policies could also be inadequate.

Observers have argued that as cyber-related incidents continue to be widespread in many school districts, because of school disciplinary actions, increase in legal disputes would also reflect a similar trend. Dunn and West (2009) note there is a relationship between school discipline and school-related litigation. They based their argument on past trends in education litigation. Chart 1.1 illustrates that between the mid 1940s and the early 1970s, school-related court cases rose from 1,552 to 6,788 annually (West & Dunn, 2009; Zirkel, 1997). Likewise, the number of lawsuits filed in federal courts on matters pertaining to deprivation of rights also rose

dramatically between the mid-1970s to the mid-1990s, from 35,000 to 58,000 annually (West & Dunn, 2009). It is worth noting that these patterns were not the results of a single issue in education; these cases reflected several issues in various school districts across the country.

**Chart 1.1: School Related Litigation**



Sources: From Schoolhouse to Courthouse (West & Dunn, 2009)

**This Chart:** Shows that there has been a sharp increase in the number of court cases pertaining to school related issues. Over the course of the last few decades, particularly in the mid 1990s, there have been more than fifty thousand legal disputes settled in courts on an annual basis.

All these increases, however, coincided with several educational policies that were implemented during that time. While it could not be said that these data are very impressive compared to other areas of school law, they do speak volume about the influence of court opinions from previous cases onto the designing of school policies. As outlined in this chart, the 90s were particularly active in terms of school related litigation in part because of the implementation of new policies. Not surprisingly, the same could be said about current policies.

Currently, the assumption is that because of the emergence of zero-tolerance policies in K-12 public schools, which are often applied in conjunction with anti-bullying policies, when it comes to online incidents, a similar trend would not be far-fetched. Presumably, school policies are closely intertwined with legal disputes. In spite of this presumption, however, it is not clear

whether online issues are the direct causes of school-related litigation. As alluded to above, legal disputes in school settings are rarely concerned with cyber-bullying or the very act of bullying.

There may already exist some developing skirmishes about the true incidence of cyber-bullying in public schools. Hertz and David-Ferdon (2008) argue that there is a dearth of information about the true impact of electronic aggressions or cyber-bullying in general in K-12 public schools. The authors note that, while each year nine to thirty-five percent of young people report having been victimized by cyber-bullying, few studies, however, have delved into the details of this phenomenon. Similarly, few researchers have conducted follow-up inquiries to either confirm or refute those data. For instance, they further note that most inquiries on the topic of cyber-bullying asked different questions and did not measure the same behaviors. The authors determined that there was not a definitive conclusion as to the true impact or the prevalence of cyber-bullying in American public schools (Hertz & David-Ferdon, 2008).

While this study was not particularly concerned with assessing the prevalence of cyber-bullying holistically, it did find an array of indications, which also suggest that cyber-bullying litigation or cyber-related legal disputes are not as rampant as previously thought. Consequently, the findings of this inquiry could constitute an enormous contribution to the literature on cyber-bullying litigation. Similarly, the findings could also widen the scope of understanding about the legal effects of school policies onto the issue of cyber-bullying in public schools.

Within the last few years, many scholars have looked at cyber-bullying from several perspectives, including legal, psychological, and criminal. Still, there are little or no studies conducted on the implications of school administrators' role or the impact of school policies on these problems. Studies addressing traditional and cyber-bullying conjointly are almost non-

existent. Most studies have addressed cyber-bullying from the perspective of offender versus victim, whereby findings tend to report the causes and the effects of such behaviors, which, in most cases, are the guiding principles for school interventions. Other studies tend to look at cyber-bullying within the context of the types of disciplinary actions taken by school officials, not necessarily the motive behind those actions or the justification for the intervention.

This study looked at cyber-bullying within the context of existing laws and policies. The issues were analyzed from both legal and leadership standpoints. Disciplinary actions taken by school administrators were closely examined in relation to litigation outcomes and courts' reasoning in order to depict a holistic view to the real issues. As a result, this study offers a different approach to understanding online incidents and cyber-bullying laws in general.

This study offers a rare look into the administrative and legal ramifications of school interventions in online incidents. This study assessed cyber-bullying from two important lenses. First, it examined the extent to which cyber-bullying, as a legal issue, is pervasive in public schools. Second, it sought to link the pervasiveness of cyber-bullying with the implementation of school policies. Moreover, this study in the subsequent findings may provide important insights about the origin and the impact of school policies, the role of school administrators in the implementation process of those policies, and the extent to which cyber-bullying is the root cause of the problem many have identified in online issues and school interventions.

By and large, school administrators often play a crucial role in the initial phase of legal disputes, which, more often than not, was the result of their decision to punish students. Since generally such disputes often lead to lawsuits, it was paramount to understand the relationship between school policies and school administrators' decision to intervene. Toward that end,



online issues were analyzed from the lenses of school administrators' confidence in their school policies. While the study did not focus on individual school administrators in each case in order to understand the thought process during the decision to act or intervene, through the rational model theory, it assessed the driving forces behind the decision to initiate the intervention. Subsequently, the study sought to link school interventions with school policy requirements.

Succinctly, this study poises itself as a tangible contribution to the fields of education and law. Furthermore, it may provide a substantive methodological contribution to social sciences in general by conducting a thorough, but replicable analysis of the legal and policy dimensions of cyber-bullying issues in K-12 public schools for future research endeavors.

### **Conceptual Framework**

School administrators play an important role in cyber-related issues. Generally, legal disputes are the direct results of a school administrator's decision to intervene. The assumption is that before initiating an intervention, an administrator has the choice of determining whether an incident warrants immediate attention. It could also be said that in the absence of clear policies or guidelines to intervene, subjective interpretations of the situation could generate a sense of urgency, which, in turn, could be the driving forces behind the decision-making process. For example, a school administrator may decide to regard the incident as an on-campus or off-campus issue, depending of his or her understanding of the need to intervene.

Prior to intervening, an administrator could initiate an investigation into the matter. Similarly, an administrator could determine the seriousness of the incident and devise a plan of action. The determination that an online incident is threatening to the school environment is

probably based on the discretionary power of school administrators. Hence, it is plausible that during the decision-making process, school administrators have the ultimate power of action.

We could agree that it would be unlikely that a school, let alone a school district, would operate without clear policies. However, we may disagree as to the impact of a particular school policy on an issue, if its implementation is incumbent upon the discretion of school officials. For instance, despite the existence of school policies, it is not clear as to the types of conditions that would set in motion the decision to intervene. It is equally uncertain whether school policies or leadership instincts play a major role in the decision-making process. Given the litigious nature of school interventions, it was necessary to locate a framework, which would allow a holistic assessment of the decision-making process of school administrators. The goal was to understand whether a guiding principle or sets of guidelines constantly informed the decision to intervene.

Since the majority of the legal disputes rarely mentioned bullying or cyber-bullying activities and since school districts rarely invoked in their arguments that the decision to discipline students was based on the need to protect students or others from being bullied, it could reasonably be inferred that the act of bullying was never a necessary condition for school interventions. Arguably, concerns about cyber-bullying throughout the decision-making process were relatively minimal or non-existent. Thus, the motive for the intervention remained elusive.

Considering that problems pertaining to freedom of speech issues in public schools have a long history in the courts, one could reasonably conclude that school administrators knew about the legal risks of taking disciplinary actions against students in the absence of any substantial disruption. At this point, the rational model theory offered the most promising tools to conceptualize school administrators' decision to intervene in online incidents. Consequently, this

study was constructed using the rational model approach as a conceptual framework to understanding the underlying motives behind the decision to intervene in online issues.

### *The Rational Model*

The rational model emanates from a larger framework called: the formal models. Formal models, is an umbrella term, which encompasses several similar, but not identical, approaches (Bush, 2003, p. 37). The underpinnings of this model emphasize that organizations, in general, function as hierarchical systems. The trademark of these organizational systems is that administrators tend to heavily rely on rational means to pursue agreed upon goals or ends (Bush, 2003). The formal systems model focuses on quality and value throughout the decision-making process (White & Fortune, 2009). It is based on the assumption that in every decision, administrators can effectively avoid failure by looking at the practical implications of their actions. This businesslike approach in the decision-making process is further narrowed down to the concept known as the ‘rational model.’

The rational model is essentially based on the premise that every decision must be rational and logical (Abruzzi, 1959). In this model, decision-makers carefully choose the appropriate means to reach their goal. Based on that logic, it could be inferred that school administrators would pick battles they know that they can win. When it comes to cyber-bullying, the assumption is that school administrators would weigh their options, particularly their legal options, before intervening. The expectation in this study was that, regardless of the situation (e.g. the location of the incident), the decision to intervene on an online incident would be based on schools’ current policies, not necessarily the leadership instincts of school administrators.

The rational model also posits that making a decision is as artistic as it is scientific (Hoy & Tarter, 2008). In other words, making a decision requires both a certain amount of agility and, at the same time, an equal amount of conciseness. It is imperative that school administrators seek logical and empirical considerations in their approaches. The understanding here is that school administrators would take into account the managerial, the leadership, and the legal ramifications of a situation before intervening, however, they would heavily relied upon existing policies.

Contrary to the argument that cyber-bullying laws offer little or no tangible guidance to school administrators in online interventions, a decision to intervene without a clear understanding of the possible outcomes would seem non-rational. Using the rational model as a framework, the study was able to look at school administrators' decision to intervene in order to determine whether they were completely acting on their own (i.e., in a non-rational manner), or whether they were following school policies.

When it comes to making a decision to intervene in an online or an off-campus situation, which has the potential to escalate into some major freedom of speech issue, the presumption is that school administrators would be reluctant to act without the proper guidance, particularly if they did not perceive any tangible value in their actions. Arguably, in many online incidents, the potential for the students involved to claim freedom of speech violations is always there. Therefore, it was important to understand the rationale behind the decision to take disciplinary actions against the student(s) involved in an online incident. It was also important to understand whether school administrators considered the recommendations set forth in the school's policy documents when they were handing down punitive sanctions to students.

Hoy and Tarter (2008) argue that whenever there is a reasonable connection between the

means and the ends within a decision, that decision is rational (p. 3). Bush (2003, p. 46) outlines the decision-making process in the following six steps:

1. The administrator assesses the situation and determines whether it is a problem or not.
2. If the situation is viewed as a problem, he or she analyzes the problem, including collecting data or relevant information about the situation (e.g., conduct an investigation).
3. He or she formulates alternative solutions or choices.
4. He or she chooses the most appropriate solution to meet the objective of the organization, not necessarily to solve the problem.
5. He or she implements the chosen alternative or solution.
6. He or she monitors and evaluates the effectiveness of the chosen strategy and adjust the chosen solution accordingly.

According to this model, school administrators would see no tangible value in their intervention, if they perceived the issue as not being related to the school (e.g., off-campus). In other words, if they perceived the problem as being outside the realm of their responsibilities, they would not intervene (see Illustration 1.1). The presumption is that most school administrators would delay their intervention until they are certain of the outcome.

The notion that the courts are inconsistent on the issue of online interventions suggests that there are cases in which the courts have agreed with school administrators' decisions to discipline students. But most importantly, this notion also suggests that school administrators are equally inconsistent in their approach to online issues. To that effect, one could infer that, only in some cases, the decision to intervene was made without a clear legal guidance, which would

make such decisions non-rational, at best. In other words, school administrators are not devoid of legal guidance; in some cases, they simply chose to ignore existing legal guidelines.

Coincidentally, the rational model would contradict such an approach, for it suggests that either school administrators do not follow their school policies or such policies are misguided. For that reason, this model was the right tool to conceptualize the way school administrators processed their decision to intervene in online incidents. Considering the contentious nature of cyber-bullying and online speech in general, one could argue that in every decision, school administrators believed that their approach was within the legally acceptable parameter established by the courts. From their perspective, the decision to intervene was rational.

As the data analysis progressed, it became apparent that, legal precedents were used in most state statutes. Sadly, the same could not be said about school policies, since the degree of compatibility varied considerably among school districts and the types of policies in effect did not necessarily reflect the issues at hand. For instance, most school policies did not contain certain terms or did not define those terms, as they were initially defined in the state statutes. For example, the term cyber-bullying appeared incongruently defined and understood between many school policy documents and the respective state statutes. Nonetheless, many state statutes clearly defined this term in accordance with legal precedents. Surprisingly, legal precedents, at least to some extent, were also used in the language of many school policy documents.

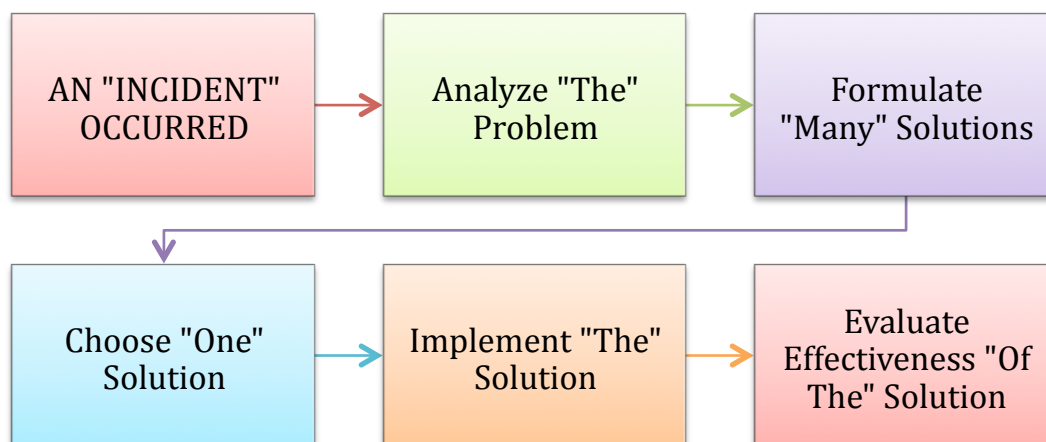
Initially, these discrepancies created an enormous confusion. It was not clear whether the policies were wrong or whether the statutes misinterpreted legal precedents. As a result, it was not possible to determine whether school administrators' approach to intervention was wrong. Since school policies often derived from state statutes, the only plausible explanation was that

school policies mistook state laws or were simply incompatible with state statutes. As the policy documents were closely examined, I was able to grasp a better understanding of the situation.

Some school administrators may have a tendency to completely ignore their school policies. In fewer instances, school administrators' actions appeared to be based on their school policy documents. That being said, it is worth noting that the findings also suggest that the courts outlined several constitutional abnormalities with several school policy documents. Possibly, while in some cases school administrators miscalculated their approach, in other cases, they were simply misguided by the requirements of their school policies. Consequently, the rational model functionally indicated that, in most cases, the decision to intervene was based on a particular set of guidelines, which, in this case, consisted of existing school policies. While taking into account that subjectivity and/or too much discretionary power probably influenced intervention decisions, because of the rational model, it could be argued that most school interventions were made on the premise that they were the right things to do at the time of the incident.

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### Illustration 1.1 The Rational Process of Decision-Making



Source: Rational model as described by Bush (2003, p. 47, Figure 3.1)

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**This Illustration:** Shows that the decision to intervene in online issues is usually based on a set of logical structures. In most cases, the school administrator would follow those logical sequences before adopting a particular approach.

### *Criticism of the Rational Model*

The rational model, as the cornerstone of this study, it is not devoid of criticism. Critics are quick to point out its shortcomings, particularly in relation to the basic principles and assumptions it makes about the role of the individual in the decision-making process. To that effect, it is worth outlining some of the most prominent criticisms of this model in this section.

Green and Shapiro (1994) note that the rational model is often used as a tool to understand the behaviors of leaders in crisis situations. Yet, the term itself is generally used vaguely to include other important theories, including social choice theory, public choice theory, and game theory, to name a few. This amalgam of approaches often leads to erroneous interpretations of the major underpinnings of the rational model itself. For example, one of the major assumptions about the rational model is that all leaders tend to act rationally in all situations. From this perspective, people in leadership positions, particularly the ones that are in a hierarchical organizational structures, always take the time to evaluate their options by looking into the costs and benefits of alternative options before selecting the option, which would increase their likelihood of success. But critics argue that this is rarely the case, particularly in situations where time is critical in the decision-making process. In some cases or situations, school leaders have to make split decisions in a relatively short amount of time.

While it could be said that school leaders tend to use rational means to make decisions, it is not often clear whether they chose to approach a situation from a rational standpoint or whether there are structural forces in place, at the organizational level, which geared them toward a particular option. For instance, it is not always clear as to the range of choices or options school administrators enjoy when the school board already established the rules, the



conditions, and the directions that they are expected to follow. In other words, it is not clear whether school administrators really have the power to decide. The assumption is that in organizations where there is a hierarchical structure in place, people in leadership positions are expected to make decisions in a particular format, which, by design, removes the decision-maker from the initial steps of the decision-making process.

Alternatively, most experts argue that there is an internal rationalization process that usually takes place at the deepest core beliefs of the individual during the decision-making process. Landa (2006) notes that leaders are gravitated toward a rational model because of their perceived understanding of the relationship between the choices that they have and the outcomes of those choices. From this perspective, school leaders have preconceived expectations about the choices that they may or may not make. Thus, those expectations are often the reason why they select a rational approach, which suggests that leaders are much more comfortable with a decision-making approach in which they can predict all the possible outcomes.

Moreover, critics have also contended that there are several basic assumptions about the rational model, which are often overlooked. For example, most people tend to associate the rational approach to the notion of utility maximization in the decision. In spite of this, there are other factors that frequently contribute to the decision-making process as well. For instance, there is also the notion of consistency, which is often neglected (Landa, 2006). Similarly, in the rational model approach, other notions such as expected value and the role of the individuals are often ignored or overlooked.

In the rational model, it is widely believed that there is a certain homogeneity factor in the decision-making process. Critics have argued that this is not always the case. Every situation

is different and every individual approaches a particular situation differently (Allison & Zelikow, 1999). To that effect, this explanation, at best, undermines the notion that the rational model could single handedly explain the decision-making process of several school administrators in many different online intervention scenarios. Nevertheless, in this study, this model was the best way to conceptualize school intervention in a concise and consistent manner.

### **Overview of Methodology**

This study is a qualitative analysis of cyber-bullying policies in K-12 public education. It is a combination of traditional legal inquiry, otherwise known as legal research or legal analysis, and content analysis. In order to answer the research questions, past court cases, state statutes, and school policy documents were collected and analyzed. While there are methodological or perhaps paradigmatic incompatibilities between legal analysis and qualitative analysis, the subtle nuances within the analytical procedures for a consistent analysis of the data were carefully considered.

Legal research is not simply a matter of locating appropriate case laws (Statsky & Wernet, 1989). Once a case law has been identified, the challenges often reside in the researcher's ability to thoroughly analyze its content. Without the proper training in legal analysis, such a methodological endeavor could prove disastrous. Fortunately, possessing a legal training is not a requirement in order to conduct a sound legal analysis.

In order to circumvent any methodological limitations, this study relied upon the two methodological approaches aforementioned. A legal analysis was employed chiefly to locate and analyze the reasoning of the courts. While this study did not focus on a policy analysis, it used

content analysis to examine the language and the texts within the documents retrieved. The goal was to obtain a deeper understanding of school policies within the context of cyber-bullying.

The study also focused on the role school administrators played in online incidents by analyzing the disciplinary actions taken against the students throughout the many court cases retrieved. Consequently, such methodological approaches foreground depth over breadth, and also allowed incredible insights into texts and court documents, which would not be available through a stand alone quantitative or qualitative study of the large corpora of data examined in this dissertation.

## Chapter 2

### REVIEW OF LITERATURE

*“Copy from one, it’s plagiarism; copy from two, it’s research.”*

—Wilson Mizner

#### Overview

The decision to intervene in an online incident is an important administrative, leadership, and perhaps legal undertake. There seems to exist a double standard in the way cyber-related incidents are addressed in K-12 public schools. In some cases, school administrators have displayed a precipitous tendency to overreact by taking harsh disciplinary actions against the student(s) involved in, more often than not, trivial incidents. For instance, a student who posted an online comment, which ridiculed school staff or other students, is often severely punished for his or her conduct. In many cases, school administrators overlooked the fact that the infraction in question neither occurred on school grounds nor did it rise to the level of a serious threat to the school environment and, most importantly, school materials were not even used. In other instances, school administrators have hinted a propensity to procrastinate their interventions, particularly in cases that they deemed outside the realm of their administrative responsibilities.

While the assumption is that inconsistencies within the laws are often the reasons for this apparent incongruence, it was not clear whether school administrators were following school policies or whether they were simply acting on their own. The rational model, however, succinctly demonstrated that in school settings, administrative decisions are generally logically structured. Hence, it became paramount to cater a good understanding of the issues. Arguably, the decisions to intervene in online incidents are usually the results of existing school policies.

In this chapter, the literature about online incidents and cyber-bullying in general is thoroughly examined. The goal is to grasp a firm understanding of the task at hand. The next sets of pages provide a detailed assessment of several aspects of online incidents in public education. First, traditional bullying and cyber-bullying problems are explored both historically and contemporaneously. Second, cyber-bullying laws are examined in depth within the context of both federal and state involvement. The prevalence of cyber-related incidents and the prevalence of cyber-related litigation are also explored in this section. Third, cyber-bullying is examined within the context of hasty interventions. Lastly, the argument for criminalizing cyber-bullying is cautiously explored. The ultimate goal of this in-depth review of the literature was chiefly aimed at putting school interventions in cyber-bullying or online issues in general in context, so that the lenses from which the data collected and analyzed from diverse state and school authorities are unequivocally understood, particularly within the subjective nature of this qualitative inquiry.

### **Historical Background of Cyber-bullying**

What is bullying? Most importantly, what is cyber-bullying? Although there is not a single way of defining cyber-bullying, the term itself is often used to describe bullying activities that take place in the cyber-space (e.g., online). Erb (2008) defines cyber-bullying as students' use of electronic, including the use of the Internet or websites, chat rooms, instant messaging, text and picture messaging on phones, and blogs to bully their peers. Menesini and Nocentini (2009); Smith et al. (2008) define "cyber-bullying as an aggressive and intentional act that is carried out by a group of individuals or a single person, through electronic forms to contact and harass repeatedly and over time a victim who cannot easily defend him or herself" (p. 230). Cyber-bullying definitions often include the terms: "stalking," "harassment," "impersonation,"

“spreading rumors or lies,” and “on-line fights” (Kevin & Conn, 2006). While the effects of cyber-bullying are not limited to a specific place, any online activity that targeted students or school staff, on purpose or otherwise, is usually considered as a cyber-bullying incident.

In educational settings, Li (2007) denotes that cyber-bullying is the use of the Information Technology, namely the internet via cell phones or other communication devices to disseminate, send, and post harmful and cruel texts and images by an individual or a group in order to harm others. More often than not, the consequences of cyber-bullying go far beyond the school grounds. In essence, many of the activities related to cyber-bullying or online incidents<sup>6</sup> do not always occur on campus and are not necessarily limited to students-to-students assaults.

Nevertheless, what really constitutes cyber-bullying in school settings seems elusive. Most scholars have generated a slightly different twist in their approach to understanding the true nature of the phenomenon. These different connotations often lead to more confusions rather than shedding lights onto the real issues surrounding this phenomenon. Stuart-Cassel, Bell, and Springer (2011) note that most bullying laws are based on definitions, which were established by previous researches. Not surprisingly, short of a universal approach, those definitions tend to emphasize on the repetitive nature of bullying behaviors and patterns, which often leading to conflicting views as to what constitutes repetitive conduct.

Nevertheless, in school settings, certain online behaviors do not have to be repetitive for school administrators to intervene. Similarly, the repetitiveness of a particular online behavior

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<sup>6</sup> As noted, there is not a clear distinction between the terms cyberbullying and cyber-related incidents. In public school settings, both terms are used interchangeably to refer to any activities that involve the use of information technology to harass and bully others.

does not guarantee school interventions. To complicate the situation, most state laws clearly require that, as a condition for intervention, the bullying activity must be persistent, pervasive, or repeated over time (Stuart-Cassel, Bell, & Springer, 2011). Sadly, this is rarely the way in which interventions are initiated. More often than not, interventions are based either on the severity or the pervasiveness of a single incident. Further, in other instances, the concept “imbalance of power” between perpetrator(s) and victim(s) is not always mentioned or required as an important factor for interventions. Thus, this confusing situation appears to be one of the reasons why school interventions, at least in many cases, are very complex and controversial. Arguably, school interventions in online incidents, particularly in off-campus issues, could be extremely difficult for school administrators to handle without the proper guidance or policy guidelines.

While cyber-bullying in public schools has become the center of attention, the act of bullying itself (i.e., traditional bullying) is not a new phenomenon. For centuries, people have always picked on each other for whatever reason. As a result, several attempts have been made to reprehend or perhaps to reprimand such behaviors (Tattum & Tattum, 1992). In educational settings, bullying has always been considered a common occurrence among school children; a form of schoolyard nuisance, which most school administrators never bothered to address. In most instances, children with disabilities have been the targets of school bullies (Shariff, 2009).

Until the early 1970s, research about bullying was very scarce. While currently such behaviors have been the object of intense and systematic inquiries (Shariff, 2009), as illustrated in previous paragraphs, a universal definition of traditional bullying does not exist. Similarly, a universal approach to addressing such issues does not exist. For that reason, the types of behaviors that constitute both bullying and cyber-bullying are equally unclear. The assumption is

that any person capable of reason would recognize a bullying activity in any form that it might take or in any location that it might be perpetrated. But there are pros and cons to that assertion.

In recent years, scholars have attempted to provide a clear and concise definition as to what traditional bullying entails. Tattum and Tattum (1992) have articulated a definition of bullying in which they referred to it as a “willful” and “conscious” desire to cause harm to another person. This definition was vehemently challenged by critics who pointed out that it does not delineate between bodily harm and mental distress. Scholars successfully argued against the definition by noting that the act of bullying does not exclusively entail physical harm.

In 1993, Dan Olweus, as Shariff and Churchill (2010, p. 22) put it, “the ‘guru’ of research on bullying,” attempted to define bullying in terms of “*a negative behavior,*” which is solely aimed at causing pain and injury through physical means (Olweus, 1993). Similar to the previous definition, critics vehemently challenged that definition on the ground that pain and injury could be inflicted through other means as well. Debatably, pain and injury could also be inflicted through mental or psychological means. Consequently, it must be understood that the fundamental underpinnings of cyber-bullying (i.e., online bullying) are very hard to decipher.

Shariff (2009) argues that current definitions about cyber-bullying are too simplistic and, therefore, invite reactions, policies, and programmatic responses that ignore the nuances and the complexities this issue entails (p. 39). In other words, erroneous definitions of cyber-bullying tend to lead to erroneous responses. The author further contends that any definition of this phenomenon should take into account the specific paradigmatic context of the issue at hand. For instance, “when we define a behavior, it is important to remember it is an action that takes place in a particular context, at a particular time, with various influences operating on the individual(s)



who take the action (Shariff, 2009, p. 40). Accordingly, it should not come as a surprise to see that the term cyber-bullying, although technically a little more concise due to the involvement of the Internet, is even harder to decipher.

While cyber-bullying is relatively a new phenomenon because of the Internet, the act of bullying does not necessarily require special attention from school administrators. As Shariff (2009), Campbell (2005), and Limber and Small (2003) note, from a historical standpoint, the act of bullying was never considered a problem, which necessitated attention; rather, it was perceived and perhaps accepted as a fundamental and/or a normal part of childhood. In other words, until public opinions were shifted in the opposite direction, most people saw nothing wrong in a child being bullying once and a while on school grounds. Some would argue that bullying was a like a 'right of passage' to becoming a man; that is, one learned to stand up for oneself against the schoolyard bully. But this was a different time in history. Currently, bullying behaviors are unacceptable in any way, shape, or form. Many see bullying activities as harmful to the mental state or perhaps the psychosocial health of the individual.

Smith (2009) describes bullying as abusive relationships, whereby the victim is subject to repeated harmful actions from the aggressor, which can be physical, verbal, or psychological. As opposed to cyber-bullying, traditional bullying often takes place within the context of a school setting, namely on the schoolyard. Currently, many school districts have stringent policies that address such behaviors. Conversely, it could be argued that misunderstanding the nuances between traditional bullying and cyber-bullying is also one of the reasons why this issue has taken a front row seat in the debate over the right kind of policies that should be implemented, both nationally and internationally. As Shariff and Churchill (2010) suggest, there is a big

difference between the two concepts, which must be taken into account when designing policies.

### **Traditional Bullying versus Cyber-bullying**

Nowadays, when people speak of bullying in schools, they might be referring to either traditional bullying or cyber-bullying. In most instances, people do not see a difference between the two conduct. While there are some noticeable similarities between the two concepts, they are not necessary the same thing (Kowalski, 2008). For instance, unlike traditional bullying, cyber-bullying tends to be pervasive, instantaneous, and, in most cases, anonymous (Conn, 2009). Traditional bullying requires both the victim and the perpetrator to be present at the same location (e.g., on campus); cyber-bullying, however, is “on” 24/7 (Kowalski, 2008; Conn, 2009).

Nevertheless, the underlying principles for both phenomena are similar in many aspects. For example, the two conduct entail interactions between perpetrator(s) and victim(s). Most observers tend to overlook the fact that cyber-bullying or traditional bullying must have occurred over a certain period. Hence, the occurrence of a single incident, regardless of its severity, does not necessarily constitute a bullying act. Determining when a particular behavior or conduct is serious enough to necessitate school interventions or disciplinary actions is challenging (Stuart-Cassel, Bell, & Springer, 2011). Perhaps this could be one of the challenges facing lawmakers in their attempt to properly define cyber-bullying and delineate the parameters for interventions.

Traditionally, within the context of schooling, bullying is perceived as the actions (including, but not limited to, hazing, stalking, or harassment) perpetrated by a group of kids or, in most instances, an individual, which can be physical or verbal, against a helpless victim on the playground or on the school bus (Kowalski, 2008). Shariff (2009) notes that in school settings,

bullying entails “a group of students taking advantage of or isolating one student in particular and outnumbering him or her” (p. 22). Bullying frequently occurs in places with little or no adult supervision, for instance, in hallways, bathrooms, and/or during after-school activities (Shariff, 2009). Cyber-bullying, on the other hand, is not bounded by space, time, or location.

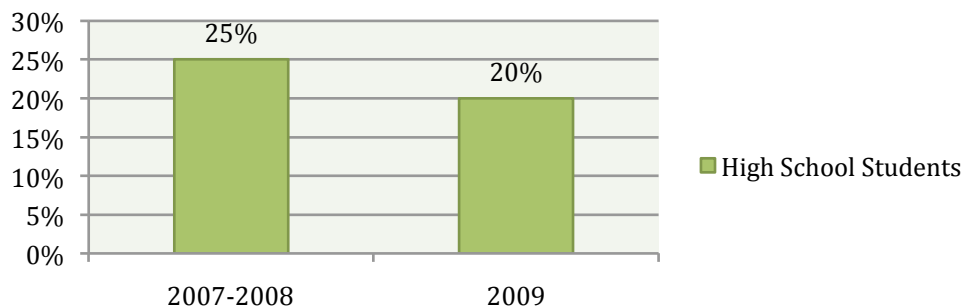
Cyber-bullying is not limited to physical or verbal aggressions. Unlike traditional bullying, victims of cyber-bullying are more prone to both psychological and physical problems, which, in turn, may lead to an array of emotional problems, including feeling sad, angry, upset, depressed, violated, hated, annoyed, helpless, stupid, and put down (Burgess-Proctor, Hinduja, & Patchin, 2010). Then again, the act of cyber-bullying is not as simple as posting offensive, lewd, or obscene comments online. By all accounts, as per the definition of many state statutes, the conduct would have to be repetitive, pervasive, or severe in order to qualify as a bullying act. In every online incident, the basic elements of traditional bullying must be present as well. That is to say, the mere fact of posting a comment on a website does not necessarily constitute bullying.

Cyber-bullying activities stem from the availability or the means to harm and/or harass others remotely (Shariff, 2004). Many observers have argued that school administrators should not intervene carelessly on matters that are outside of their domain or expertise. Failure to recognize and address bullying activities in a consistent manner may lead to erroneous identification and enforcement by school staff (Swearer, Limber, & Alley, 2009). Shariff and Churchill (2010) argue that there are four myths about both traditional bullying and cyber-bullying, which ordinarily provide a false sense of confidence to educators, government officials, lawmakers, educational practitioners, teachers’ unions, and parents, particularly in their attempt to control, curb, and restrict electronic or online communication among students.

These myths are as follows: (1) cyber-bullying and traditional bullying can be controlled; (2) technology as a whole ensnares children and youth into engaging in malicious behaviors; (3) other forms of technologies such as filters and restrictive access to certain websites could deter cyber-bullying activities; and (4) a zero-tolerance approach will refrain and/or deter cyber-bullying and control children's behaviors in schools (Shariff & Churchill, 2010). The authors contend that there are much deeper and perhaps much more fundamental societal issues that facilitate both traditional bullying and cyber-bullying. For example, there is extensive evidence to support the notion that both traditional and cyber-bullying are "grounded in intersecting and interlocking systematic and social forms of expression, abuse, and threats rooted in homophobic, sexist, racist, and discriminatory attitudes" (Shariff & Churchill, 2010, p. 3). Moreover, most academic inquiries on the subject, at least within the last few years, have constantly overlooked these issues, which are often reinforced by adults in society (Razack, 1998; Boyd & Jenkins, 2006; Shariff, 2008-09; Shariff & Churchill, 2010).

### **Prevalence of Traditional Bullying in the United States**

The National Center for Injury Prevention and Control (2011) states that bullying is a form of youth violence and it is widespread in the United States. It usually entails a real or perceived imbalance of power between the bully and the victim (Farrington & Ttofi, 2009). For instance, Chart 2.1 features a 2009 nationwide survey, which found that 20 percent of high school students reported being bullied on school grounds twelve months before taking the survey (Eaton et al., 2010). Similarly, between 2007 and 2008, 25 percent of public school officials reported occurrence of bullying activities among students regularly during the school day or during the school week (Roberts, Zhang & Truman, 2010).

**Chart 2.1: Bullying Victimization In High Schools**

Sources: Data From: Eaton et al., 2010; Roberts, Zhang & Truman, 2010

**This Chart:** Shows that between 2007 and 2008, approximately 25% of high school students experienced or were victimized by cyber-bullies. In 2009, there was a decline of at least 5% in the victimization rate among the same group.

Strangely, there is also an intricate relationship between schoolyard bullying and cyber-bullying. In 2007, approximately four percent of adolescent between the ages of 12 and 18 reported having been cyber-bullied during the school year (Roberts, Zhang & Truman, 2010). As the National Center for Injury Prevention and Control (2011) asserts, any young person can be a bully, a victim, or both, regardless of the location the initial act began. For instance, while abusive interpersonal behaviors, stalking, sexual solicitation, and transfer of pornographic materials often take place outside of school grounds (Mishna et al., 2010), those items can end up on school grounds and those behaviors can have reverberating consequences on campus.

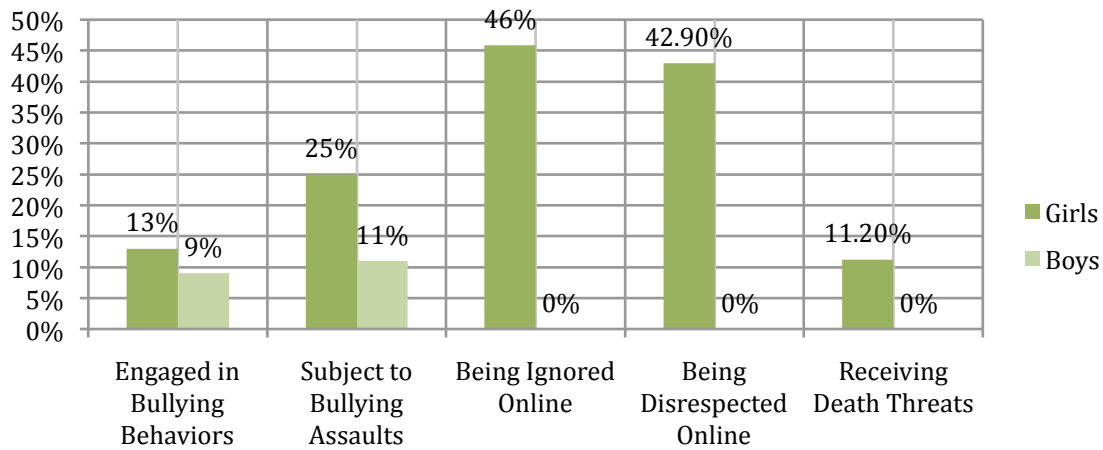
### **Prevalence of Cyber-bullying in the United States**

Accurately determining the exact incidence of cyber-bullying can be a daunting task partly because of two reasons: first, what constitutes cyber-bullying is not clear; secondly, most incidents go unreported. Additionally, the extent to which victimization is pervasive is also unclear. Kowalski (2008) notes that recent studies have yet to offer a clear picture of the number of people affected by this phenomenon. Since cyber-bullying is incumbent upon the use of the

Internet, and since billions of people worldwide use the Internet on a regular basis, almost anyone could be a victim as well as a perpetrator. Nonetheless, the consensus in education is that cyber-bullying is more prevalent in middle and/or high schools (Kowalski, 2008). Instant messaging is one of the most popular forms of communication among adolescents (Lenhart, Maddeen & Hitlin, 2005). Not surprisingly, instant messaging is also one of the most preferred means through which adolescents tend to engage in online activities (Kowalski & Limber, 2007).

As discussed earlier, there is not a clear delineation as to what constitutes traditional bullying, and by extension, what constitutes cyber-bullying is equally unsettled. There are many ambiguities in assessing the prevalence of cyber-bullying among students. In most cases, the data are contradictory. Yet, between 2000 and 2005, Jacobs (2010) notes that online harassment among children ages 10 to 17 rose to nearly 50 percent in the United States. Similarly, the number of adolescents who admit engaging in online bullying activities also rose from 14 percent to 28 percent during that same period (Jacobs, 2010). Still, in the 2007 findings, figures for victims in the similar age bracket suggest a much lower incidence of cyber-related cases.

The currently available data depict a gender difference in the prevalence of bullying. Chart 2.2 illustrates studies suggesting that in most traditional bullying incidents, boys are more likely to engage in physical and/or verbal acts against another person (Kowalski, 2008). Conversely, girls are more likely to engage in indirect forms of harassment (e.g., online), namely ostracism and gossiping (Kowalski, 2008). Two recent studies in the U.S. found that 13 percent of girls, as opposed to 9 percent of boys, reported having engaged in cyber-bullying behaviors (Kowalski, 2008; Kowalski & Limber, 2007). The authors also found that, 25 percent of girls, as opposed to 11 percent of boys, reported being regularly subjected to cyber-bullying assaults.

**Chart 2.2: Bullying Victimization By Gender**

Sources: Data From: Kowalski, 2008; Kowalski & Limber, 2007; Burgess-Proctor, Hinduja, & Patchin, 2010

**This Chart:** Shows that boys and girls are engaged in bullying activities. However, girls, at a higher rate than boys, are engaged in more bullying behaviors. Between boys and girls, the difference is stunning in terms of types of conduct.

Chart 2.2 also shows a recent study of underage (e.g., 8 to 17 years old) female Internet users, which found that cyber-bullying activities are prevalent among adolescent girls. The study found two important online victimization behaviors: one is “*being ignored*” during online activities and the other is “*being disrespected*” (Burgess-Proctor, Hinduja, & Patchin, 2010). The study also found that cyber-bullying was characterized by harmless and/or childish behaviors, including other types of serious behaviors, namely making threats. For instance, less insidious online behaviors such as sending text messages, making fun of, exclusion, or harassing another person occurred regularly among that group (Burgess-Proctor, Hinduja, & Patchin, 2010). Nearly 45.8 percent of adolescent girls reported being ignored online (Burgess-Proctor, Hinduja, & Patchin, 2010). Approximately 42.9 percent also reported being disrespected during online activities (Burgess-Proctor, Hinduja, & Patchin, 2010). More threatening and serious behaviors often occurred as well. For example, the same study found that 11.2 percent of adolescent girls reported receiving death threats online (Burgess-Proctor, Hinduja, & Patchin, 2010).

There is also an intricate relationship between victims and offenders in most cyber-bullying incidents. Many youth who were once the victims of either traditional bullying or cyber-bullying, at some point, changed lanes and became the perpetrators or the bullies as well. Conn (2009) notes that most victims appear to know who the perpetrator is. In many instances, victims and perpetrators are friends from the same school or acquaintances from nearby schools. To that effect, it is not surprising that most victims are fighting back by engaging in similar activities (Burgess-Proctor, Hinduja, & Patchin, 2010).

Additionally, it can be very difficult to determine (e.g., between the victims and the perpetrator), who initiated the first assault. A case in point is that a recent study of approximately 3800 middle-school students in the United States found that, while 18 percent of the participants reported being victimized by cyber bullies within a two-month period, 11 percent of those individuals admitted engaging in bullying activities online during the same time (Kowalski, 2008; Kowalski & Limber, 2007). Hence, the true incidence of cyber-bullying is not clear.

The currently available numbers are important. However, they do not portray a clear picture of the prevalence of cyber-bullying, at least in the United States. Because of the evolving nature of this phenomenon, time is also a major factor when assessing its prevalence (Kowalski, 2008). In most cases, it is not clear whether to include incidents that occurred over the span of a few weeks, months, or a lifetime. Current data tend to show a considerable range of fluctuation, particularly when it comes to delineating between victims and offenders; most perpetrators were once victims and vice versa. Kowalski (2008) notes that over a certain period, victimization rates fluctuate around 4 percent to 53 percent. Equally, the rates for offenders vacillate around 3 percent and 23 percent, depending of the length of time of the incidents (Kowalski, 2008).



## Cyber-bullying Laws

Cyber-bullying laws generally come from two sources: federal and state authorities. At the federal legislative level, however, laws pertaining directly to cyber-bullying activities are virtually non-existent. Most would agree that the federal government has had little or no direct influence on cyber-bullying legislation. Still, Dunn and West (2009) point out that in education, the judiciary role in social policymaking has expanded considerably within the last few decades. The authors argue that the increased involvement of federal courts in educational matters has drastically changed litigation practices. Since the 1940s, actions taken at the federal court level, through what is known as ‘common law,’ have shaped education law and litigation. Similarly, conjunctive activities between the legislative and judiciary branches of the federal government such as the Supreme Court’s interpretation of the First Amendment (Establishment Clause<sup>7</sup>) in 1947 and the passage of the Elementary and Secondary Education Act in 1965, to name a few, have opened the floodgate for new types of litigation (Dunn & West, 2009; Burke, 2002).

In school settings, cyber-bullying issues are not only associated with students’ free speech rights, but they are often blamed for students’ safety problems, including school violence. For that reason, several laws and regulations have been tailored to protect children during online activities. For instance, the protection against harassment, one of the major tenets of the Equal Protection Clause (Civil Rights Act of 1964<sup>8</sup>), offers an array of legal avenues to which such

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<sup>7</sup> Establishment Clause: A statement within the First Amendment of the United States Constitution, which prohibits Congress from enacting laws that establish religion: Congress shall make no law respecting an establishment of religion.” According to About.com, the phrase "wall of separation between Church and State" is the most popular meaning of the establishment clause.

<sup>8</sup> Equal Protection Clause: According to archives.gov, under the Fourteenth Amendment of the United States Constitution, in 1964, Congress passed Public Law 82-352 (78 Stat. 241). The provisions of this civil rights act forbade discrimination based on sex as well as race in hiring, promoting, and firing.

online behaviors can be addressed.

The United States Supreme Court has been instrumental in many legal issues, which often set the stage for cyber-bullying laws at the state level. As noted earlier, within the past few years, many states have enacted statutes that also have provisions, which address cyber stalking or cyber harassment. It must be noted that at the state level, cyber-bullying and cyber harassment are often used interchangeably to denote electronic harassment or bullying among minors (National Conference of State Legislatures, 2011).

#### *Federal Laws and the United States Supreme Court*

Binding decisions at the Supreme Court level generally form the body of law, for instance, legal precedents, which have a direct impact on educational legal matters. Landmark decisions tend to address freedom of speech, due process, and search and seizure issues in school settings. It is worth noting that most of the cases litigated at that level have only addressed on-campus incidents. Conversely, at the lower courts level, cases litigated have mostly dealt with off-campus incidents. Still, both court levels have always used the same legal precedents.

Possibly, the first U.S. Supreme Court case pertaining to student speech was decided in 1943, in *West Virginia Board of Education v. Barnette*. In this case, the Court held that the First Amendment protects students from being forced to salute the flag (Zirkel, 2009). For a good portion of the twentieth century, specific laws governing speech in schools were non-existent. Possibly, during that time, policies regarding bullying and harassment were equally scarce. But in 1969, a landmark decision substantially changed the legal foundation of students' freedom of speech in public schools. In *Tinker v. Des Moines* (1969), the Supreme Court made it clear that

students may express themselves in the absence of “material and substantial disruption” (Bosher, Kaminski, & Vacca, 2004).

While those two decisions could be seen as in favor of students, subsequent court cases could be seen as less favorable to students’ free speech rights in general. For example, as noted in Zirkel (2009), in *Bethel School District v. Fraser* (1986), the Court held that the free speech rights of students are not the same as those of adults. The Court also argued that off-campus speech should be afforded greater legal protection than on-campus speech (Stefkovich, Crawford, & Murphy, 2010). Thus, it is incumbent upon school districts to determine the appropriate rules to maintain discipline during school activities.

Consecutively, in *Hazelwood School District v. Kuhlmer* (1988), the Court held that school districts have the authority to prohibit student expression beyond the notion of materially and substantially disruptive speech. In other words, schools could restrict student speech in activities that might reasonably be perceived as school-sponsored (Zirkel, 2009). School districts have the authority to control students’ free speech, regardless of location, in the event that there is a legitimate pedagogical concern. Put another way, schools can discipline expressive activities, which are either protected or not under the law, as long as a pedagogical interest can be demonstrated by school officials.

These court rulings suggest that school districts should have the upper hand in legal disputes, regardless of the location of the incident. Still, Stefkovich, Crawford, and Murphy (2010) assert, “there are limitations to the law, which administrators should be aware of when disciplining students engaged in cyber-bullying” (p. 139). As previously mentioned, there are also technicalities in the language of certain rulings, which offer great opportunities for lawsuits.

As noted in Dunn and West (2009), the 1961 decision, *Monroe v. Pape*, was the first in a series of court opinions, which also provided parents, students, and teachers the avenue to seek monetary damages against schools, school boards, and individual administrators. Since the 1970s, federal courts, by recognizing “private rights of action<sup>9</sup>,” gave private citizens the legal tools to file lawsuits to enforce certain provisions of the Civil Rights Act of 1964 (Dunn & West, 2009, p. 21). In 2001, however, *Alexander v. Sandoval* (a Supreme Court decision) outlined an important enforcement issue about the law, particularly when it comes to the role of federal agencies such as the Office of Civil Rights (OCR) or the Equal Employment Opportunity Commission (EEOC) in enforcing anti-discrimination laws (Miksch, 2008).

In the aforementioned case, the Court held that individuals might not be entitled to file suits under Title VI disparate impact provision; likewise, officials may only file such charges under the agency’s rules and regulations. But in educational issues, the Title VI disparate impact is extremely important. Individuals, including teachers or school employees, who believe that they had been discriminated against because of race color, religion, sexual orientation, or national origin, can contact the aforementioned agencies to seek relief.

The problem is that in educational settings or education-related matters, individuals with grievances must obtain a right-to-sue letter from the mentioned agencies (Miksch, 2008). “Private rights of action allow persons who have been harmed by discriminatory practices to file suits, even if the appropriate federal agencies decline to do so” (Miksch, 2008, p. 172). Interestingly, however, in cyber-bullying incidents, the parties that often file lawsuits are usually

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<sup>9</sup> Private rights of action is a remedy adopted by the federal courts to enforce federal mandates such as the nondiscriminatory provisions of Title VI of the Civil Rights Act and Title IX of the 1972 Education amendments (Dunn & West, 2009, p. 21)

parents and/or students. In these circumstances, the courts usually act as the only agency through which to file grievances.

Alternatively, in 2008, a piece of legislation (H.R.6123<sup>10</sup>) sought to amend Title 18 (or *Title XVIII*) of the U.S. Federal Criminal Code to fine or imprison, for no more than two years, or both, “whoever transmits in interstate or foreign any communication, with the intent to coerce, intimidate, harass, or cause substantial distress to a person, using electronic means to support severe, repeated, and hostile behavior” (Megan Meier Cyber-bullying Prevention Act, 2008). Concerns over infringement upon individual freedom of speech derailed efforts to pass this bill.

#### *State Legislatures and Lower Courts*

According to the National Conference of State Legislatures (2011), concerns about online bullying or harassment have forced many states to adopt cyber-bullying laws, with the goal of protecting minors. But most state statutes do not enforce or punish cyber-bullying *per se*. In many instances, state laws only require school districts to adopt the proper policies to address such activities. However, not every school district has created new policy documents or had developed specific provisions in their current policies, which directly address cyber-bullying. In many cases, school districts have only updated their existing bullying policies to include cyber-related incidents. Nonetheless, at the lower courts level, most legal disputes are not specifically concerned with cyber-bullying. As argued throughout this dissertation, more often than not, issues pertaining to student speech, particularly within the context of defamation or libel or other online criminal matters also constitute important aspects of cyber-bullying laws in general.

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<sup>10</sup> H.R.6123 or House Resolution 6123: Megan Meier Cyberbullying Prevention Act. On May 22, 2008, Representative Linda T. Sanchez of California introduced this bill (for herself and Mr. Hulshof) to the Committee on the Judiciary (110<sup>th</sup> Congress).

### *Defamation or Libel*

Since cyber-bullying tend to entail dissemination of texts or pictures, defamation of character is one of the major issues that generally lead to legal disputes or litigation. Defamation is an important area in cyber-bullying laws; it includes civil and criminal defamation. In many instances, the lower courts have addressed matters pertaining to circulating false information, rumors, or false claims about the victims. It is worth noting that the notion of defamation falls within the realm of civil and criminal laws as well. The courts have made a clear distinction between public officials (i.e., government employees) and private persons in defamation cases.

Making false claims about a person could result in a defamation lawsuit. Writing false statement online about a person could also result in *libel*, which, in turn, may lead to tort liability issues. But how do the courts define defamation? In *Romaine v. Kallinger* (1988), the Supreme Court of New Jersey defined defamation as a statement, which is false and injurious to someone's reputation. In other words, a statement, which is false, made intentionally, and has the potential to cause harm, could qualify as *libel* under the law. In most cases, the perpetrator could be held criminally responsible and/or required to pay monetary damages.

In the 1990s, several attempts were made to shift the responsibility of defamatory activities to Internet Service Providers (also known as ISP) (Ottenweller, 2007). In 1996, Congress enacted the Communication Decency Act<sup>11</sup> (also known as CDA) with the intent of shielding ISPs from lawsuits (Ottenweller, 2007). The well-known fourth circuit case, *Zeran v.*

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<sup>11</sup> Communication Decency Act: On February 8, 1996, the Communications Decency Act was enacted into law. The law criminalizes the use of any computer network to display "indecent" material, unless the content provider uses an "effective" method to restrict access to that material to anyone under the age of 18 (Bernstein, 1996).

*America Online* (1997) illustrates the notion that ISPs are exempt from tort liability as the publisher of materials posted on their sites by third parties.

In most situations, stalking, harassment, invasion of privacy, threat, impersonation or identity theft, and fraud could be considered criminal activities. As Cannizzaro (2008) notes, while online incidents, including the aforementioned behaviors, tend to occur between underage children, perpetrators who inflict damages to victims are not exempt from criminal or juvenile charges. In most cases, perpetrators could be arrested, convicted, and sent to jail.

#### *The Intent Element*

Until recently, most state statutes did not specifically include behaviors that occurred through electronic means, for example, instant messaging, emails, cell phones, and texts were not legal concerns. Nowadays, a great majority of state laws include online behaviors. Generally, the focus is whether the behaviors occurred repeatedly and demonstrated deliberate intent to cause harm. For example, the posting of unflattering contents about a student or a school administrator on Facebook or Myspace may not qualify as online stalking or harassment, at least in most states.

Successful litigation is incumbent upon a school district's capacity to demonstrate that the offense of harassment violates state statute. For instance, in an Indiana case, *A.B. v. State* (2008), the Court of Appeals found that the posting of vulgar comments on a fictitious profile about the school principal on Myspace.com did not constitute harassment because the state failed to prove the statutory elements for the offense of harassment, as stipulated in the state statute. Because the message posted by *A.B.* (the defendant/appellant in this case) was publicly accessible, the Court argued that, "It may be inferred that *A.B.* had a subjective expectation that

her words would likely reach Mr. Gobert. This alone, does not establish the intent element specified in the harassment statute” (*A.B. v. State*, 2008, p. 5).

### *Privacy Issues*

In online incidents, matters of privacy tend to generate considerable debates. Two items are worth noting here: first, the notion of privacy (e.g., expected privacy) for the victim(s) is always a concern, particularly in situations where people are victimized because their pictures (oftentimes, pictures that expose intimate body parts or private areas) have been disseminated to the public electronically without their consent; second, matters of privacy for the perpetrator(s) are often the basis for litigation, particularly within the context of search and seizure (Fourth Amendment<sup>12</sup>). For example, as Willard (2010) notes, in *New Jersey v. T.L.O.* (1985), the Supreme Court held that student searches must be reasonable. According to the *T.L.O.* standard, school officials cannot search students’ personal computers, cell phones, or other electronic devices, unless there is a reasonable suspicion that the search will lead to the discovery of evidence in violation of a school policy or the law (*New Jersey v. T.L.O.*, 1985). However, the notion of reasonable suspicion, particularly in most online situations, is difficult to assess.

### *The Concept of “Reasonableness”*

Some legal commentators have argued that the concept of “reasonableness” is not easily discernable; it often conflicts with existing school policies in certain situations (Willard, 2010). For example, most schools have policies that prohibit the use or the display of certain electronic devices on school grounds. Yet, those policies do not always give school officials the broad

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<sup>12</sup> Fourth Amendment prohibits the government from subjecting an individual to an unreasonable search (U.S. Constitution, Amend. IV).



authority to search and/or seize items beyond the prescribed requirements of the *T.L.O.* standard. In *Klump v. Nazareth Area School District* (2006), a court applied the *T.L.O.* standard and held that although the school officials had reasonable suspicion that a school policy on display/use was violated, there was no “*reasonable suspicion*” that any other laws or policies were violated. In other words, while the seizure of the cell phone was justified, the subsequent search of the phone records was in violation of the student’s Fourth Amendment rights (Willard, 2010).

Courts have often used the *Tinker* standard, which requires a “*material or substantial disruption,*” to adjudicate in online matters. Most commentators have rejected this approach, claiming that the type of material disruption students experienced is different from the material disruption of the school district. Erb (2008) argues that, it is ‘*absurd*’ that the courts continue to use the *Tinker* standard in online incidents. The author further asserts that cyber-bullies usually target individual, rather than the entire school. The disruption that this standard speaks of is incompatible with the type of disruption that usually takes place in cyber-bullying incidents, since the educational interest of schools is rarely disturbed; conversely, the educational interest of individual students is always disturbed by the actions of the bullies. That is to say, an online post may substantially or materially disturb the learning environment of a student (Erb, 2008).

#### *The Direction of the Courts*

It is worth noting that the United States Supreme Court has not yet dealt with any online freedom of speech cases, particularly within the context of cyber-bullying. Recently, the Court denied certiorari requests in several prominent cases involving school discipline of student for online speech issues. Court cases such as: *J.S. v. Blue Mt. School District* (2012); *Doninger v. Niehoff* (2011); and *Wisniewski v. Board Of Education.* (2008), have all been unsuccessful in

their attempt to obtain judicial review from the highest court of the land. To reiterate previous assertions, at the state level, lower courts have mostly decided on these issues based on the doctrine of legal precedents. Still, the courts have been reluctant to side with school districts, particularly in cases where the speech was found to be inconsequential to the safety of other students or to the safety and security of the school as a whole.

Although the case of *Morse v. Frederick* (2007) might offer a contradictory assessment to the above statement, in part because a school principal's disciplinary actions in an off-campus speech had been upheld by the courts, most would agree that, currently, the courts are leaning in the opposite direction. That is to say that, they are protecting student rights more than ever before, particularly when it comes to online speech situations. Conn (2009) notes that, in 2006, *Layshock v. Hermitage School District*, the courts vindicated a school district's decision to suspend a student for creating an unflattering and offensive profile about the high school principal. The courts later reversed its decision (*Layshock v. Hermitage School District*, 2007), and held that the plaintiff, Justin Layshock, should have been afforded his First Amendment rights to freedom of speech because his speech occurred off campus (Stefkovich, Crawford, & Murphy, 2010, p. 146).

Subsequently, in 2011, the U.S. Court of Appeals for the third district also affirmed the district court's decision. This court noted that, unlike previous cases, in this case, they reached a unanimous resolution in which they argued, "nothing in the First Amendment requires administrators to check their common sense at the school house door" (*Layshock v. Hermitage School District*, 2011, p. 17). Within that context, when it comes to off-campus speech issues, the burden often falls onto the school districts or school administrators to demonstrate a nexus

between the speech and any significant disruption of the school environment (Stefkovich, Crawford, & Murphy, 2010).

### *True Threat*

While acknowledging the schools' responsibility to protect students, as noted above, in areas notoriously favorable to school districts, the courts have been leaning toward protecting students' rights to free speech, particularly in cases where a "true threat"<sup>13</sup> has not been clearly demonstrated. As a result, in cases where the courts found in favor of students, there is always the potential for civil rights violations, which, in turn, may entail tort liability consequences for the school districts involved.

Legal commentators argue that school districts are more likely to lose on every front (Erb, 2008). For example, school administrators do not have a clear alternative as to when an online incident is not severe enough to meet the standard of "true threat" or is not disruptive enough to meet the *Tinker* or the *Fraser* standards; yet, the incident is severe enough to negatively affect students and the school environment in general (Swem, 2006). The argument is that the way cyber-bullying laws are currently structured is that any actions taken by a school administrator could be seen as prejudicial to both sides (e.g., the perpetrator/bully and the victim). It could, nevertheless, be argued that failure to act could similarly benefit the bully while enhancing the likelihood of greater damage onto the victim. Thus certain actions or inactions on the part of school districts or officials could be successfully challenged in courts. For that reason, it seems imperative that any school interventions are well planned and guided by current laws.

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<sup>13</sup> True threat: A statement communicated as a serious expression of an intention to inflict bodily harm upon or take the life of another person. True threats are not protected by the U.S. Constitution and may be criminal (Jacobs, 2010, p. 180).

## Legal Framework of Cyber-bullying Policies

Until recently, specific rules or policies, which guided or monitored the online behaviors of students and/or school staff in public schools, were scarce. Presumably, there were no guidelines for school officials to follow in the event of any malicious online activities by students or teachers. Although most schools have rules/policies in place to punish bad conduct, but since cyber-bullying or traditional bullying generally entail physical and/or mental harms, the judicial system (i.e., the courts), often plays the important role of “referee” in determining the culpability and/or the responsibility of the parties involved. Nevertheless, commentators argue that the courts should do more to protect the disciplinary decisions of school administrators, particularly in instances where cyber-speech caused serious harm to other students (Lane, 2011).

As mentioned earlier, the courts have often used the *Tinker*<sup>14</sup> (fear of disruption) and the *Fraser*<sup>15</sup> (vulgar, lewd, and plainly offensive speech) tests to adjudicate in these matters. The argument that is often raised by many legal commentators and school practitioners alike is that the courts have been ambivalent about the appropriate actions school officials should take on a particular issue. But one of the most fundamental principles of the judiciary system is that when a court erred in its rulings, courts of higher instances are usually there to rectify those reversible

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<sup>14</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). In this case, involving a school rule prohibiting the wearing of black armbands in protest of the Vietnam War, the Court held that students in school and out of school do not shed their constitutional rights to freedom of speech or expression at the school gate. Therefore, they possess the fundamental constitutional rights. Alternatively, the Court acknowledges that school officials have a fundamental prerogative to safeguard, to prescribe, and to control conduct in the schools. To that effect, in order to maintain a balance, school officials can restrict student speech in cases where there is a material and substantial interference with schoolwork or discipline or invasion of the rights or others.

<sup>15</sup> *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986). In this case, involving a school decision to punish a student for making a speech containing sexual innuendo during a school assembly, the Court held that the free speech rights of students are not the same those afforded to adults. To that effect, the school board can determine the rules necessary in order to maintain discipline during school activities. For instance, a school may regulate the type of speech it finds appropriate in a particular school activity.

errors, which could be prejudicially affect a party. Consequently, there is nothing ambivalent with the fact that, cases where the court believes an injustice had been committed are remanded back to the previous courts (i.e., the lower instances) for final decisions or legal remedies.

Actions taken by a school administrator on matters pertaining to online speech could entail both administrative and/or legal complications. What could be seen as protecting students from negative behaviors by other students could also be seen as an infringement upon students' rights to free speech. Imber and Geel (2010) note that until recently, children, much less students, did not enjoy any of the protections set forth by the Bill of Rights and the Fourteenth Amendment. While the courts have recognized that children do not possess the same legal rights as adults, they also recognized that, children are, nevertheless, "entitled to constitutional protection" (Imber & Geel, 2010, p. 117).

Many school districts are desperately seeking and, in most instances, inventing new ways to dealing with cyber-related situations. The National Conference of State Legislatures (2011) notes that many states currently have laws that, not only address harassment behaviors, but also have laws that, address online harassment. For instance, as of 2011, all fifty states had some sort of statute that addressed "cyber stalking," "cyber harassment," or have updated their current legislation on traditional stalking or harassment laws to include electronic forms of communication (National Conference of State Legislatures, 2011). On the other hand, McLeod (2008) points out that when it comes to cyber-bullying laws, there is still a lot of legal uncertainty, in part because most states define harassment differently from bullying conduct, but harassment laws are not necessary compatible with bullying laws. Most, however, agree that specific cyber-bullying laws are necessary in order to address cyber-bullying incidents.

Conn (2009) suggests that most courts have been unsympathetic to many school districts' attempts to discipline students for inappropriate technological expression. The argument is that no one really knows what to do, which seems to suggest that there are no clear legal guidance as to how to address cyber-bullying incidents. In spite of this, as this study unraveled, it was determined that the issues were often mixed-up. For instance, while school districts thought they were disciplining cyber-bullying incidents and/or policy violations, students believed that they were deprived of the freedom to express themselves. My conclusion is that, perhaps there is a lack of clear policy on this issue. But the literature suggests that, in most cases, many school districts have policies in place. Whether they are implementing the "right policy" or whether they are implementing the "right policy properly" were important questions this study sought to examine. One plausible explanation was that, from conception to implementation, most school policies regarding cyber-bullying were simply inadequate. This possibility was carefully assessed throughout this study.

Functionally, the question then became: were there any discrepancies between court opinions, school policies, and the implementation of those policies? If so, would it be possible to identify these discrepancies? The expectation was that in the event that such discrepancies existed, it would, indeed, be possible to discern them from the type of language used in both court and school policy documents. In light of current federal and state legislations, several crucial legal matters were also important to look at in order to understand the legal framework of cyber-bullying laws. For that reason, in this study, the impact of the First, Fourth, and Fourteenth Amendments to the U.S. Constitution was particularly taking into account in order to generate a better assessment of the issues.

### *First Amendment (Free Speech)*

One of the most fundamental rights that the U.S. Constitution, through the First Amendment, guarantees to all the citizens of this country is the freedom of expression. Weaver et al. (2006) note that the First Amendment is coined in an unequivocal language; “Congress shall make no law abridging the freedom of speech, or of the press” (p. 769). They further note that Justice Black requested that the language of the law should be taken literally. As alluded earlier, in educational settings, particularly in public schools, students are afforded a different kind of freedom of expression. A case in point is that, not all types of speeches are protected in public school settings. In other words, there are limits to the kinds of speech students are permitted to express while on school grounds or in school-sponsored activities.

Student speech is divided in two broad categories: protected and unprotected speeches. As Imber and Geel, (2010) illustrate, while most speech is protected under the First Amendment, other types of speeches receive only limited protection, and some receive no protection at all. Among the types of speeches that are not protected by the aforementioned amendment include: obscenity, fighting words, threats, and defamation of private citizens (Imber & Geel, 2010). Nevertheless, as per the *Tinker* standard, when it comes to off-campus issues in particular, the restriction of those speeches must be related to disruptive activities.

### *Fourth Amendment (Search and Seizure)*

Under the Fourth Amendment, government officials cannot subject citizens to unreasonable search and seizure. In public school settings, the Supreme Court has argued that students could be searched, if school districts have a *reasonable suspicion* at the inception of the

search. In the landmark *New Jersey v. T.L.O.* (1986), the Supreme Court held that there is a need to strike a balance between student rights and public order in the schools (*New Jersey v. T.L.O.* 1986). In cyber-related incidents, the *T.L.O.* standard is generally used when students' devices such as cell phones, iPads, iPods, or laptops are searched for offensive or inappropriate materials.

#### *Fourteenth Amendment (Equal Protection Clause and Harassment)*

The Fourteenth Amendment is concerned with protecting individual rights and freedom (Alexander & Alexander, 2009). The fundamental tenet of this amendment is that no one should be deprived of life, liberty, or property without due process. In public school settings, this amendment is particularly important because it often affords students, parents, and teachers their fundamental individual rights. Moreover, this amendment has “a pervasive and lasting effect on school policy” (Alexander & Alexander, 2009, p. 99), because it is often evoked in due process cases. Also in many cyber-bullying incidents or legal disputes, the Fourteenth Amendment often plays an important role when school policies are believed to be unconstitutional, particularly in situations where students were not provided with the proper notice or the opportunity to be heard before they were punished or disciplined.

#### *Tort Liability*

Tort is usually considered is civil matter and in most situations, a person can be held liable to damages perpetrated onto another individual or his property. In the common law, the basic tenet of tort law is defined as whether the costs of accidents should be transferred from the party that originally sustained them to the party that caused them (Shulman et al. 2003). Alexander and Alexander (2009, p. 639) define a tort as “a civil wrong independent of contract.”



The authors further assert that:

“The law imposes corresponding duties and responsibilities on each individual to respect the rights of others. If, by speech, act, or other conduct, a person fails to respect these rights, thereby damaging another, a tort has been committed, and the offending party may be held liable” (p. 639).

In online incidents, matters pertaining to harassment and discrimination are usually assessed from the standpoint of what is commonly referred to as “the degree of care” in tort liability, particularly in situations where school districts were found responsible or guilty of wrongdoings, whether intentionally or by negligence. Shariff (2009) argues that students could bring an actionable tort of negligence (e.g., unintentional tort) against school officials for failure to supervise. As argued earlier, whether an incident occurred on or off campus, school districts are expected to take proper measures to respond adequately. When students had been subjected to constant bullying or harassment, particularly in situations where minimal or no actions were taken on the part of the school district to foresee the risks or protect the victim(s), school officials could be held liable under state and federal laws (Hutton & Bailey, 2007). It is worth noting that school districts are generally immune from monetary damages under the doctrine of “qualified immunity.”

Can a student sue a school district for harassment by other students? The answer is almost in the affirmative. School districts have the obligation to guarantee the safety and the security of students while on school property or when attending school-sponsored events (Stuart-Cassel, Bell, & Springer, 2011). Under the private Title IX damages, in situations where the harassment was so severe, pervasive, and objectively offensive to a point where it prevented the victim(s) from having access to educational opportunities or benefits provided by the school

(Schimmel, Fischer, & Stellman, 2008), student(s) may have a legitimate reason to take legal actions against a school district.

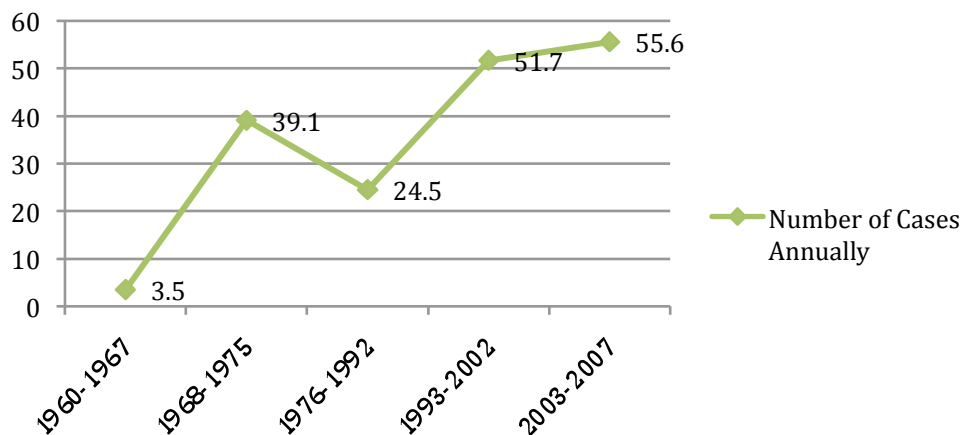
In instances where school officials had knowledge of an ongoing assault and failed to act, the school could be held liable in a court of law (Schimmel, Fischer, & Stellman, 2008). For instance, in 1999, in *Davis v. Monroe County Board of Education*, the U.S. Supreme Court held that “school officials would have to have knowledge of the harassment and acted with deliberate indifference” (Schimmel, Fischer, & Stellman, 2008, p. 110). As noted above, cyber-bullying is a form of harassment. In cases where school officials were apprised of a situation and failed to intervene, the school district, in most instances, individuals, namely school principals or assistant principals or even teachers, could be held liable in court.

### **Prevalence of Cyber-related Litigation**

Since the presumption or the common belief is that cyber-related incidents are on the rise, the assumption is that cyber-related litigation should also be increasing. The argument is that school administrators’ attempts to curb these incidents, by disciplining students, could lead to more legal disputes, which could windup in courts. While most cyber-related litigation fall within the realm of students’ rights to free speech, as mentioned earlier, most legal claims tend to evoke harassment protection under the civil rights provisions, which sought to protect certain classes of individuals against discrimination based on race, gender or sex, disability, or national origin (Sacks & Salem, 2009). The bulk of the issue often lies in the types of disciplinary actions taken by school administrators. As the study progressed, the expectation was that litigation pertaining to student rights would fluctuate as school administrators attempted to discipline student activities. This expectation was guided in part because, within the last few decades,

school administrators' efforts to discipline students had met with stiff challenges in the courts. For example, between the late 1960s to mid-1970s, there had been numerous contestations against school officials' authority in their attempt to discipline students (Arum & Preiss, 2009).

Chart 2.3 illustrates that the number of court cases challenging schools' authority to discipline students rose from 3.5 cases per year between 1960 and 1967 to 39.1 cases between 1968 and 1975 (Arum & Preiss, 2009, p. 247). Conversely, between 1976 and 1992, the average number of court cases declined around 24.5 a year, due to the fact that legal precedents, through several court decisions, had set the parameters for disciplinary actions in schools, and the school districts provided strong adhesions to those new rules through their policies and regulations. Tragically, between 1993 and 2002, which also coincided with the implementation of broad zero-tolerance policies across the nation, legal challenges rose sharply again. By the late 1990s and in earlier parts of the 2000s, 51.7 court cases were reported annually. Similarly, between 2003 and 2007, that number rose even higher. For example, the total number of reported cases during that period was 55.6 a year (Arum & Preiss, 2009). This fluctuation is believed to be the result of stringent school policies after the Columbine shootings. It was not clear, however, whether cyber-related incidents played a major role in these numbers.

**Chart 2.3: Cases Challenging School's Authority to Discipline Students**

Sources: From *Schoolhouse to Courthouse: The Judiciary's Role in American Education*. (Still judging school discipline, chapter 11) (Arum & Preiss, 2009).

**This Chart:** Shows that since the 1960s, the number of lawsuits challenging school districts' authority to punish students has risen considerably, with the exception that between the mid 70s to the early 90s, there was a sharp decrease in the annual lawsuits. However, throughout the mid 90s till recently, the number of lawsuits challenging school authority continue to rise at an alarming rate. But these numbers do not specifically mention online incidents.

### Understanding Cyber-bullying Policies

Currently, many school districts have adopted what is commonly referred to as: 'Acceptable Use Policy'<sup>16</sup> (also known as AUP). Those policies limit access and the use of school materials, including school computers (McLeod, 2008). Nonetheless, many observers wonder whether school districts have the legal authority or obligation to address online incidents. McLeod (2008) argues, "School organizations have an affirmative obligation to protect students and staffs from harassing or bullying conduct" (p. 214). Strikingly, the author also asserts that: "the default rule is that student speech is protected" (McLeod, 2008, p. 214).

While most school districts have policies regarding the use of electronic devices on school grounds, many online incidents tend to occur off campus. Ambiguities in the definition of

<sup>16</sup> An Acceptable Use Policy (AUP) is a written statement by a school district declaring its policy of acceptable uses of the school's computers and the penalties associated with any violation (Jacobs, 2010, p. 174).

the term cyber-bullying seem to have exacerbated the problem. Without a clear policy, it could be very difficult for schools to justify their interventions. Similarly, the extent to which school districts have the authority to include off-campus situations in their policies was not clear.

As the literature review progressed, this uncertainty was palpable despite the existence of cyber-bullying laws. The literature also suggests an ambiguity between the language within many state laws and the guidelines published by many state Departments of Education on the issue of cyber-bullying. While state laws defined cyber-bullying in a particular format, the guidelines published by state authorities on education suggested something completely different. In most instances, it was not clear whether school districts had the authority to broaden their definition of cyber-bullying to include off campus activities. Beckstrom (2007) notes that while in the state of New Jersey the law on cyber-bullying does not include off-campus discipline, the Department of Education of that state does establish guidelines, which afford school districts the authority to discipline off-campus speech that present a disruption of school operations.

#### *The Effect of Current School Policies*

One of the major tenets of this inquiry was that school policies could be playing a major role in the contentious nature of school interventions in online incidents. This study started out with this fundamental question: could schools' current policies help prevent or reduce the incidence of cyber-bullying? As the study progressed and the data analysis began, the prospect of an affirmative answer faded further away. While many school districts have policies regarding bullying, it was not clear whether they had policies that specifically addressed cyber-bullying, particularly off-campus bullying activities. Thus, this inquiry was determined to delve deeply into schools' current policy documents.

Although cyber-bullying does not necessarily entail violence, in public schools, almost every violent act has its roots in traditional bullying. Many observers have argued that, contrary to other forms of harassment, the victim of bullying, be it traditional or online, is always an acquaintance of the perpetrator (Willard, 2007). Bullying is seldom an act of opportunity, where a person becomes a victim by accident. There are myriad of events that must take place before the breaking point, so to speak. There is always an element of malicious intent in those situations. As established throughout this thorough review of the literature, in cyber-bullying, the harm does not have to be physical at first (Willard, 2007). Confrontation over online posts or comments could also lead to physical altercations on school grounds as well. Within that perspective, there is an intricate relationship between violence in schools, traditional bullying, and cyber-bullying. Because many school districts have adopted zero-tolerance policies, there is always the pressure to intervene, and interventions are expected to be swift and effective.

#### *School Safety versus Student Safety*

School safety usually entails policies and measures that are aimed at protecting and/or guaranteeing the safety and the security of every occupant inside the school. Many school districts have policies that address: weapon possession, contraband, drug possession or use, and random school search of lockers, to name a few. The presence of metal detectors in school entrances and exits and the presence of security officers or the local police are usually routine procedures (Li, 2006). When it comes to online incidents, such policies are usually ineffective.

Still, student safety extends beyond the walls of the school building. Student safety entails precautions that school administrators must put in place to ensure the safety of students regardless of locations. For example, installing cameras and other safety and security equipments

onboard school buses is a form of student safety. Similarly, school buses that are properly equipped in order to accommodate special needs students, is also a form of student safety.

From the minute a student enters a school premise to the moment he or she reaches home, school officials have the legal custody of that student. In most states, the legal responsibilities of school officials toward students are unequivocal. While school officials have no legal rights to discipline students after school hours, in most instances, there are exceptions to these rules (Alexander & Alexander, 2004). For example, school officials have the authority to discipline students for activities that have a direct or immediate chance of harming other students or disrupting the “proper performance of the educational function” (Alexander & Alexander, 2004, p. 215). Be it during or after school hours, or on or off campus, school officials do possess certain authority to punish students in the event that students are engaged in behaviors or activities that could be detrimental to the school environment in general. In other words, the authority of school districts is not limited to the school grounds.

### **Cyber-bullying and Prompt Interventions**

Some believe that the right school policies and prompt interventions by school officials may determine whether students are engaged in criminal mischief and/or violent behaviors (Lane, 2011). Others have also suggested that school districts should adopt a zero-tolerance approach in cyber-related problems. Trump (n.d.) argues that kids who are not adequately disciplined will think that there are no consequences for inappropriate or, sometimes, illegal behaviors. The argument is that such an approach, i.e., zero-tolerance, would facilitate prompt intervention and, at the same time, it would serve as a deterrent to prevent other students from engaging in similar activities.

But there are several problems about that approach, which are worth pointing out in this dissertation. For instance, zero-tolerance approach in public schools is extremely problematic, particularly on cases pertaining to due process rights. Regardless of the effectiveness of cyber-bullying laws, school districts that adopt such an approach have the potential to overlook their existing policies and assess harsh punishments or perhaps unnecessary disciplinary actions against students.

Already, many school districts have demonstrated a minimal threshold for tolerance when it comes to students using the Internet to post lewd and/or offensive materials about school staff. For example, when other students are targeted, school officials tend to demonstrate little sensitivity to the situation and procrastinate their intervention. But school officials tend to adopt a different approach when school personnel are targeted. To illustrate, a student who posted a comment on a website, ridiculing his or her classmates may have nothing to worry about, unless there is something in the post that could be interpreted as a threat to the school environment. One could argue that most student-to-student online activities trigger little or no immediate intervention on the part of school officials. On the other hand, however, if a student posted a comment that made fun of a school personnel, namely a school principal, that student would probably receive a few words from the school principal or could even be reprimanded, depending on the gravity of the comments or the perceived seriousness of the situation.

Zero-tolerance policies are often broad in scope and vague in application or implementation. As argued throughout this dissertation, many of the situations that led to legal disputes could have been the results of careless approaches to online incidents. Martinez (2009) contends that, while most schools tend to use zero-tolerance policies as a one-size fits all



approach, there is not enough evidence to justify such an approach. Similarly, Yell and Rozalski (2000) argue that the impact of zero tolerance policies on school districts is not homogenous. While a zero-tolerance policy is seen as the best means to curtail deviant online behaviors, its effect on student's overall criminal activities remains elusive. Furthermore, zero-tolerance policies can have negative consequences on students' learning environment in general. Researchers have attributed recent increased rates of school dropouts and discriminatory practices in public schools to the adoption of zero-tolerance policies (Martinez, 2009).

### **The Racial and/or Socioeconomic Dimensions**

It could be argued that since most poor people do not own a computer or do not have regular access to the Internet, they are less likely to experience or cause online bullying. Consequently, there is an economic factor to cyber-bullying issues, which most people tend to ignore. Similarly, there is also a race factor, which is often overlooked. In fact, rarely the racial background of the victims or the perpetrators of cyber-bullying incidents are known. That does not necessarily mean that race is not an issue. Nevertheless, the Civil Rights Act of 1964 protects every citizen against discrimination, including children in public schools. Most minority students fall within the category of what is often referred to as "protected class" status. To the extent that a person/student is targeted because of gender, race, religion, or national origin, both state and federal laws authorize school officials to take the proper actions to address these matters.

School violence is often associated with inner-city schools, where the majority of the student body is Blacks or Hispanics. Similarly, zero-tolerance policies were designed as a direct response to school violence (Martinez, 2009). Some see a direct link between school violence and bullying activities. Others have argued that the exacerbation of cyber-bullying may lead to a

repeat of Columbine shootings (Erb, 2008). Hence, the argument is that there is a clear justification for a zero-tolerance approach to online incidents. However, to date, there is no clear evidence to suggest that cyber-bullying is directly linked to violence in schools.

Alternatively, in the courts cases included in this study, issues of race had not been mentioned. Perhaps minority students are either targeted less frequently or they do not have the means to sue the school districts or the other students involved. Nevertheless, the common belief is that problems of violence in public schools are generally associated with ethnic minority groups, including Blacks and Hispanics. Yet, cyber-bullying does not seem to be an inner-city issue. The majority of the school districts mentioned in the court cases are located in predominantly white regions; and those schools are relatively safer. Hence, the use of zero-tolerance because of concerns over school violence and cyber-bullying appear misguided.

Sadly, however, while currently school violence is not necessarily worse than the 1970s, the number of students who received suspension throughout their academic stance in schools has nearly doubled in comparison to that era (Building Blocks for Youth, 2004). This argument is echoed throughout this study. The findings supported the notion that suspension and expulsion are prevalent in public schools. A great majority of the students involved in online incidents had been suspended, and in most cases, expelled. Although some state laws require school districts to take harsh disciplinary sanctions against students only after more than one online offense occurred, in the majority of the cases reviewed, students were suspended or expelled after their first offense, including in states where such a requirement is in effect.

Ultimately, it is not clear whether there is a racial component to cyber-bullying in public schools and hasty interventions. Because of privacy laws, the identity of the students in public

schools is often concealed to the public. Similarly, the identities of the students mentioned in the court cases are usually withheld. Nevertheless, Martin (2001) suggests that based on previous records, when it comes to zero-tolerance, African American students are mostly affected; they are two times more likely to receive harsher disciplinary sanctions than their white counterparts. For example, minority children, including Blacks and Hispanics, are more likely to be suspended or expelled, as opposed to White students.

To illustrate, since the beginning of widespread adoptions of zero-tolerance policies, African American students have been disproportionately punished in schools. While current data are unavailable, records show that while African Americans constituted approximately 17 percent of public enrollment nationwide between 1998 and 1999, they accounted for 32 percent of suspensions (Building Blocks for Youth, 2004). In addition, the Center for Disease Control (2004) also note that between 2002 and 2003, approximately 944 students were expelled from several schools, in the state of Pennsylvania alone; during that time, approximately 25,284 students were suspended in that state. Minority students are also disproportionately affected by zero-tolerance approach (Rockstar, 1999). Many observers believe that, over the past few years, this trend has mostly remained unchanged.

### *Summary*

The National Association of School Psychologists (2008) argues that zero-tolerance policies are complex and are mostly ineffective in other instances or situations. Therefore, adopting such an approach in cyber-bullying incidents would not be beneficial to both students and school districts. In a study conducted in 2011, it was found that many school districts have policies that are heavily emphasized on the consequences or sanctions for traditional bullying

behaviors. For example, policies that addressed bullying conduct tended to focus on punitive sanctions, which often included suspension, expulsion, transfer to alternative programs, or denial of participation in co-curricular or extracurricular activities (Stuart-Cassel, Bell, & Springer, 2011).

While many of the policies addressing traditional bullying included other measures—at the discretion of school administrators—implementing preventive programs such as bullying awareness, counseling, and parental involvement, just to name a few, remained unexplored. Most school administrators opted to suspend or expel students, by-passing other available options to remedy the situation. Arguably, suspension and expulsion often set vulnerable individuals onto a path of anti-social behaviors, namely, delinquency, drug use, and gang activities. To that effect, a misguided zero-tolerance approach in cyber-bullying issues, which has the potential to affect students in a negative way, is not the best alternative.

### **Criminalizing Cyber-bullying**

Over the last few years, several incidents have caught national attention. Although many believe that these incidents have been the results of bullying in schools, few have been directly linked to cyber-bullying. Nevertheless, the media has been instrumental in catapulting these events into the national stratosphere. In part because of the gruesome details of the behaviors that went on before the victim or, in rare cases, victims, finally committed suicide, many have called for the criminalization of bullying behaviors. The emergence of Internet-related incidents has in part led many to have a cynical view on cyber-bullies. Not surprisingly, many people agree that cyber-bullies should be severely punished. However, excessive media coverage of those online incidents tends to set the tone of the debate. For instance, sensationalist media hypes often define

online bullying in a particular way and, oftentimes, dictate what authorities should do in order to effectively address such issues.

Recently, a young college student<sup>17</sup> (male) committed suicide days after he had a sexual escapade with another male. This young man had been the subject of ridicule and embarrassment partly because his roommate posted a video of the sexual encounter online. While the details of the incident were not immediately available and were still emerging, the trial had already begun (so to speak) and the shaping of public opinions had already been set in motion in the media.

One of the resounding arguments that are often articulated is that perpetrators of such conduct must be severely penalized in order to send a clear message to others that such behaviors will not be tolerated. In the aforesaid incident, the offender only received a thirty-days jail sentence. Many proponents of the criminalization of cyber-bullying were bitterly disappointed. Still, it was not even clear whether the evidence presented in court were related to bullying, let alone cyber-bullying. It could be very difficult to argue that the posting of a video, which led to the death of a person, is, by all means, an act of cyber-bullying. Ironically, however, in this case, the offender was not charged nor convicted of any bullying activities.

As articulated in previous pages, cyber-bullying does not have any particular trademark. Any activities that could otherwise be seen as normal social interaction, when taken to the extreme, could also be considered bullying. For example, an argument between two young kids over who has the best hairstyle could easily turn into a bullying incident. Similarly, a young

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<sup>17</sup>Tyler Clementi was a college student at Rutgers University who committed suicide after his roommate, Dharun Ravi and another Molly Wei, used a webcam to view, without Clementi's knowledge, Clementi kissing another man. Retrieved on May 24 from [http://en.wikipedia.org/wiki/Suicide\\_of\\_Tyler\\_Clementi](http://en.wikipedia.org/wiki/Suicide_of_Tyler_Clementi)

teenage boy who is in love may engage in activities that could be considered harassment or bullying, particularly if he constantly used a cell phone or sent several instant messaging to his beloved friend. Indeed, there is a fine line between expressive conduct and bullying activities.

In K-12 public schools, many have also called for the criminalization of cyber-bullying. But in on-campus bullying, many state laws and policy recommendations have emphasized on the need to expand the roles of law enforcement authorities and the criminal justice system as a whole on these matters (Stuart-Cassel, Bell, & Springer, 2011). When it comes to online issues, however, the problem is that most activities that are often associated with traditional bullying are already criminalized. In many states, the act of bullying or harassment is punishable under the law. Recent trends suggest that the most serious forms of bullying are often treated as criminal misconduct, which are generally handled through the criminal justice system (Stuart-Cassel, Bell, & Springer, 2011). That said, it has not been demonstrated that the act of posting comments about school staff or other students is in violation of existing laws. Yet, while posting comments online is not a crime in it of itself, most legal commentators are convinced that it should be.

Erb (2008) argues that the use of the Internet to harass one's peer is devoid of any legal liability. But online harassment is generally considered as more specific in its effects onto the victim(s), as opposed to the more broadly construed online bullying (Greene & Ross, 2005). As alluded to earlier, bullying behaviors are not permissible under the law, no matter where they occur. The act of harassment is also a violation of states and federal laws, particularly the Federal Civil Rights Act of 1964 (Greene & Ross, 2005). Currently, most states have also introduced provisions or amended their criminal or juvenile codes to include both traditional bullying and off-campus or online bullying (Stuart-Cassel, Bell, & Springer, 2011). For example, states like

North Carolina, Idaho, Kentucky, Missouri, and Virginia, have recently passed legislations, which already criminalize cyber-bullying (National Conference of State Legislatures, 2011).

Still, many object to the idea of criminalizing cyber-bullying, in part for the reasons outlined earlier. The argument is that cyber-bullying would have to be uniformly defined (e.g., throughout the country or across states), before considering its full-fledge criminalization. For instance, because many school policies on bullying, oftentimes, within the same state, are not straightforward, implementation could be very difficult. As Erb (2008) notes, in most cyber-bullying incidents, while the police initially charged the students involved, some cases had to be dropped because the offense did not meet the legal definition stated in the state statutes.

As noted in previous paragraphs, the line between what constitute normal childish behaviors and what constitute a flat-out harassment conduct is blurry. To that effect, it is not often obvious when a child is being bullied. As suggested in the literature, many cyber-bullies were once bullied. Hence, criminalizing cyber-bullying would seem unfair, for it would not deter such behaviors; implementation of such a law could lead to more issues. It could also be argued that school policies would have to be revamped before criminalizing cyber-bullying activities. In many cases, school administrators do not know which type of behavior they are punishing.

Shariff and Churchill (2010) note that the argument for criminalizing cyber-bullying, thereby filling our prisons with teenagers, is simply misguided. It is possible that cyber-related incidents are increasing at an alarming rate. But it is not clear whether school districts are doing something different other than exacerbating the situation by adhering to the wrong policy approaches. Since in most cases bullying is already a criminal offense, it is not clear why schools need the authority to intervene when there is knowledge that a bullying act has been committed.

## Conclusion

Cyber-bullying is a complex issue (McLeod, 2008). This assertion is echoed throughout this literature review. However, it could be argued that cyber-bullying laws are not static; rather they are evolving as politicians and policymakers struggle to find the right approach to eliminate or perhaps deter bullying behaviors in schools. Whether the argument centers on the many definitions of the term bullying, its prevalence, the policy issues, the role of school districts, or the effects of existing laws, currently, there is no consensus as to how to best approach school interventions on this issue, despite the fact that schools are not totally devoid of legal guidance.

While there is not a clear distinction between traditional and cyber-bullying, the nature of online issues suggests that the criminalization of online conduct is not the answer. Although bullying conduct is generally defined rather ambiguously, the courts have clearly delineated the conditions in which student conduct can be disciplined. Current approach to bullying activities, however, is mostly the result of existing policies, which, arguably, do not always follow the laws that purview such infractions. Admittedly, this lack of coherence often creates more confusion, particularly when it comes to determining how some issues should be approached and resolved (Stuart-Cassel, Bell, & Springer, 2011). Succinctly, this literature review suggests that careless interventions can be costly to school districts and can further exacerbate legal uncertainties.

Arguably, existing laws are the best tools to addressing cyber-related issues. While many observers suggest that the prevalence of cyber-bullying incidents is grossly exaggerated, current intervention strategies are not without significant flaws. Possibly, cyber-bullying laws are imperfect, but school policies are in a desperate need for an urgent makeover. In the following chapters, I hope to show the relevancy of this assertion by letting the data speak for themselves.



## Chapter 3

### METHODOLOGY

*“There is nothing like looking, if you want to find something. You certainly usually find something, if you look, but it is not always quite the something you were after.”*

—John Ronald Reuel Tolkien

#### Overview

This is a legal study in combination with content analysis. Certainly legal analysis is learning the law in all its intricacies. However, the process of learning the law is generally conducted through a legal research. Legal research is a systematic inquiry of the law, a form of historical-legal analysis, which is neither qualitative nor quantitative (Russo, 2006). Content analysis is a systematic, but replicable technique, which enables the researcher to compact and understand the words contained within the texts of a document or sets of documents (Stemler, 2001; Berelson, 1952; GAO, 1996; Krippendorff, 1980; and Weber, 1990). Understanding policies require a firm grasp of the laws that purview them. For that reason, content analysis, in conjunction with legal analysis, offered the proper avenue to assess the impact of school policies.

This methodological approach was selected as the best alternative to mitigate potential analytical problems between content and legal analyses. The goal was to find a way to overlap the strengths and, at the same time, compensate the weaknesses of both legal research and content analysis. This complementary approach was important because it offered a better opportunity to exhaustively answer the research questions. As argued in Russo (2006): “The use of complementary methods can help bring research questions into clearer focus and can also offer solutions that might not have been considered had a single method been employed” (p. 5).

## Understanding Legal Research

Traditional legal inquiries generally focus exclusively on the legal dimension of the topic of interest. Lee and Adler (2006) argue that “most research into legal issues in education often entail a simple summary of distinct case laws on a subject” (p. 26). This one-sided approach, however, often leaves room for erroneous interpretations of the findings. Furthermore, the authors assert that qualitative methods can be considered as the perfect match along with court cases for evaluating legal and policy matters in education. These two approaches tend to add an interpretive perspective to the process as a whole. While legal research in education often covers the formal acts of governmental agencies, qualitative inquiry, on the other hand, assesses the process and the impact of court decisions, constitutional laws, and rules enacted by different regulatory and administrative bodies; they are also responsible for implementing and adhering to those policies (Lee & Adler, 2006).

This study mainly focused on the legal ramifications of school districts’ interventions, particularly school administrators’ role in cyber-bullying issues. It also sought to establish the extent to which there were any discrepancies between legal precedents, state statutes, school policies, and disciplinary actions. A preliminary design for this study suggested that a traditional legal analysis alone would not yield the proper assessment needed in order to answer the questions outlined in chapter one. Similarly, it was understood that a traditional qualitative inquiry would offer limited possibilities for an in-depth analysis of cyber-bullying incidents. Consequently, the use of content analysis, in tandem with legal analysis, offered the potential to enlighten, supplement, reinterpret, widen, and validate the perspectives for sound analysis about the role school policies and school administrators played in cyber-bullying incidents.

This study used several legal tools and instruments to gather the data. In order to examine the themes and patterns within the different documents retrieved, the following tools were used: legal encyclopedias, law journal articles, court cases, statutes, and regulations. Kromrey, Onwuegbuzie, and Hogarty (2006) also note that legal matters in education are best-examined and understood with traditional qualitative research, as opposed to policy research or even quantitative research. Such an approach, the authors further contended, tends to offer invaluable interpretive insights to the researcher.

Furthermore, legal research generally entails the use of a variety of resources (Cohen & Olson, 2003). Nevertheless, locating relevant information on a legal topic is incumbent upon two important items: the sources of the law and the means through which information are accessed. Cohen and Olson (2003) argue that in a legal inquiry, sources of law include primary and secondary authorities, which can be accessed through both print and electronic means. Moreover, they note that those sources tend to originate from diverse entities, including the courts, the legislatures, scholars, and practitioners of law.

### **Sources of Law**

The doctrine of precedent is the fundamental tenet of the Anglo-American legal system (Russo, 2006). Any legal inquiry should include a thorough analysis of past authoritative decisions, which dealt with the same issue. The primary objective of this study was not centered on seeking cases that supported or disagreed with any preconceived notions or assumptions. As mentioned in previous chapters, this study was not grounded on any particular theoretical perspective. Still, it was widely expected that legal precedents would play a major role in the design and crafting of school policies; and these expectations guided the entire research process.

Although most legal inquiries tend to begin by locating primary authorities, it is often suggested to start with a preliminary review of secondary sources (USC Law Library, 2010). Still, the proper technique a researcher chooses to locate specific legal information is incumbent upon his or her level of expertise and the availability of materials or resources in a given library (Russo, 2006). A preliminary review of the secondary sources has the potential to yield tangible background information, which, in turn, could guide the research process throughout.

Similarly, initiating a legal search with primary or secondary authorities also depends on the aforesaid reasons. Russo (2006) points out that “the source of law that one begins with is, in large part, a matter of preference, depending on how familiar one is with legal sources and research. Put another way, an experienced researcher should be able to go right to a primary source, such as a Supreme Court opinion. That being said, a novice who is unacquainted with the intricacies of legal research might be wise to start with a secondary source, such as an article in West’s Education Law Reporter, a law review, or an entry in a legal encyclopedia since these should provide information that can help the researcher to develop a full understanding of the issue(s)” (p. 8). Since this study sought to look at cyber-bullying or online issues inductively, a preliminary review of secondary sources was conducted in order to obtain relevant background information on the topic and the different arguments. Subsequently, primary authorities were consulted for the collection of the appropriate data.

### Secondary Authorities

In traditional legal research methodology, secondary authorities or sources tend to explain the law and its many intricacies; they also provide citations to the primary sources (USC Law Library, 2010; Harvard Law School Library, 2010). These types of sources usually include,

but not limited to: law journal articles, legal encyclopedias, loose-leaf services, bar journals, scholarly treaty, legal dictionaries, law review articles, nutshells, hornbooks, dictionaries, and practitioner books. In this study, legal encyclopedias and dictionaries, law review articles, restatement of the law, and practitioner books and treaty were consulted.

Cohen and Olson (2003) argue, “effective legal research requires more than the knowledge of the nature of the legal system” (p. 5). In other words, it is also important to decipher the pathology of the law. For instance, school policies often derived from state statutes; more often than not, these policies carry with them consequences that go far beyond the walls of local school districts. Zero-tolerance policies could be considered a perfect example of policies that are often subject to controversy in part because of their effect on many aspects of schooling. For that reason, it is very important to review the laws from which such policies emanated from.

While many see zero tolerance policies as vague and too broad in scope, few people contest the fact that this particular policy is the result of the Gun-Free School Zones Acts of the 1990s, which was enacted by the United States Congress. Arguably, cyber-bullying policies are also closely intertwined with harassment and traditional bullying policies, which emanated from the equal protection clause of the Fourteenth Amendment (U.S. Constitution). Thus, cyber-bullying policies, in all instances, should mirror aspects of anti-harassment and anti-bullying laws.

### *Legal Encyclopedias and Dictionaries*

In educational policy issues, a legal encyclopedia often presents rudimentary background information about a particular subject area. While cyber-bullying is a new phenomenon, as

demonstrated in earlier chapters, the laws that purview cyber-related policies are not limited to Internet-related laws. Since online incidents in public schools are often litigated based on constitutional violations, legal encyclopedias offered a broad array of materials to understanding cyber-bullying incidents and cyber-bullying laws holistically.

When it comes to understanding the legal issues in a particular area of law, a *Black Letter Law* is generally quintessential for a substantive analysis of the legal issue at hand (Harvard Law School Library, 2010). Such legal tools tend to generate the key references needed to locate appropriate primary sources. Legal dictionaries also facilitate a handy reference guide to researching the law in a systematic fashion. Understanding *Black Letter Law*, however, necessitates a good grasp of the language of the law (Cohen & Olson, 2003). Yet, *Black Letter Law* is not easily discernible; the term itself is not recorded in one particular section or research source. It requires specific searches in a particular area of law to determine the standard elements (Harvard Law School Library, 2010). Unfortunately, in cyber-bullying, there are not too many laws that are so deeply entrenched that they are rarely disputed. In fact, it is the opposite. Critics who often aired in disbelief about the usefulness of cyber-bullying laws regularly assail those laws and the courts that rely on them. Still, in this study, several materials, which constantly referenced notorious principles in this area of jurisprudence, were regularly consulted.

Similar to encyclopedias, dictionaries can facilitate a quick summary or a general overview of the topic of interest (Russo, 2006). Cohen and Olson (2003) list several legal dictionaries, which can provide access to: definition of terms; quotations from scholarly works; the way words are used in legal contexts; essays; and techniques to identifying and choosing words when searching in indexes or preparing online searches. In this study, the *Law Dictionary*

(2003, 5<sup>th</sup> Edition.) by Steven H. Gifis, *Nolo's Plain-English Law Dictionary* (2009, 1<sup>st</sup> Edition) by Gerald N. Hill and Kathleen Thompson Hill, and *Encyclopedia of Education Law* (2008), which was edited by Charles J. Russo, were regularly consulted.

### *Legal Periodicals*

Similar to encyclopedias, legal periodicals (e.g., legal newspapers and bar association journals, and law reviews) often facilitate the retrieval of important background information about a particular legal subject. In contrast to the former (i.e., legal encyclopedias), the latter offers the necessary insights to critically assess the policy ramifications of the legal issue at hand. Russo (2006) argues that these types of secondary sources are among the most useful peer-reviewed journals for educators (p. 17). Many of them offer an accurate, concise, and up-to-date analysis of contemporary legal issues for both academicians and practitioners. This study consulted several legal periodicals. These documents were accessed as complementary information about the court cases retrieved for further analysis.

The law is never static. McLeod (2008) notes that cyber-bullying issues are changing constantly. Currently, such issues are very contentious in courts. Observers have argued that cyber-bullying laws are plagued with legal uncertainty (McLeod, 2008). In many instances, state laws are vague and only addressed online incidents within the context of traditional bullying. But cyber-bullying laws are not set in stones. As it is the case in any other areas of law, there are no right answers from such laws. Contrary to popular assumptions, I would contend that cyber-bullying laws do not contain the ultimate answer to any cyber-related issues. As it is often the case in the legal profession, a law can be manipulated and interpreted in many different ways. The presumption is that the law, regardless of the field of interest, is constantly evolving and

adapting to the needs of society. Within that context, one could argue that as cyber-related incidents increase, cyber-bullying laws can adjust to better tackle future incidents. For that reason, this study relied on law periodicals, particularly law reviews to locate pertinent articles that critically discussed new developments in this area of the law.

#### *Restatement of the Law*

Restatements of the law usually include materials that provide commentaries and in-depth analysis of legal issues (Russo, 2006). These types of materials restate specific rules in a particular area of the law. These items are generally available through the American Law Institute (also known as ALI). The areas of law that they mostly focused on generally include the followings: contracts, torts, property, and liability issues (Russo, 2006). While this study did not address liability issues in cyber-bullying, it did examine the conditions that could potentially lead to such issues, particularly in court cases where the students prevailed.

#### *Practitioner Books and Treaties*

These types of secondary sources by and large offer a basic assessment of the law (Harvard Law School Library, 2010). They tend to provide the background information necessary to locate the authority to consult during the research process. Russo (2006) argues that a broad array of books and treaties could provide critical assistance to researchers. Books and treaties may offer systematic guidance as to how to approach a court case. Although they do not provide in-depth information as to the development of the law for the future, they tend to provide useful references to primary sources and other forms of secondary materials (Cohen & Olson, 2003). This study consulted several practitioner books during the analysis of the findings.



### Primary Authorities

In legal research methodology, primary sources usually include, but not limited to: constitutions, court decisions, statutes, regulations, and municipal ordinances. These types of materials form what is known as the “legal doctrine” (Cohen & Olson, 2003), which Wacks (2008) also denotes as “the principal sources of the law and the basis of legal training, knowledge, and institutional practice” (p. 9).

Similarly, primary sources tend to be comprised of legally binding (i.e., mandatory) and non-binding, but persuasive, authorities as well as, which are useful tools for finding other relevant materials (Cohen & Olson, 2003). It must be noted that, while this study consulted several important primary sources, including state constitutions, municipal ordinances, and state regulations, it relied heavily upon school policies, court cases and state statutes.

### *Constitutions*

The U.S. Constitution is the law of the land (Russo, 2006). Still, states have their own constitutions, which, according to the Supremacy Clause of the U.S. Constitution, Article VI, Section 2, a concept developed in *Mcculloch v. Maryland* (1819), cannot surpass the U.S. Constitution. The federal government must prevail over any conflicting or inconsistent state authority. In other words, the U.S. Constitution is supreme over state constitutions.

While the U.S. Constitution indubitably addresses the fundamental tenets pertaining to the governmental entities and the status of other branches evolving within that governmental structure, the rights and responsibilities of separate governmental branches are not often clearly delineated (Weaver et al., 2006). As noted in Russo (2006), under the Tenth Amendment, “the

powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people” (p. 8 & 9). Within that context, education is the sole responsibility of individual states. Consequently, there should not be any intermingling between the federal government and individual states on educational issues. However, this is seldom the case. Currently, whether in the design or the implementation phases of policies, the federal government is deeply involved in educational issues.

In education, the responsibility of the federal government is often a great source of contention as well, particularly in situations where states believed that their individual rights had been trampled by the federal government through mandates. Alternatively, in cases where states’ constitutions do not clearly define the parameters of local agencies in the light of the U.S. Constitution on matters pertaining to freedom of expression (free speech), search and seizure, and harassment (equal protection), numerous issues have been raised, which, in most instances, tended to prompt the federal government to intervene.

While the federal government has had little or no direct impetus in cyberbullying laws, historically, they have played a prominent role in educational endeavors in general, particularly on policy matters. A case in point is the *Brown v. Board of Education* ruling, in 1954, which paved the way for a broad array of federal governmental policies in educational issues. Arguably, this decision continues to have substantial effects on school administrative issues and school law in general. Furthermore, states’ constitutions are supreme only within the boundaries of state borders and as long as they do not contradict or limit the rights of students (Russo, 2006). This study looked at specific amendments in the U.S. Constitution and consulted some selected state constitutions in order to understand the laws that purview cyber-bullying policies.

### *Statutes*

The U.S. Constitution indubitably sets precedents for the rest of the country. The being said, governmental powers are customarily dispersed into several branches. Both federal and state governments are divided in three branches: executive, legislative, and judiciary (Cohen & Olson, 2003). Traditionally, the legislative branch—be it at the federal or state level—tends to influence public policy through statutes (Cohen & Olson, 2003). As Russo (2006) purports, once a bill has been signed into law, generally by the chief of the executive branch (e.g., the president at the federal level or the governor at the state level), it becomes enforceable law. At the federal level, statutes can be found in the United States Code (USC) or the United States Code Annotated (USCA). At the state level, statutes usually take several names and titles. But “state statutes may not contradict their own state’s constitution or any federal law” (Imber & Geel, 2010, p. 3).

Statutes, in general, have two important characteristics. On the one hand, statutes are broadly worded statements of public policy; on the other hand, they can be specific and regulate certain activity in minute detail (Cohen & Olson, 2003). For instance, most states have broad statutes that address harassment and traditional bullying. This study focused on the extent to which those statutes addressed issues pertaining to online or electronic bullying activities.

Russo (2006) notes that some statutes, particularly at the state level, are silent or limited in effect in some issues, which are generally addressed by regulations. It is worth mentioning that personnel at administrative agencies generally develop such regulations. Furthermore, given the extensiveness of statutes, “it is safe to say that the professional lives of educators, especially in public schools, are more directly influenced by regulations than by statutes” (Russo, 2006, p. 9). Consequently, this study also attempted to locate pertinent regulations on cyber-bullying.

### *Regulations*

Regulations often emanate from statutes; but they differ greatly from constitutions and statutes (Imber & Geel, 2010). It is safe to say that there could be no regulations, in the absence of a specific statute, which needed to be enforced. State statutes are usually the source of regulations. Regulations generally provide more in-depth details on a subject, which the statute did not thoroughly address. O'Connor and Sabato (2008) point out that regulations usually entail the rules that govern the way in which government programs are operated and, in most instances, they have the same effect as laws.

While regulations serve as a mechanism through which the implementation of legislation is carried out, they must satisfy three requirements. For instance, a regulation must be the result of a statute; it must be substantively conformed to the statute it seeks to implement; and finally, the statute itself must be conformed to the constitution (Imber & Geel, 2010, p. 4).

In educational policy issues, regulations often originate from statutes adopted by the legislatures. In most cases, those regulations are issued by the U.S. Department of Education, state Departments of Education, and by other state and federal agencies. According to the Pennsylvania Human Relations Committee (2009), in 2008, the state of Pennsylvania passed legislation, which required school districts to adopt policies on bullying. Subsequently, many school districts across that state developed policies that specifically addressed bullying in their schools. Similarly, in many other states across the country, legislators passed similar statutes, which also required their school districts to develop their own policies. Considering the perceived increase in cyber-bullying and litigation, this study sought to examine the language in school districts' policies to assess their compatibility with their respective state statutes.

### *School Board Policies*

School board policies usually entail rules and regulations on particular instances, which were crafted or designed by a school board authority with the intent of requiring school personnel, including administrators, staff, and/or students to abide by. Although such policies are often limited based on the scope of the authority delegated by the state legislatures (Imber & Geel, 2010), in most cases, through statutes, most school boards tend to adopt their own rules and regulations on a particular matter. Those rules, however, must fall within the guidelines prescribed by constitutional provisions, regulations, statutes, and common law.

As previously noted, one of the goals of this study was to look at school districts' policy documents in order to analyze the language therein, and to decipher any potential discrepancies between the written text and the actions of school administrators in cyber-bullying situations. First, it sought to establish the existence of clear policies regulating online misconduct, particularly cyber-bullying activities. Second, it assessed the impact of those policies onto the types of disciplinary actions taken against the students involved. Hence, this study accorded a great deal of importance on locating the appropriate school board policies on cyber-bullying.

### *Common Law*

Common law is often described as rules emanating from court decisions. As argued throughout this chapter, the American legal system heavily relies upon past court decisions. Russo (2006) argues that cyber-bullying is relatively new to the U.S. legal system. Consequently, most cases involving cyber-bullying have been litigated based on landmark decisions pertaining to free speech, search and seizure, and equal protection, just to name a few. For example, as

opposed to statutory or constitutional cases in which the courts usually adopt a strict interpretation of the law, which was created by a previous authority, in common law cases, the “courts invent the relevant legal rules and apply them to the case at hand” (Imber & Geel, 2010, p. 5). Functionally, the bulk of this study entailed the analysis of past court decisions on the issue of cyber-bullying; in parallel, court cases, which constitute the legal standards were also retrieved. Specific keywords within the language of those standards were thoroughly examined.

### **Content Analysis**

Krippendorff (2004) defines content analysis as a systematic review of texts, images, and symbolic matter. This methodological approach is often regarded as a research technique, which enables the detection of specific words or concepts within a document or sets of documents in order to decipher the meanings or underlying messages hidden in the written texts. In qualitative inquiries, content analysis is often used to decipher speech within texts in order to better understand underlying meanings of the words articulated in a particular document.

Several authors have attempted to contextualize this methodological approach through various definitions. For instance, Patton (2002, p. 453) defines content analysis as “any qualitative data reduction and sense-making effort that takes a volume of qualitative material and attempts to identify core consistencies and meanings.” Hsieh and Shannon (2005, p. 1278) state that content analysis is “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns.” Content analysis can also facilitate the examination of trends and patterns in documents (Stemler, 2001). While this approach can be used to generate theory, in this study, it was chiefly employed to determine whether important or specific keywords from legal precedents were present within

state statutes and school policy documents. It was also employed to determine whether school disciplinary actions aligned with school policies.

Content analysis is perhaps one of the most important research techniques in social sciences (Krippendorff, 2004). It is also the best methodological approach to easily sift through large volumes of data in a systematic fashion (GAO, 1996). When it comes to analyzing administrative, judicial, legislative, and policy issues on a specific area of law, for instance, education law, content analysis is a powerful and unobtrusive tool to gain a greater understanding of the meanings, contexts, and intentions of a specific piece of legislation or set of rules and regulations. As a research technique, content analysis “must predict or infer phenomena that cannot be observed directly” (Krippendorff, 2004, p. 10). Content analysis was ideal to understanding cyber-bullying policies within the context of legal precedents.

#### *Content Analysis versus Legal Analysis*

Conducting legal analysis concurrently with content analysis offered an important framework to contextualize the issues at hand. Legal inquiries often entail a thorough understanding of the legal issues associated with statutes, regulations, policies, and common law. But only through a careful probing of the texts within the documents of interest, for instance, a school policy on cyber-bullying, that matters pertaining to the administrative obligations of school officials, requirements for protecting the fundamental rights of students, and the types of disciplinary actions taken can become apparent. Content analysis was ideal for this study. Using content analysis also facilitated an in-depth evaluation of different themes and patterns within the court documents. In short, this technique allowed a thorough examination of the problems that could have otherwise been very difficult to assess, using a different approach.

### **Research Tools**

Locating the first piece of information relevant to the topic of interest is often the most difficult part of the research process (Cohen & Olson, 2003). As mentioned earlier, the availability of resources and materials are crucial when conducting a legal inquiry. Considering the pervasiveness of the Internet and online resources, it became evident that the convenience of electronic database such as Lexis-Nexis would play a major role during the data gathering process. Cohen and Olson (2003) argue that the weight the researcher attaches to a particular source might determine the difference between the sources. Nevertheless, conducting a sound legal inquiry also depends on “whether it was carried out manually or electronically” (Russo, 2006, p. 8). Cohen and Olson (2003) further note, “electronic research has significantly affected the process of legal research” (p. 8). This study used online resources, including online software and databases to locate and analyze the data.

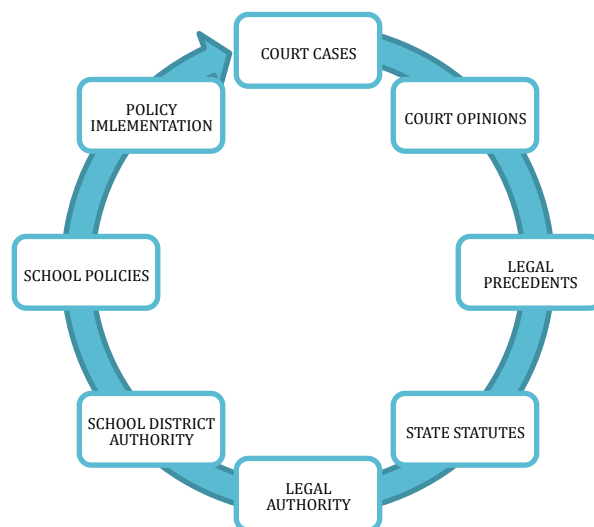
### **Data Collection and Procedures**

To reiterate, this inquiry was approached inductively. In other words, there were no specific expectations as to what there issues were. That is to say prior to the analysis process, no direct conclusions were drawn from the data retrieved. For example, while several concepts and themes related to legal precedents were expected to emerge from the texts, their specific locations were unknown in advance. That being said, it must be noted that the study was centered on the presumption that legal precedents would play a crucial role in the following: state statutes, school policies, and the outcome of cyber-related litigation. Alternatively, the supposition was that court cases would lead to court opinions, which, in turn, would constitute the Jurisprudence or legal precedents in cyber-bullying litigation. Legal precedents would be the basis for state



statutes; and those statutes would give school districts the legal authority to enact school policies addressing online speech or cyber-bullying. Functionally, school administrators would implement those school policies, which, depending on the interpretation of the language within those policies, would lead to other legal disputes or court cases (see Illustration 3.1).

### **Illustration 3.1—Conceptualizing Cyber-bullying Litigation and Policy Implementation**



Sources: Researcher/Author conceptualization of the sequences

**This Chart:** Shows how cyber-related litigation and policy implementations are intertwined. For instance, there is a relationship between court cases, court opinions, which would form the legal precedents, statutes, which would give school districts the legal authority to enact school policies, and the way the implementation of those policies could lead to more litigation or court cases

While the United States Supreme Court has not decided any specific cyber-bullying case, as previously noted, legal precedents such as the ones articulated in *Tinker v. Des Moines* (1969), *New Jersey v. T.L.O.* (1985), and *Bethel v. Fraser* (1986) often serve as the guiding principles or legal standards in many online free speech, particularly on matters pertaining to the use of the Internet technology or electronic devices by students in public schools.

The first step in this study consisted of locating court cases addressing the issue of cyber-bullying. Since the terms: “cyber” and “bullying” were not always mentioned in online-related

litigation, it was very difficult to locate relevant case laws. In the initial search, several terms were used to locate the appropriate court opinions. Once the pertinent cases had been located, a preliminary review of the cases indicated that the most prevalent issues or incidents invoked claims of constitutional violations and school policy issues. A great majority of the cases retrieved dealt with problems pertaining to freedom of speech that occurred online and due process issues as a result of the types of disciplinary actions taken. Landmark cases such as, *Tinker v. Des Moines Independent Community School District* (1969), *Bethel School District No. 403 v. Fraser* (1986), and *New Jersey v. T.L.O.* (1985), were also retrieved for further review.

#### *Data Collection*

During the data collection phase, court cases were retrieved from the Lexis-Nexis Academic search engine. Throughout the initial search, phrases containing words such as cyber bullying, cyber harassment, and cyber incidents were entered into the database. The preliminary search yielded no results. Subsequent search terms were modified to maximize the results. Those actions were equally futile. The term cyber-bullying appeared incompatible with the contents within the database.

As a last resort, the term “free speech” was entered into the database. Only then, a few court opinions, approximately seven cases, were located. The term “school discipline” was also entered in conjunction with the term “free speech.” Subsequently, several more cases were retrieved. Many of the cases retrieved at that point did not apply to cyber-bullying. Using a search technique called “shepardizing,” the citations within the seven cases already retrieved were entered individually into the database. This technique yielded several more cases. Unfortunately, the shepardizing technique had to be repeated for each case separately.

The different columns in Appendix A illustrate the process of locating the court cases from the Lexis-Nexis Academic database. The first column illustrates the number of times a search was conducted. Subsequently, the terms, the connectors, and the results of each search are presented in the order in which they were entered into the database throughout the searching process. It is worth noting that other databases were also accessed. For example, LoisLaw, LLMC Digital Law Library, Lexis-Nexis Academic-News Sources, Westlaw China, and Lexis-Nexis State Capital were accessed. Then again, most of these searches were fruitless. It is important to note that unsuccessful searches are not mentioned in the Appendix A or in this document.

This process (i.e., the Shepardizing), while time consuming, allowed the retrieval of additional information pertinent to each case. The shepardizing technique yielded important information about each case in terms of their prior and subsequent histories as well. This process also enabled a deeper understanding of the situations and the facts that accompanied each case retrieved. For that reason, important aspects of school policies, statutes, scholarly articles, and law reviews, which addressed the issues within a particular case, were also obtained.

Once the cases had been retrieved, electronic and hard (e.g., printed or paper) copies were obtained for each court case. It is worth noting that regardless of subsequent histories, court documents containing information about the initial filing were prioritized during the review process. Cases that had subsequent histories were also considered for further review. The cases were sorted by year, location (i.e., geographic location), demographic information, and the nature of the claims. The cases selected ranged over the span of eleven years. The first case on the list was decided on January 1998 and the last case was decided on June 2011. It is worth reiterating

that some of these cases had been denied certiorari by the United States Supreme Court, as recently as January 2012.

### *Assessing the Data*

The study included 24 court cases, scattered throughout 15 states across the Continental United States. The cases mentioned 23 school districts, including three state authorities as defendants, appellants, appellee, or plaintiffs. As noted earlier, three more cases were retrieved in order to establish the key elements of legal precedents or legal standards. Those cases were excluded from the list of cases this study thoroughly examined.

Three types of data were collected in this study: court cases, school policies, and state statutes. Court opinions or court cases were collected in order to understand the nature of cyber-bullying incidents in K-12 public schools; school policies were collected in order to determine whether the school districts involved in litigation had specific policies addressing cyber-bullying; and state statutes were accessed in order to decipher the effects of legal precedents onto the design of state laws, which are generally the guiding principles of school districts' policies.

### *Coding Procedures*

Coding is often equated as marking or highlighting portions of data with identifiable symbols or other descriptive words. In qualitative research, coding usually entails categorizing the raw data. It is also the initial step in qualitative analysis, particularly when it comes to preparing documents to be analyzed (Maxwell, 2005; Emerson et al., 1995). In contrast to quantitative inquiries, the goal of coding in this qualitative research is not merely to count the number of items that occurred, rather it is intended to rearrange the data into categories, which,

in turn, may facilitate a clearer analysis of the items within the same category in order to develop theoretical concepts (Maxwell, 2005; Strauss, 1987). Since three data sets were collected in this study, categorizing all the documents were very difficult and, in most cases, unnecessary.

Initially, the coding process was open, i.e., the data were constantly monitored and elements within the different sets of information retrieved were compared as the study progressed. The bulk of the primary reviews were centered on court opinions. The cases were divided into seven important elements; they were later categorized into three groups: Group 1, which consisted of holdings in favor of students; Group 2, holdings in favor of school districts; and Group 3, holdings in favor of both, i.e., holdings for students and school districts simultaneously (see Figure 4.1).

School policy documents were also categorized in three groups, including schools that had specific policies on cyber-bullying; schools that had traditional bullying policies, which also included online activities; and schools that had “other” policies. In this instance, the term “other” was used to describe schools that had no policy on either traditional bullying or cyber-bullying, but had policies that included the term “harassment” or “electronic” or “online” within the language or the texts of their policy documents.

State statutes were not categorized; except that, four criteria were used in order to determine their alignment with legal precedents. In the first criteria, the *Tinker Standard*, which contained phrases such as “substantial disruption” and “right of others,” was used. The second criteria consisted of the *T.L.O. Standard*, which contained the phrase “reasonable suspicion.” More emphasis was put on the word “Reasonable,” since it was mentioned in various contexts throughout the documents retrieved. The third criteria consisted of the *Fraser Standard*, which

contained words and/or phrases such as “vulgar,” “lewd,” and “plainly offensive.” In the fourth criteria, the term “*Other*” was used in order to delineate the presence of the phrase “true threat.” Similarly, more emphasis was put on the word “threat,” since it was also used in several contexts throughout the documents retrieved.

### *The Court Documents*

The court documents were visually scanned and reviewed for important themes and patterns in the type of language used during court proceedings. During that process, issues such as constitutional amendment violations, vagueness in school policies, and tort liability were identified. Lee and Adler (2006, p. 46) note that: “coding the data may be accomplished using colored highlighters.” For that reason, each identified issue was then underlined (by hand) with a highlighter. As the review process continued, each time the terms: “First Amendment,” “Fourteenth Amendment,” “Due Process,” “Equal Protection,” “Constitutional Tort,” and “School Policy” appeared in the texts, they were marked or highlighted with colored markers for further review.

Stemler (2001) notes that there are two approaches to coding data: emergent and priori coding. In emergent coding, categorizing the data is incumbent upon a preliminary review of the data itself. In priori coding, the data is categorized based on a theory or sets of theories (Stemler, 2001). The initial intent was to use emergent coding. However, as the study unfolded, it became apparent that a different approach to the coding procedure would be necessary.

The review of the cases indicated that, words or phrases such as lewd, vulgar, plainly offensive, reasonable, and disruptive speeches were regularly mentioned throughout the literature

of each court document. Coincidentally, such terms had been previously identified as the key elements in legal precedents. These words were entered into a list of keywords in order to code the rest of the data. As mentioned earlier, the phrase “true threat” was also entered into the list of keywords. In order to assess the data, these keywords were then selected as “piori codes.” Piori codes are usually codes that have been developed by the researcher before examining the available data.

#### *Analysis Method and Procedures*

In a qualitative study, data analysis usually entails a search for themes, patterns, and connections among the data in order to decipher broad, fluid, and working hypotheses (Kromrey, Onwuegbuzie, & Hogarty, 2006). Creswell and Plano Clark (2007) note that data analysis can only begin when the researcher initiates the process of converting raw data into smaller units or categories to form analysis that is more concise. As a rule of thumb, this technique entails organizing the document or visual data or text into a word-processing file.

After the initial review of the court documents, certain patterns regarding the choice of word and language used by the plaintiffs, defendants, and judges during the course of the litigation process were identified. Using the “core terms” section, which is part of every court document, the cases were compared and contrasted with one another to determine the frequency of certain words or phrases. During this phase, certain characteristics contained within the cases, i.e., prevailing parties, legal issues, or the court levels, were not taken into account. The goal was to generate a broader understanding of potential themes and patterns within the text by assessing the frequency of the words and/or phrases outlined in the core term sections of the different court cases retrieved.

As Glesne (2011) posits, the selection of a site to conduct a study is not set in stone. In other words, as a study progresses, the data collection begins to take shape and informs the researcher, the actual site may change. The term *site* is used, in this case, to refer to aspects of the data that were emphasized during the study. For instance, during the scanning of the *core terms*, certain words or phrases kept appearing throughout the texts. Further review of the documents confirmed the present of those words in the literature of each case. Oftentimes, the same words or phrases were present in many cases. Consequently, the documents were sorted in chronological order, starting from the 1998 to 2011. The goal was to determine the direction of the courts in terms of reasoning patterns.

The question that emerged from that process was the following: were the courts using the same types of words or reasoning patterns between 1998 and 2011? If so, it was important to know, how often certain words or phrases were used by the courts and under what circumstances. To that effect, a word frequency analysis was conducted on each document in order to determine the frequency of certain words and phrases. Subsequently, the results obtained from the different cases were also analyzed as a lump (i.e., as a whole) document to determine the frequency of certain words, phrases, or terms.

It must be noted that certain words or phrases used to describe institutions, individual titles, and other descriptive aspects within the cases were ignored throughout this inquiry. These words were eliminated on the outset of the review process. Words such as school district, high school, classmates, administrators, off-campus, on-campus, photographs, picture, message, position, and title of school staff, to name a few, were disregarded and were not entered into the word frequency analysis software. These words appeared insignificant in informing the research



questions the study was attempting to answer and they appeared to provide little or no tangible information for further reviews.

### *Preliminary Analysis*

Kromrey, Onwuegbuzie, and Hogarty (2006) argue that text data from diaries, documents, and personnel logs may yield raw data for quality research. Moreover, the authors assert that regardless of the source of the data collected, in qualitative inquiries, the majority of the data “consists of words or texts that reflect the perspective and experience of the research participants” (p. 97). Furthermore, Stemler (2001) argues that in content analysis, it is imperative to identify words of potential interest. Within that context, a preliminary word frequency analysis was conducted, using the online software called *writewords*<sup>18</sup>. For maximum accuracy, several other online software programs were used and the results were contrasted and compared.

The initial analysis focused primarily on court cases that contained a long history, for instance, cases that were litigated at many court levels. For instance, cases that had both prior and subsequent histories, including cases litigated in trial courts, district courts, appeal courts, and/or state and federal supreme courts, were exclusively included in the primary word frequency analysis. The results yielded dozens of words that were common among these cases. As the process continued, certain words that were constantly present in certain cases, regardless of the outcome, were identified and put aside or noted for further review.

After the preliminary word frequency analysis, the court documents were once again reviewed. During that process, words that were not repeated, for instance, words that appeared

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<sup>18</sup> Writewords is free online software, based in the United Kingdom, which that allows practitioners and scholars to conduct analysis of texts via a secure portal. The website can be accessed at: <http://www.writewords.org.uk/>

only once, were disregarded. As this process continued and irrelevant words were eliminated from the study, the presence of certain words in certain cases reinforced the initial assumption that some words were always present in the language of the court documents.

As previously noted, words that were uttered the most were identified and the cases in which they were present were set aside for further review. During that process, words such as: discipline, judgment, disruption, and summary were repeated more than a dozen times. These words were further assessed for other themes and patterns throughout the documents. It must be noted that certain words were used in different grammatical formats or verb tenses. For example, while the word “discipline” appeared more than a dozen times, it was also substituted by the word “disciplinary.” Similarly, the word disruption was also present more than a dozen times. In most instances, the word “disrupt” was used in a similar fashion or context. The same procedure was used for many more words, which appeared frequently, but under different forms throughout the court documents.

As Stemler (2001) notes, content analysis goes beyond a simple word count in an inquiry. For the purpose of this inquiry and the questions it sought to answer, this technique strengthened the validity of the coding process and ultimately helped in categorizing the data into smaller, but manageable units. Through this technique, the presence of certain phrases or sentences were later confirmed in both cyber-bullying laws and court cases, which, in turn, enabled a thorough assessment of school policies and the types of disciplinary actions taken by school administrators when those policies are violated. As illustrated in Creswell and Plano Clark (2007, p. 131), the division of the texts into smaller units allowed a deeper analysis of phrases, sentences, and paragraphs contained within the documents.

### **Reliability and Validity**

While the original intent was to use the Nvivo software, due to the unavailability of the software at the Pennsylvania State University Library (Harrisburg Campus), the study was forced to rely on online versions (freeware), which, in essence, were equally relevant for the purpose of this study. Lauer (2006) argues, “For research conclusions to be valid, it is important that data-collection instruments have both validity and reliability” (p. 34). Even so, the inability to locate the Nvivo software and the use of online software programs in this study should not be a major concern because of two reasons. First, the online software programs performed similar tasks as the Nvivo program would. Second, to mitigate potential reliability issues the different online programs were used in order to make certain of the results across the board.

Validity is when the instruments used in a study performed exactly the way they were intended, i.e., they measured “what they are supposed to measure” (Lauer, 2006, p. 34). Reliability, on the other hand, usually entails the capacity of an instrument to produce the same result within a certain timeframe (Lauer, 2006). In other words, the instrument used in a study should consistently measure the items it was intended to measure. In this study, the main tool or instrument used to evaluate potential discrepancies within school policies and court documents consisted of qualitative data analysis online software programs, which include writewords, wordcounter, and AnSWR.

The goal in using three separate programs as cross-references was to increase consistency during the measurement process. The presence of certain words, themes, and patterns, particularly during the word frequency analysis, were confirmed in all three software programs. Alternatively, while taking into account the magnitude of the data retrieved, proper precautions

were taken in order to ensure accurate assessment of the concepts this study sought to measure.

It is worth noting that one of the major validity issues this study was concerned with is ‘Generalizability’. According to the U.S. Census Bureau (2011), the United States has approximately 14,000 public school districts. This study is only comprised of 24 court cases, 15 state statutes, and 23 school policies. Conversely, the court documents retrieved did not include unpublished cases. That is to say, only 23 school districts were included in this study. This number represents merely 0.16 percent of all the school districts in this country; in other words, a fraction of the number of districts. Therefore, the findings cannot account for a larger population.

Additionally, since I did not have access to all the major legal databases, I am not sure whether all the cases retrieved were the only published cases that addressed online speech issues or cyber-bullying during the thirteen year period (i.e., 1998-2011). This situation outlines a considerable limitation in the sample. Further, of the 48 contiguous states in the Continental United States (excluding Alaska and Hawaii), only 15 state statutes (approximately 31.25 percent) were included in this study. Therefore, the findings cannot be generalized to include all the school districts and/or states across the country.

Alternatively, it is not clear the extent to which the school policies retrieved were in effect during the incidents. Furthermore, another complication is that, in some cases, third party companies designed the policies for several school districts. In many instances, those policies were similar in many respects, with only subtle differences in the language, regardless of the state in which the school districts were located. Moreover, at least in one instance, the policy for one school district had not been retrieved. Consequently, the extent to which the findings could be applied to every school district and/or generalize to a larger population remains dubious.

Moreover, the primary goal in this study consisted of collecting the data and analyzing the findings objectively. Nevertheless, sifting through the documents required a process by which the texts could be analyzed consistently. Since “coding is designed to reduce the information in ways that facilitate interpretations of the findings” (Lauer, 2006, p. 48), emphasis was put on eliminating the possibility for unclear definition of the categories or groups. Hence, terms, concepts, and words had to be defined by the researcher in a coherent manner. It was crucial that the procedure was consistent throughout the data collection. Within that perspective, the potential for construct validity issues cannot be ignored.

## Chapter 4

### RESULTS

*“Research is to see what everybody else has seen and to think what nobody else has thought.”*

—Albert Szent-Gyorgyi

#### Overview

On the outset, it is important to reiterate that preliminary searches yielded a dismal amount of court cases. This was not surprising because legal disputes pertaining to online bullying or any other online issues rarely referenced the phenomenon called “cyber-bullying.” While at the center of online freedom of speech litigation, the very act of cyber-bullying is not often mentioned in legal claims, court proceedings, or in court cases. As several search terms were entered into the database, it became apparent that using the term “cyber-bullying” was not helpful. For that reason, it was difficult to locate court cases pertaining to cyber-bullying.

The primary objective consisted of locating the court documents and, as needed, the subsequent collection of other relevant data would follow. Despite the difficulties in locating the appropriate court and policy documents, this goal was achieved. As noted in the previous chapter, three sets of data were collected, which included case laws pertaining to the use of the Internet and/or electronic devices on or off school grounds. School policies and state statutes were also retrieved. The documents were sorted, scanned, reviewed, and analyzed.

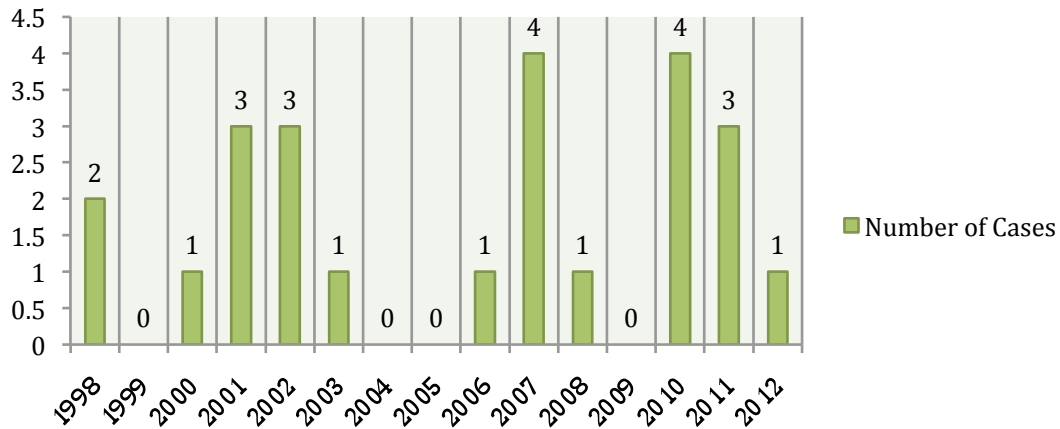
In order to answer the research questions, an extensive review of the background information within each case was conducted. Triangulating the information contained in each data set required a substantial amount of understanding of the facts of the cases. Therefore, a

great deal of the data collected consisted of the following: background information about court cases, school policy documents, and the language contained within each selected state statute.

The information outlined in the following sections constitutes an overview of the data that were collected and analyzed. Within the next few pages, a summary of the findings is presented, while specifically answering each question. Additionally, tables, figures, charts, and illustrations are used to support the conclusions drawn from the data. Subsequently, an analysis of the findings is reported. Further, this chapter also elaborates on the mechanism used in order to answer the research questions. The following chapters (e.g., Chapters 5 and 6) analyze those findings in-depth, discuss possible solutions to addressing the problem, outline the salient policy implications, and offer recommendations for educational practitioners and for future researchers.

### **Background Information**

A previous, but distinguishable, research on bullying indicated that from 1999 to 2010, there has been a growth in legislative activities about traditional bullying issues (Stuart-Cassel, Bell, & Springer, 2011). Traditional and cyber bullying often fall within the same legal realm. Coincidentally, the cases retrieved in this study were litigated during a similar period. But this study only contains cyber-bullying cases, which were litigated between 1998 and 2011. Before the review process began, each case was assigned a numerical number from 1 to 24 (see Chart 4.1). The cases were further sorted by year. Because, in most cases, more than one document had been retrieved—some cases were argued in several courts—only the years of the initial and final court decisions were mentioned in the list of cases (see Appendix D). Hard copies from previous court proceedings for the cases that had previous histories were obtained separately for further review. Subsequently, the different court cases were sorted out into several identifiable groups.

**Chart 4.1: Cyber-related Court Cases Between 1998-2011**

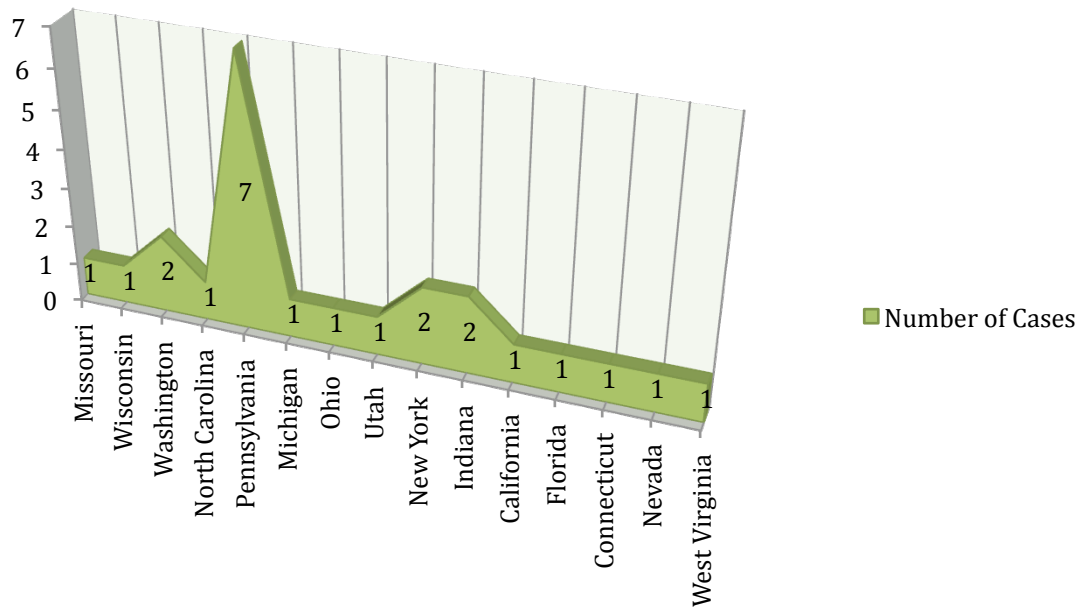
Sources: Data From The Court Cases Retrieved

**This Chart:** Shows the number of cases litigated on an annual basis. In most cases, there had been at least, one case of cyber-related litigation, per year, during a thirteen-year period. Also in this chart 2012 is included because the final decision, on appeal, for one of the cases mentioned in this list was entered in that year. But for the most part, 2001, 2002, 2007, 2010, and 2011 were the most prolific years. Each registered a minimum of three court cases related to online issues.

#### *Cases by Geographic Region*

The incidents described in the court cases transpired in many states across the country (see Appendix B). The geographic regions in which those cases had been litigated were scattered from the East to the West Coasts. In all, 15 states were included in this study. As noted earlier, because several states had more than a single incident that occurred under their jurisdiction, in many instances, at least two court cases had been retrieved for those states as well. For example, Chart 4.2 illustrates that in the state of Pennsylvania alone, seven different court cases were retrieved for the thirteen-year period (i.e., 1998-2011). However, at least two separate cases were retrieved for the following states: New York, Indiana, and Washington.



**Chart 4.2: Cyber-related Court Cases By Region**

Sources: Data From The Court Cases Retrieved

**This Chart:** Shows that most states included in this study had more than one incident that wended up in courts. But the state of Pennsylvania, however, had at least seven court cases litigated. Similarly, states like New York, Washington, and Indiana had two incidents related to online issues, each, during the 1998-2011 period.

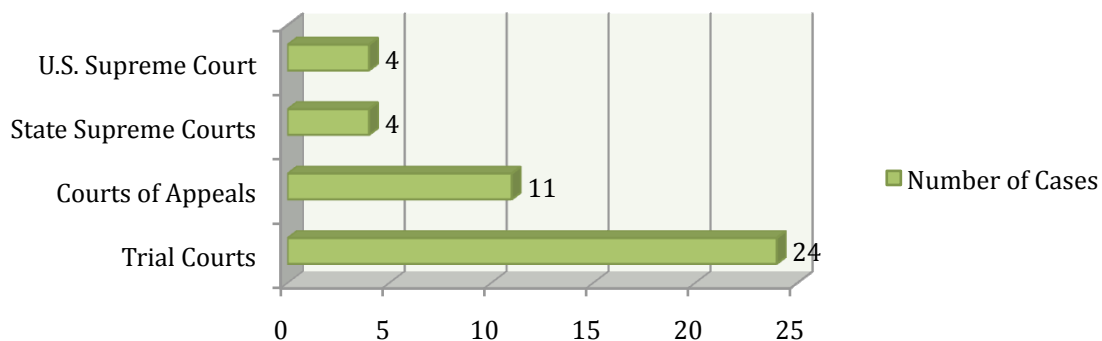
### *Summary of the Cases*

A preliminary review of the background information revealed several important elements within each case. During the preliminary review process, seven crucial elements were identified within the court documents. For example, each case document contained information about: the plaintiff(s) or appellant(s), defendant(s) or appellee(s), the location of the incident, the types of disciplinary actions taken by school administrators, the types of legal remedy sought by the parties involved, the legal claim(s) argued on both sides, and the prevailing party or prevailing parties in each case (see Appendix C). As the process continued, these elements were further afforded a greater attention.

### *Litigation Location and Court Level*

In the United States Judicial system, the initial attempt to find resolution in a dispute often begin at the lower courts level. Not surprisingly, a great majority of the cases retrieved was litigated at the trial court level. Most cases were litigated in U.S. District Courts. But some cases were also litigated in other courts, including County Superior Courts, Court of Common Pleas, and Juvenile Courts; but it is worth pointing out that these courts are technically considered part of lower courts or trial courts. As Chart 4.3 illustrates, at least half of all the cases included in this study were also heard at the appellate courts level, mostly in State Superior Courts. It is worth noting that a handful of cases requested certiorari from the United States Supreme Court. However, these requests were unsuccessful.

**Chart 4.3: Cyber-related Litigation By Court Levels**



Sources: Data From The Court Cases Retrieved

**This Chart:** Shows that all the cases litigated were heard at the trial courts level. But only half of that number was heard at the appellate level. Similarly, a much lower number was heard at the Supreme Court level. Alternatively, a handful of cases attempted to obtain certiorari at the U.S. Supreme Court level, but they failed.

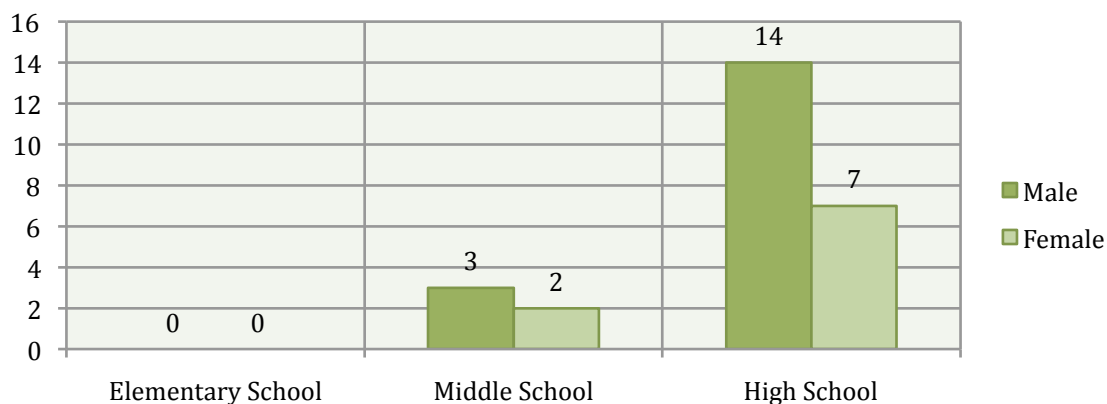
Approximately 46 percent of the cases were argued at the court of appeals level. For instance, many cases were litigated in United States Court of Appeals, including the Seventh, Second, Third, and Fourth Circuits. In addition, other cases were argued in State Courts of Appeals, including Commonwealth Courts. Surprisingly, only 4 cases (approximately 13

percent) of the cases were argued at the State Supreme Courts level. As signaled in the previous paragraph, none of the cases was granted “certiorari” at the United States Supreme Court. Sadly, some cases had been denied certiorari as recently as January 2012 (see Appendix D).

#### *Incidents by Gender and School Grade*

Chart 4.4 illustrates that when it comes to the demographic of the students involved in cyber-bullying issues, gender and school grade level played an important role (see Appendix E, and Tables 4.1 and 4.2). As opposed to female students, in a great majority of the cases retrieved, male students were more likely to be implicated in online incidents. Approximately 67 percent of male students, as opposed to 38 percent of female students were implicated in online incidents. Similarly, when it comes to school grade level, the majority of the cases reviewed indicated that, as opposed to students in elementary or middle schools (approximately 20 percent), high school students (approximately 80 percent) were more likely to be involved in online-related incidents. It is worth signaling that elementary students had not been mentioned in the court cases.

**Chart 4.4: Cases Litigated By Gender and School Grade**



Sources: Data From The Court Cases Retrieved

**This Chart:** Shows the number of court cases litigated by gender and school grade. As illustrated, female students are more likely to engage in online issues. Similarly, high school students are many times more likely to be involved in online issues as opposed to middle school students. Also, no elementary students were involved in the cases retrieved.

It is also worth noting that contrary to the different findings outlined in the literature review, most of the incidents included in this study did not confirm that girls were more likely to engage in online incidents. This current data show that in the many cases litigated, boys were more likely to engage in online activities. Although that does not necessarily mean that boys are more likely to bully others, it does show that when it comes to online misconduct punished by school administrators, boys are more likely to be punished than girls. For example, Table 4.1 shows nearly twice as many boys were mentioned in the court cases than girls. This current data did confirm, however, that most online incidents occurred at the high school level (see Table 4.2)

**TABLE 4.1**—Incidents by Gender

Gender	Number of People
Male	16
Female	9
<b>Total Number</b>	<b>25</b>

- Note: In one particular situation or court case (*T.V. v. Smith-Green School Corporation*) two female students were involved. For that reason, the total number of female students included in this study exceeds the total number of cases mentioned in this study.

**TABLE 4.2**—Incidents by Grade School Level

School Level	Grade Level	Total Number of Incidents
Elementary School	None	None
Middle School	Eight grade and other	5
High School	Tenth Grade, Senior, and Other	19
<b>Total</b>		<b>24</b>

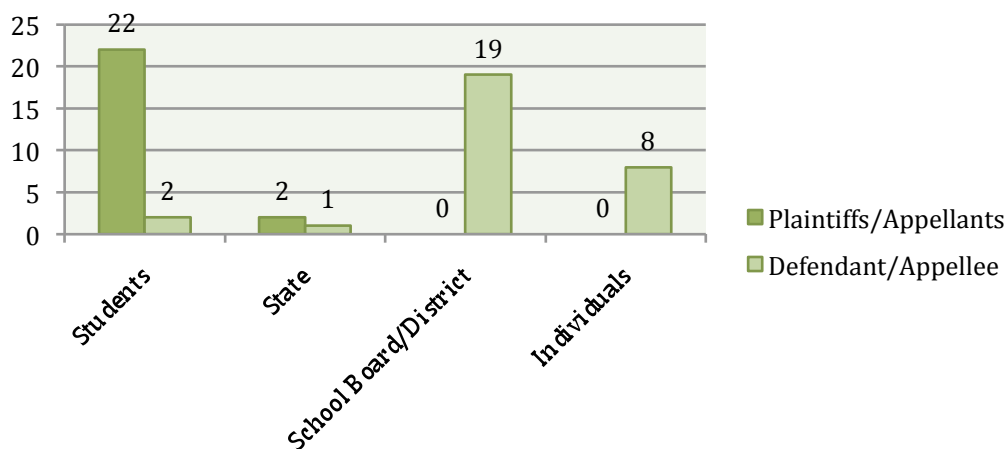
### *The Litigants*

The terms “defendant(s)” and “plaintiff(s),” in some cases, “appellant” and “appellee,” were used to designate the parties involved in court proceedings. The parties were generally students and school districts; except, in a few cases, where the state or state agents were represented as one of the parties in the dispute. In some cases, neither the school districts nor the states where the incident occurred were named directly in the disputes or the lawsuits. In some

cases, the school board was named as a party (see Chart 4.5). In other instances, while some school districts were named directly, individuals, oftentimes, school staff or school administrators, were also named as the defendants in the case.

During the initial trial, the parties were not always consistent. In many cases, the defendants were either students or school districts. Conversely, the plaintiffs were almost certain to be students. In appellate cases, either the school districts or the students could be the appellant or the appellee (see Appendix C). Consequently, the demographic of the parties varied considerably, particularly when it comes to the defending parties or the defendants.

**Chart 4.5: The Parties in The Cases Litigated Between 1998-2011**



Sources: Data From The Court Cases Retrieved

**This Chart:** Shows that students were more likely to be the plaintiffs of the appellants during court proceedings. Alternatively, school districts, school boards, or individuals were more likely to be on the defendant side. While students and school districts usually represent one side or another during court proceedings, in some cases, they switched sides.

Chart 4.5 shows that most of the parties involved in lawsuits pertaining to online incidents are students, school districts, the state, and individual school administrators. The plaintiff(s), as the student(s), represented 87.5 percent of the cases. However, the plaintiff(s), as the school districts, represented 0 (zero) percent of the cases, while the states represented 12.5

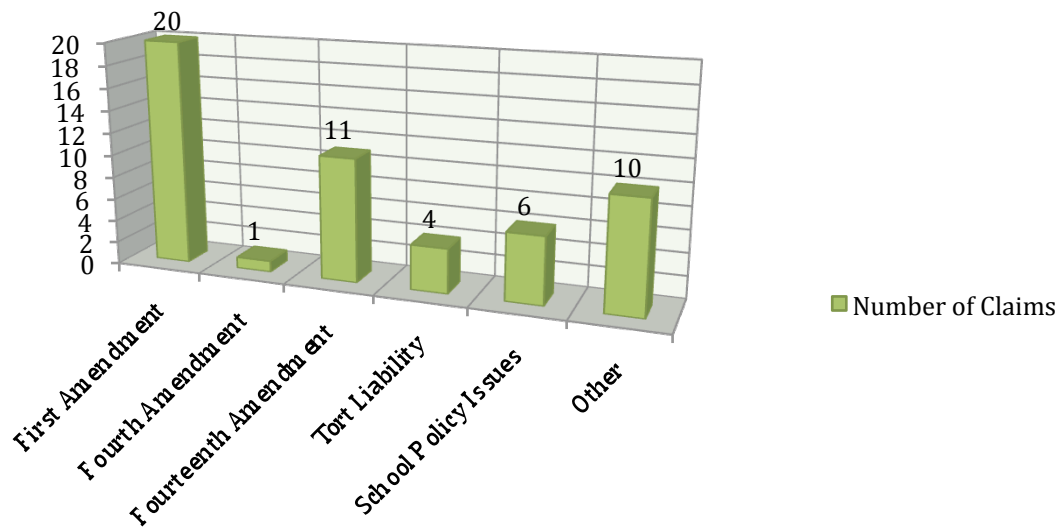
percent of all the cases. Similarly, as the plaintiff(s), individuals named in the litigation constituted “0” (zero) percent of the cases. Conversely, the defendant(s), as the student(s), represented 12.5 percent of the cases, while the school districts represented 79.1 percent of the cases and the states constituted 0 (zero) percent. Surprisingly, 44 individuals were also named directly as the defendants. In approximately 8 percent of the cases litigated, school administrators, as individuals, were named directly as the defendants (see Table 4.3).

**TABLE 4.3**—The Litigants

Parties	Student(s)	School District(s)	Proxy Agent (e.g. The State)	Individual(s)
Plaintiff(s)	21	0	3	0
Defendant(s)	3	19	0	44
Total	24	19	3	44

#### *Litigation and Legal Claims*

In several cases, the plaintiff(s) tended to claim a broad array of constitutional violations. For instance, “First Amendment” (Freedom of Speech), “Fourth Amendment” (Search and Seizure), and “Fourteenth Amendment” (Substantive and Procedural Due Process and Equal Protection) were frequently mentioned in court proceedings. Further, both defendant(s) and plaintiff(s) also advanced other types of legal claims. The school districts often claimed “Qualified Immunity” and students often claimed “Tort Liability.” Moreover, school districts’ policy issues were regularly mentioned. Many students claimed that school policies were “Vague” and “Unconstitutional.” Other types of claims also included: “Insufficient Evidence,” “Statutes Violations,” “Criminal Libel,” “Defamation,” “Wiretapping and Electronic Surveillance,” “Invasion of Privacy,” “Constitutional Torts,” and “Harassment” (see Chart 4.6 and Appendix F).

**Chart 4.6: Legal Claims Argued By The Parties**

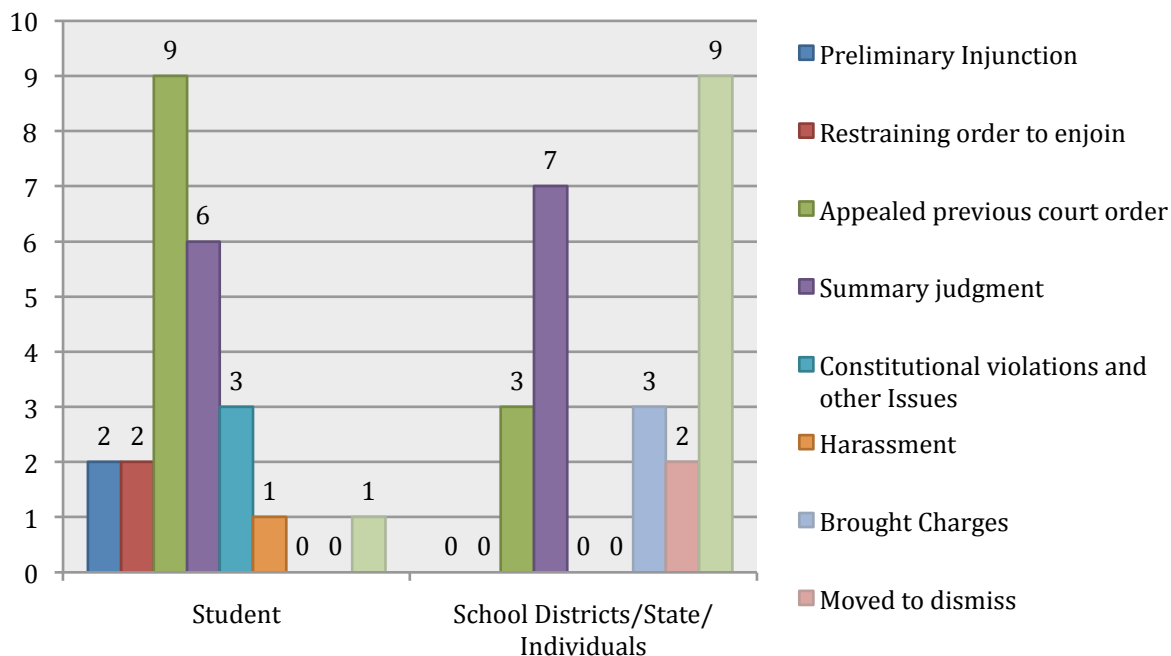
Sources: Data From The Court Cases Retrieved

**This Chart:** Shows that First Amendment appeared in the majority of the court cases included in this study. Similarly, the Fourteenth Amendment was also mentioned in various cases. Other legal claims were regularly mentioned as well.

### *Legal Claims, Legal Remedy and Court Decisions*

Chart 4.7 illustrates that depending on the issue or the nature of the legal dispute, defendant(s) and plaintiff(s) often sought legal remedies that were very dissimilar, particularly at the trial courts level. Within the different legal remedies sought by both parties, the term “summary judgments<sup>19</sup>” appeared constantly. Nevertheless, school districts tended to use this term more often in trial courts than the defendants did. School districts also tended to use this term when previous courts entered a decision in their favor. Similarly, the students tended to use this term at the appellate court level, particularly if previous courts (e.g., the lower courts) decided in their favor (see Appendix G).

<sup>19</sup> Summary Judgment is defined as a final decision by a judge, upon a party’s motion, that resolves a lawsuit before there is a trial (Hill & Hill, 2009).

**Chart 4.7: Legal Remedy Sought By The Parties**

Sources: Data From The Court Cases Retrieved

**This Chart:** Shows that while on the student side there were many appeals from previous court order, on the school district side, in a number of cases, no legal remedy was sought. On both sides, summary judgment was sought, as a legal remedy, a number of times.

In approximately 25 percent to 29 percent of the cases, which include both students and school districts, sought a legal remedy that entailed a summary judgment (see Table 4.4). Students, however, were also more likely to seek legal remedies, which would vacate a decision from a previous court. For example, 37.5 percent of the legal remedies sought by students were concerned with the appealing previous courts' rulings. Conversely, only 12.5 percent of the legal remedies sought by school districts involved appealing previous courts' rulings.

The term "motion or move to dismiss"<sup>20</sup> was mostly used by school districts within similar contexts. Students never filed such motions. In two separate instances, the school districts

<sup>20</sup> A Motion to dismiss is a motion asking the judge to throw out one or more claims or an entire lawsuit (Hill & Hill, 2009).



sought to either remove the case from the federal court or carried a motion to dismiss the case. Since school districts were often the defendant party, particularly at the trial court level, they seldom sought specific legal remedies at that level. For example, in 37.5 percent of the cases at the trial court level, the school districts sought no legal remedy. Conversely, in one occasion, the student, as the defendant party, sought no legal remedy as well.

Both parties often sought other types of legal remedies, including “constitutional violation,” “harassment,” “preliminary injunction,” and “restraining order to enjoin” previous courts’ rulings. Similarly, in three separate cases, the school districts and the state brought “criminal charges” against the students involved (see Table 4.4 and Appendix G).

**TABLE 4.4—Legal Remedy Sought**

<b>Legal Remedy Sought</b>	<b>Students</b>	<b>School Districts/State/Individuals</b>
Preliminary injunction	2	0
Restraining order to enjoin	2	0
Appealed previous court order	9	3
Summary judgment	6	7
Constitutional violations and other Issues	3	0
Harassment	1	0
Brought Charges	0	3
Moved to dismiss	0	2
None	1	9
<b>Total Sought</b>	<b>24</b>	<b>24</b>

\*Note: “None” means that at least one of the parties sought no legal remedy.

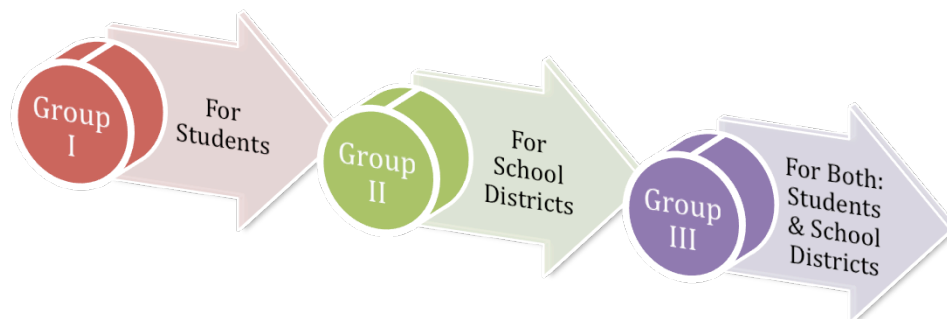
### **Categorizing the Cases**

After the preliminary reviews and analysis, three holding types were identified: holdings for students, holdings for school districts, and holdings for both students and school districts (see Figure 4.1). Subsequently, the cases were categorized in three groups. The first group contained cases in which the students prevailed; the second group contained cases in which the school

districts prevailed; and the third group contained a mixture of cases in which both the students and the school districts prevailed.

**Figure 4.1—The Three Holding Groups**

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Sources: Researcher/Author conceptualization of the holdings

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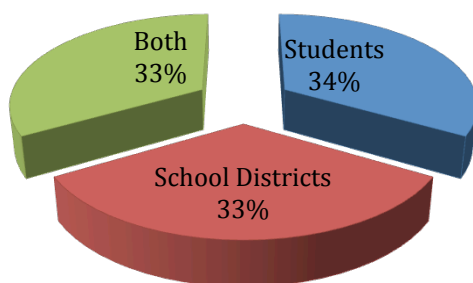
**This Figure:** Shows that there were three categories of holdings in the cases retrieved. These holdings were separated in three groups: holding for students, holdings for the school districts, and holdings for both.

Generally, based on the merits or the “*likelihood of success*” of the legal claim or the legal remedy sought by the parties, the courts might find in favor of either party or both parties. To illustrate, in some cases, a court might find that one party could be held responsible for its actions or the lack thereof. Similarly, a court might argue that the other party also failed to act in a particular way, therefore, could be held responsible as well. For example, in tort liability and qualified immunity issues, the court often debated whether to grant immunity status to a school district or a school administrator. While the court might decide in favor of the student(s), it might also grant immunity to the school district, which often meant that both parties prevailed. In order to answer the fourth question, this situation was explored in further detail.

### *Prevailing Parties*

A review of the cases indicated that the number of holdings in favor of the different parties identified earlier was very similar across the board (see Table 4.5). For example, as illustrated in Chart 4.8, the courts found in favor of school districts 33 percent of the time; and in favor of the students, at least 34 percent of the time. Similarly, the courts also found in favor of both parties 33 percent of the time. These findings are not surprising, for they added credence to this much-debated notion that there are great legal uncertainties in cyber-related litigation outcome. But it could be argued that in many cases where both students and school districts prevailed, the students' win was more important since, in most instances, school districts' motion had been granted on the basis of their claim for qualified immunity, which the courts conceded.

**Chart 4.8: Court Decisions/Holdings**



Sources: Data From The Court Cases Retrieved

**This Chart:** Shows the percentage of the three groups of holdings identified from the different court cases retrieved. In these decisions, an equal amount had been handed down in favor of both students and school districts. Similarly, an equal amount of decisions were handed down to both students and school districts simultaneously.

**TABLE 4.5—Prevailing Parties**

Prevailing Party	Holdings In Favor
School Districts	8
Students	8
Both Students and School Districts	8
<b>Total</b>	<b>24</b>

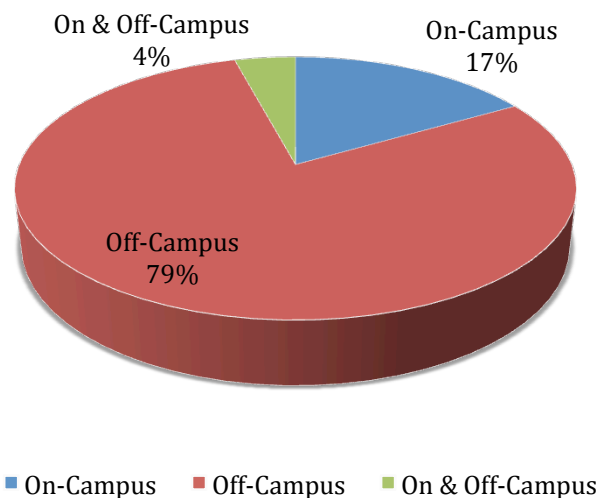
### *Location of the Incidents*

As Chart 4.9 illustrates, a great majority of the online incidents litigated during the aforesaid period occurred off campus. But some incidents occurred on school grounds as well, including incidents that occurred on both locations (i.e., on and off campus within the same time, involving the same persons). For example, 4 incidents (approximately 17 percent) occurred on school grounds. Conversely, 19 incidents (approximately 79 percent) occurred off school grounds. Nevertheless, at least one incident occurred both on and off campus (see Table 4.6).

**TABLE 4.6**—Location of the Incidents

Location of Incidents	Total Number of Occurrences
On Campus	4
Off Campus	19
Both On and Off Campus	1
<b>Total</b>	<b>24</b>

**Chart 4.9: Incidents By Location**



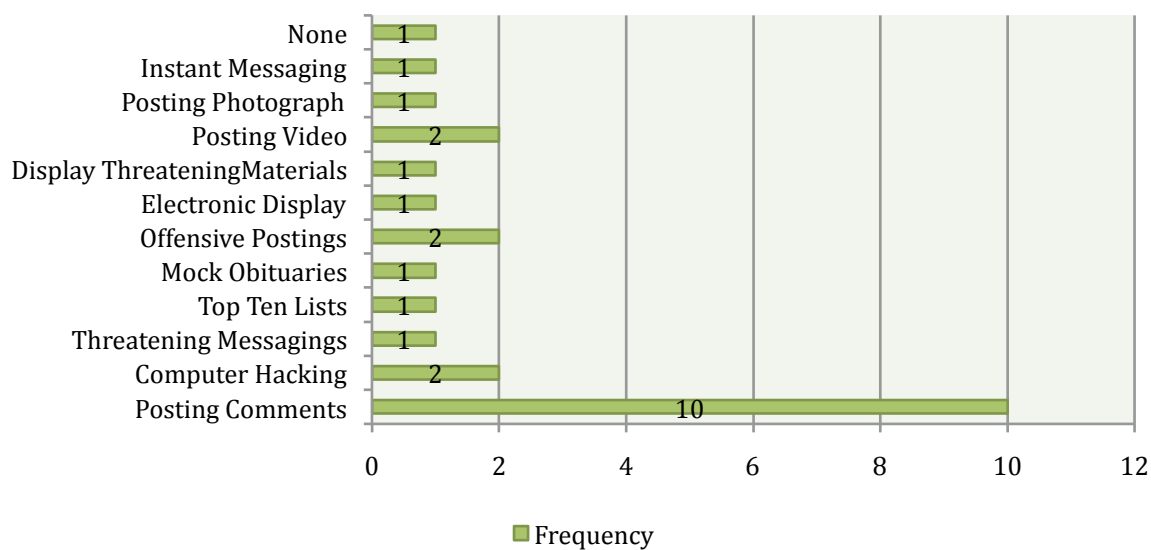
Sources: Data From The Court Cases Retrieved

**This Chart:** Shows the number of incidents by location. A majority of the incidents occurred off-campus. Only a fraction of the incidents occurred on both on- and off-campus. In this case, the student had posted comments from both his home computer and the school computer.

### *Types of Incidents and Number of Occurrences*

Several types of incidents were identified from the court cases. As noted earlier, locating cyber-bullying cases was extremely difficult. Even so, in all the cases retrieved, the incidents, which led to litigation, were concerned with online activities that specifically targeted other students or school staff. In all, 12 types of incidents were identified. In one instance, no incident occurred or perhaps the incident was omitted from the background of the case (see Table 4.7).

**Chart 4.10: Student Online Activities**



Sources: Data From The School Policy Documents Retrieved

**This Chart:** Shows the different online activities of students, particularly the ones involved in the court cases retrieved. A great majority of online activities of students entail posting comments on websites. They also engaged in other activities, including posting videos on youtube, posting offensive comments on websites, and computer hacking.

Chart 4.10 illustrates that among the types of incidents identified within the court cases retrieved, ten incidents (approximately 41.6 percent) were related to students posting comments on personal websites or social media, including Internet forums, chat rooms, Myspace, and Facebook, just to name a few. Other incidents such as “computer hacking,” “posting offensive materials” on websites and “posting videos” on websites constituted 8.3 percent of all the cases.

Incidents such as students leaving “threatening messages” on school computers, students creating “hit lists,” students “making fun of other students” by “creating mock obituaries,” students “displaying cellular phone” on school grounds, students “displaying threatening materials” on websites, students “posting photographs” of themselves or other students on websites, or students “sending instant messages” to other students constituted less than 5 percent of all the cases. In one instance, the issue that led to legal dispute did not involve any online activity *per se*, at least, on the part of the student plaintiff. In that particular case, the student claimed that the school failed to protect her against sexual harassment from the other students (see Table 4.7).

**TABLE 4.7**—Types of Incidents

<b>Types of Incidents</b>	<b>Total Number of Occurrences</b>
Student Created and/or Posted Comments on Website	10
Student Hacked and/or Helped Hack into School Computer	2
Student Left Threatening Message on School Computer	1
Student Created Top Ten List	1
Student Posted Mock Obituaries of other Students	1
Student Posted Offensive Materials on Website	2
Student Displayed Cell Phone on School Grounds	1
Student Displayed Threatening Materials on Website	1
Student Posted Video on Website	2
Student Posted Photograph on Website	1
Student Sent Messages to another Student	1
No Online Activity-Type Incidents	1
<b>Total Incident: 12</b>	<b>Total Number: 24</b>

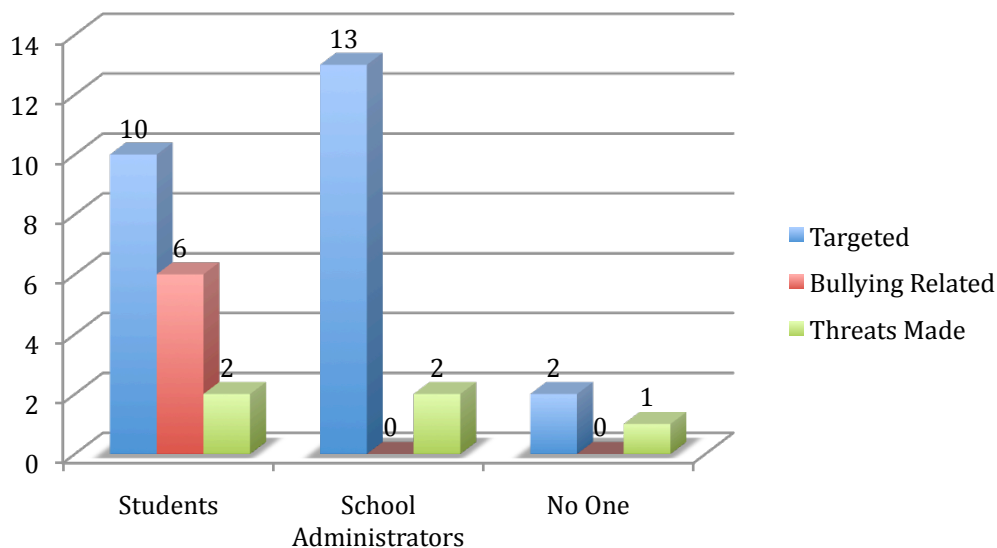
### *Effects of Incidents*

Students were implicated in the majority of—if not all—the incidents mentioned in court cases retrieved in this study. The effects of those incidents onto the school districts varied in many respects. For instance, several incidents targeted both students and school staff. In many cases, there were no bullying activities and/or threats involved. Only ten incidents (approximately 41.6 percent) suggested that the perpetrator(s) targeted other student(s). From those ten incidents, six of them involved bullying activities and only two of them involved some

form of a threat. Conversely, school administrators were targeted in 13 incidents (approximately 54.1 percent). From those thirteen incidents, zero (the number “0”) incidents were concerned with bullying activities; likewise, only two incidents were concerned with some form of threat.

In two distinct cases, students and school personnel were not targeted; however, no bullying activities were reported (*North Carolina v. Mortimer* and *Klump v. Nazareth Area Sch. Dist.*). On the other hand, in one of the cases, the student left a message on a school computer, which was interpreted as a “threat.” Similarly, in two other cases, school personnel were not targeted; no bullying activities were reported, and no threats were perpetrated (e.g., *Mahaffey v. Waterford Sch. Dist.* and *T.V. v. Smith-Green School Corporation*). Nevertheless, in both instances, other students were targeted (see Chart 4.11).

**Chart 4.11: The Targets of Cyber-related Incidents**



Sources: Data From The Court Cases Retrieved

**This Chart:** Shows that in many cases, students are target in cyber-related incidents. However, school administrators are more likely to be the targets of online incidents. As shown here, when school administrators are targeted, bullying is rarely mentioned in the incidents.

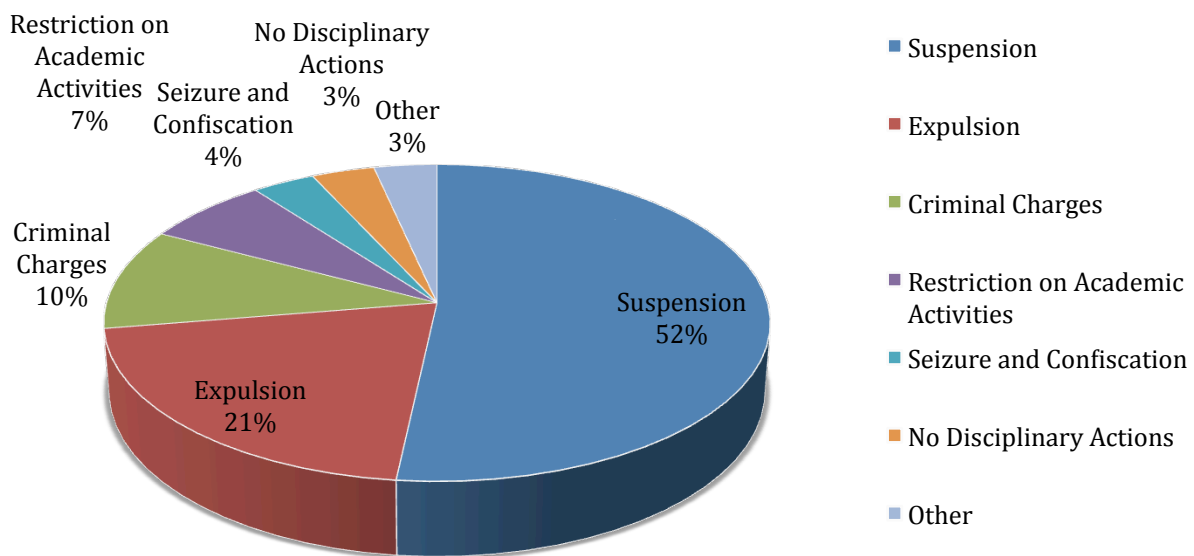
As illustrated in Chart 4.11, in many cases, school personnel were clearly the targets. Still, there were no bullying activities or, in most cases, a relatively minimal inference of threat was reported. For example, from the thirteen cases in which school administrators or school personnel were targeted, there were no bullying activities, no threats, and other students were not targeted. In these incidents, the students involved posted unflattering or offensive comments about school personnel or school administrators, which prompted harsh disciplinary actions from the school. It is worth noting that in most of the cases where students had bullied other students online, no threats whatsoever had been reported. For example, from the ten cases, where other students had been targeted, in eight cases, no forms of threats were mentioned (see Appendix H).

#### *Types of Disciplinary Actions*

This study revealed several types of disciplinary actions, which were regularly taken against the students involved in online incidents. In many instances, ordinary disciplinary actions, which included suspensions or expulsions, were often taken against the students. For example, Chart 4.12 illustrate that, in many cases, the students believed to have committed online misconduct were suspended (approximately 52 percent). In other instances, the suspected perpetrators were arbitrarily expelled (approximately 21 percent).

Moreover, in other situations, other types of disciplinary actions were also taken against students. For instance, in a few cases, criminal charges were brought against the students (approximately 10 percent); students were restricted from taking part in extracurricular activities (approximately 7 percent); students' items were confiscated (approximately 4 percent); at least in one occasion, no disciplinary actions were taken (approximately 3 percent); and other types of disciplinary actions were also taken against the students (approximately 3 percent) as well.



**Chart 4.12: Types of Disciplinary Actions**

Sources: Data From The Court Cases Retrieved

**This Chart:** Shows the types of disciplinary actions taken by school administrators against the students involved in cyber-related incidents. In a majority of the incidents, the students were suspended. Similarly, a number of students were also expelled. In some occasions, however, some students received no punishment.

It must be noted that, in some cases, no information was available about the types of disciplinary sanctions assessed to students. As noted in the previous paragraph, students were restricted from taking part in school-related activities. In some cases, students' electronic devices, including cell phones, were confiscated. As outlined in Table 4.8, in one occasion (*Tyrrell v. Seaford Union Free Sch. Dist.*), either no disciplinary action was taken against the student involved in that incident or this information was omitted from the summary of the case.

**TABLE 4.8—Disciplinary Actions**

<b>Disciplinary Actions</b>	<b>Number of Times</b>
Suspension	15
Expulsion	6
Criminal Charges	3
Restriction on Student Activities	2
Seizure and Confiscation	1
No Disciplinary Actions	1
Other	1
<b>Total</b>	<b>29</b>

Note: In one case, the type of disciplinary action taken against the student involved was not clear. The case background did not offer specific details about the punishment. In another case, no disciplinary actions were taken against the student involved. In this case, the state prosecuted the student and criminal charges were brought. Additionally, some students were also assessed more than one punishment.

### **Answering the Research Questions**

As noted in previous chapters, the study focused on four specific research questions. However, answering the questions required a linear approach or pattern. For that reason, these questions were answered in a chronological order. In other words, the answer from the first question greatly informed the second question, which, in turn, informed the third question. The third question, in turn, was also important in help answering the fourth question.

These questions are as follows: (1) did the school districts mentioned in court opinions between 1998 and 2011 have specific policies on cyber-bullying; (2) to what extent the school administrators mentioned in the court opinions followed the disciplinary recommendations in their school policy documents for online infractions; (3) to what extent specific elements of legal precedents were reflected in school policy documents on cyber-bullying; and (4) in what way legal precedents can explain the legal uncertainty about school interventions in cyber-bullying issues in K-12 public schools. These questions are answered in the following pages. The analysis of the findings is explored in depth in the next chapter.

## **QUESTION 1**

### **Did the school districts mentioned in court opinions between 1998 and 2011 have specific policies on cyber-bullying?**

In order to determine whether the school districts mentioned in court cases had specific policies on cyber-bullying, school policies were retrieved from several school districts' websites. The study is comprised of policies in (23) twenty-three<sup>21</sup> schools. Although 24 court cases had been retrieved, because one school district (The Kent School District) was mentioned in two separate cases, only one school policy document was used for the two incidents. While the gap between the two incidents is seven years apart, the dates provided in the policy documents retrieved from that particular school district suggested that even during the second incident, the district still did not have a clear policy in effect. Therefore, it was conveniently assumed that the school district did not have any policy in effect at the time of the first incident (see Table 4.11).

#### *Size of the School Districts*

It is worth noting that attempts were made to locate pertinent information about the school districts. For instance, there were several attempts to obtain information pertaining to: the number of students in each school district; the size of the district; the gender and ethnicity of the student body; and other data about the students. However those attempts were not successful in part because such information was not readily available on the websites of many schools districts; and secondly, because of privacy issues, the school districts were unwilling to release

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<sup>21</sup> Twenty-three schools were included instead of twenty-four because two cases were from one school district, although with different dates and different incidents. Kent School District was involved in two distinct disputes, which led to litigation (2000 and 2007).

such information. But the location of the majority of the school districts mentioned in this study suggests that they are mostly located in urban areas. While some districts contained more than twenty thousand students, others contained less than two thousands. Similarly, we can also infer that in many of the school districts included, most students and school personnel were Caucasian.

### *Locating School Policies*

School districts' websites were located, using *Google Search* engine. The name or other identifies of the schools, which were mentioned in the cases, were entered into the search engine and upon locating the appropriate school district, the URL, which is the abbreviation for *Uniform Resource Locator*, was copied and pasted into a list (see Appendix I). All the school districts were accessible online. In spite of this, information pertaining to their policies required a little more research. In some instances, a phone call or an email message to the appropriate school authority or school personnel was necessary in order to locate the appropriate policy documents.

The identified websites were thoroughly examined in order to locate the right school policy, i.e., policy relevant to cyber-bullying. While most school districts had a broad range of policy documents on their sites, generally, the vast majority of school districts listed their policy manuals addressing "student-related" issues under two links: *students* and *pupils*. In many instances, an extensive reading of the materials available on the site was necessary before establishing the relevancy of the documents therein.

### *School Districts' Websites*

While most schools' websites were easy to navigate, others were extremely complicated. Some school districts had their policy listed on their first webpage, i.e., on the front page of the

site, which is also known as the homepage of the site. However, others had their policy link under the navigation bar or menu bar, which also contained several other links and sub-menus.

For many school districts, locating their policy was as easy as clicking the links titled “school policies,” “policy manual,” or “board policies.” For other schools, in order to access their policies, an external link was provided. In most cases, a password and a user name was necessary. For example, in the case of the Beverly Hills Unified School District, such a situation occurred. In order to access this school’s policy, the district provided the link for a third party website, for which the school district also issued a (common) username and password to the public.

For other school districts, locating their policy was very difficult. Two school districts in the list—Blue Mountain School District and Hermitage School District—had only a portion of their policy available on their websites. In the case of Blue Mountain, several documents, which mentioned the districts’ rules on cyber-bullying issues, were immediately available on their website. The cyber-bullying policy portion of the Hermitage School District was not immediately available on their website.

After contacting the school district, it was conveniently decided to exclude this particular policy from the study. The district required the submission of a formal request known as the “*Right to Know Request*,” for which a fee would also be assessed. It was anticipated that this process would be lengthy, for the district could not guarantee a reasonable timeframe to locate or to mail (via the post service) the appropriate documents. Nevertheless, some information pertaining to online misconduct was also available under “Acceptable Use Policy.” That information was retrieved instead of the actual policy document.

*School Districts Policies and Third Party Contractors*

Several school districts contracted the services of third parties to design and store their policies and/or other documents. For many school districts included in this study, documents such as: board bylaws, policies, administrative guidelines and procedures, forms, including student, staff, and parent handbooks had been contracted out to third party entities.

Five school districts in this study, across four states (Wisconsin, Michigan, Ohio, and Indiana), used the services of a company named “Neola,” which describes itself as a “document management” for school districts. This company can be accessed through the Internet at: [www.neola.com](http://www.neola.com). The language used in those policies appeared very similar to one another in many aspects, including on problems pertaining to harassment, stalking, and bullying, despite the fact that many of the statutes in those states had subtle differences.

Other school districts also contracted the services of third party entities as well. But, those entities were mostly state or local associations. For instance, the Bethlehem Area School District and the Central York School District contracted the services of the Pennsylvania School Board Association, which is also known as PSBA. Similarly, Berkeley County Schools (South Carolina) and Beverly Hills Unified School District (California) contracted the services of their respective local school board associations (Microscribe online for the South Carolina School Board Association or SCSBA, and Gamut online for the California School Board Association or CSBA). As opposed to the five school districts mentioned earlier, there appeared to exist some notable differences in the language in the policy documents of those school districts.

### *Types of School Policies*

The first objective of the study was to locate policies that directly addressed cyber-bullying cases in K-12 public schools. As the search progressed, it became apparent that it was extremely difficult to locate such policies. While many school districts had policies that, one way or another, addressed on- or off-campus speech situations, including online speech or electronic communications, not many school districts had policies that were labeled “cyber-bullying.” Many schools had policies that covered a broad range of situations or conduct. For instance, within the context of online misconduct, some schools had policies that addressed: “harassment,” “stalking,” “hazing,” and “bullying.” Many schools had policies that also contained language that did not mention the above terms, but only mentioned the term “online communications.” For example, many schools had policies titled: “bullying policy,” “anti-bullying policy,” “harassment or bullying policy,” and “bullying/cyberbullying policy.” Within the language of those policies, the word “online communication” was mentioned without further details or elaboration.

Similar to the obstacles encountered while locating cyber-bullying court cases, the description of certain terms and words had to be modified in order to determine whether a school policy could be considered a cyber-bullying policy. Many school policies did not clearly delineate between “traditional bullying” and “cyber-bullying.” In most instances, the term “electronic” was the sole indicator that a particular policy applied to online situations. For instance, while most schools had a policy that addressed traditional bullying, only a fraction of those schools had policies that clearly delineated between cyber and traditional bullying misconduct. Put another way, many school policies did not separately address or specifically delineate, at least specifically, one type of bullying conduct or the other. Similarly, most school

districts did not have policies that clearly differentiated between traditional bullying, harassment and hazing, stalking, and cyber-bullying activities.

Conversely, while some school districts had policies that addressed online communication issues, they did not necessarily have a clear policy on traditional bullying, harassment, and stalking, to name a few. Moreover, some schools districts did not have clear policies that addressed either types of bullying directly. For instance, many schools districts had policies that only addressed harassment, stalking, and hazing, by extension, the term “include electronic” was also used in the language of the policy. The policies encountered throughout this inquiry were very broad in terms of their language, especially when it comes to online issues.

#### *Availability of School Policies*

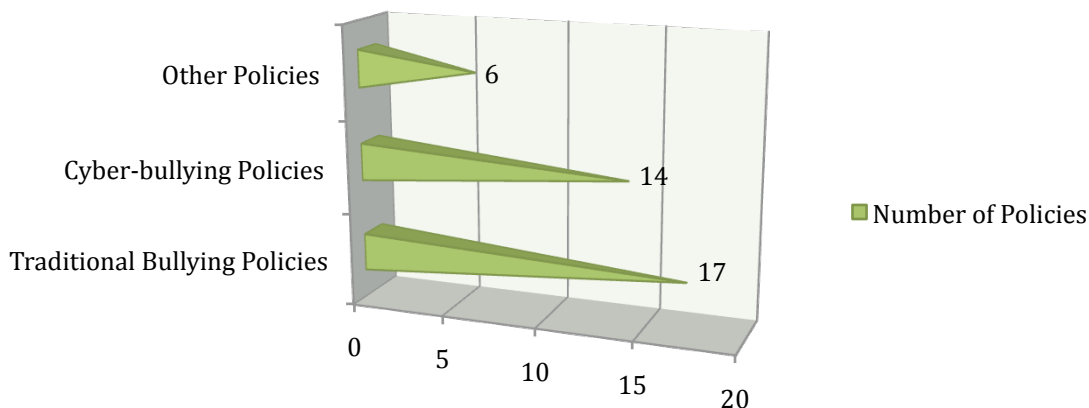
All the policies accessed online were also available for downloading. Both electronic and hard copy versions of the policy documents were obtained. Using different markers and highlighters, each policy document was visually scanned in order to locate the words or phrases: “bullying,” “cyber-bullying,” “cyber-stalking,” and “cyber-harassment.” This visual analysis allowed the determination of policies that specifically addressed traditional bullying, cyber-bullying, and other issues. For instance, policies that had a section titled “bullying” were immediately separated from the ones that did not.

Using online software called “Online Text Analysis Tool” and “Writewords,” “Word and Phrase Frequency Counter,” a word frequency analysis was conducted on each policy for the presence of the words: “cyber,” “bullying,” “stalking,” and “harassment.” A phrase frequency analysis, a combination of two-word count, was also conducted on each policy for the presence



of the phrase: “cyber bullying,” cyber harassment,” “cyber stalking,” or “electronic communication.”

**Chart 4.13: Types of School Policies**



Sources: Data From The Court Cases Retrieved

**This Chart:** Shows the types of school policies currently in effect in the different school districts included in the study. A great majority of school district had policies that addressed traditional bullying issues. A much smaller number of school districts had policies that addressed cyber-bullying, but not specifically. Also some school districts had policies that addressed neither cyber-bullying nor traditional bullying issues.

Alternatively, school policies that had headings or sub-headings titled “cyber-bullying” were immediately separated from the ones that did not. As Chart 4.13 illustrates, several types of school policies were identified, including policies that mentioned traditional bullying, cyber-bullying, and cyber-harassment, among others. For the purpose of this study, school policies were separated in three groups: “traditional bullying,” “cyber-bullying,” and “other” (see Table 4.9). As mentioned in the previous chapter, the term “other” was used to designate policies that were neither traditional bullying nor cyber-bullying. Yet, those policies contained language that included “online harassment,” “electronic stalking,” and “Internet misconduct.”

**TABLE 4.9**—Types of School Policies

Name of School District	Traditional bullying		Cyber-bullying		Other
	Yes	No	Yes	No	
Woodland R-IV School District	Yes		Yes*		-
School District of Greenfield	Yes		Yes**		-
Kent School District	No		No		Yes
Hoggard High School	No		No		Yes
Franklin Regional School District	Yes		Yes*		-
Bethlehem Area School District	No		No		Yes
Waterford School District	Yes		Yes*		-
North Canton City Schools	Yes		Yes*		-
Milford High School	Yes		Yes		-
Keystone Oaks School District	Yes		No		-
Nazareth Area School District	Yes		Yes*		-
Weedsport Central School District	Yes		Yes**		-
Kent School District (Different case)	-		-		-
Central York School District	Yes		Yes*		-
Greencastle Middle School	Yes		No		-
Smith-Green Community School Corp.	Yes		No		-
Beverly Hills Unified School District	No		No		Yes
Pembroke Pines Charter High School	Yes		Yes**		-
Lewis S. Mills High School	Yes		Yes*		-
Blue Mountain School District	Yes		Yes*		-
Douglas County Schools	Yes		Yes**		-
Berkeley County Schools	Yes		Yes*		-
Hermitage School District	No		No		Yes
Seaford Union Free School District	No		No		Yes
<b>Total Schools</b>	<b>17 Yes</b>	<b>6 No</b>	<b>14 Yes</b>	<b>9 No</b>	<b>6 Yes</b>

\*Indicates “No” separate cyber-bullying policy. Word such as cyber-bullying, electronic, Internet, or cyber were mentioned in traditional bullying policy. Online activities were not clearly punishable under any policy.

\*\*Indicates “No” separate cyber-bullying policy. Online activities were punishable under traditional policies.

\*\*\*Indicates “No” separate cyber-bullying policy. Online activities were punishable under both traditional and “other” types of policies.

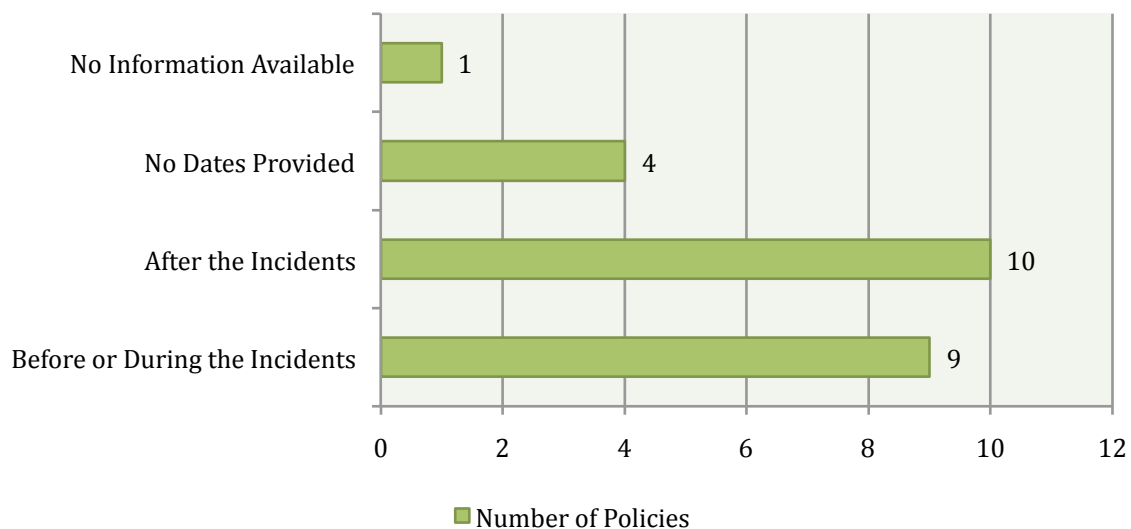
### *Policy at the Time of the Incidents*

As noted earlier, determining whether the school districts cited in court cases had policies in effect during the incidents was a difficult task. Since many school districts tended to update their policy manual regularly, and since some of the cases retrieved were litigated more than a decade ago, it was virtually impossible to determine whether a particular policy was in effect

during the time of the incidents, particularly for the cases litigated before 2002. Hence, it was unwise to be selective about the type of policy retrieved.

As demonstrated in previous chapters, because of the nature of cyber-bullying litigation, it was difficult to locate the appropriate court cases. Since locating cyber-bullying policies was incumbent upon the court cases retrieved, it was equally difficult to establish the existence of school districts' cyber-bullying policies during the time of the incidents. Even so, the dates provided in the policy documents afforded the closest opportunity for determining whether a particular policy was in effect during the actual incident. To that effect, the dates contained within the policies retrieved were closely examined in order to determine whether they were adopted before, during, or after the purported incidents, which led to the litigation (see Table 4.11).

**Chart 4.14: School Policies at the Time of the Incidents**



Sources: Data From The Court Cases Retrieved

**This Chart:** Shows that less than half of the school districts mentioned in the court cases had policies addressing cyber bullying after the incidents that led to court litigation. A much smaller number of school districts had policies in place before of during the incidents.

A review of the different school policies revealed that, for many school districts, current policies were adopted after the actual incidents. For example, Chart 4.14 shows that the dates in nine school policies, which addressed traditional bullying, cyber-bullying, and other aspects of online misconduct by students, indicated that those policies were adopted before the actual incidents (see Tables 4.10 and 4.11). But, only ten school policies, which addressed the aforementioned issues, also indicated that those policies were adopted after the actual incidents. Notably, four school districts had policies that addressed traditional bullying or cyber-bullying. Nonetheless, no information was provided about the date they were adopted or approved by the school board (see Table 4.11).

**TABLE 4.10**—School Districts Policies

<b>School Policies In Effect</b>	<b>Number of Policies</b>
Policies Before or During the Incidents	9
Policies After the Incidents	10
No Dates Provided	4
Not Available	1
<b>Total Policies</b>	<b>24</b>

It is worth noting that several school districts were contacted about the missing dates on their policy documents. No school official could offer any clear information. But one school staff warned that the presence of a specific date on the policy document does not mean that the school district did not have a different policy in effect before or during the incident in question. In many instances, dates are added onto policy documents for many reasons, including the original date they were uploaded onto the website. The assumption was that the same could be true about the other school policies retrieved. Therefore, the conclusion drawn was that the relevance of the date stipulated on the policy could be inconsequential to properly answer the research questions.

**TABLE 4.11**—Date of School Policies

Name of the School Districts Cited in Court opinions	Year of Incidents	Types of Policy in Effect During/After the Incidents	Policy Adopted	Policy Revisited	Policy Reviewed
Woodland R-IV Sch. Dist.	1998	Bullying	N/D	N/D	N/D
Sch. Dist. of Greenfield	1998	Bullying	06/04	12/04/06	08/16/10
Kent School District	2000	N/A	N/A	N/A	N/A
Hoggard High School	2001	Other	04/04/05	03/02/10	04/05/11
Franklin Regional Sch. Dist.	2001	Bullying	05/17/04	03/17/09	N/D
Bethlehem Area Sch. Dist.	2001-2002	Other	11/15/04	08/17/09	N/D
Waterford Sch. Dist.	2002	Bullying	01/05	07/12/07	N/D
North Canton City Schools	2002	Bullying	N/D	02/23/06	11/10/11
Milford High School	2002	Bullying and Cyber-bullying	N/D	2007	N/D
Keystone Oaks Sch. Dist.	2003	Bullying	11/15/07	N/D	N/D
Nazareth Area Sch. Dist.	2006	Bullying/Cyber-bullying	12/08/08	N/D	N/D
Weedspport Central Sch. Dist.	2007	Bullying	06/20/05	N/D	N/D
Kent School District	2007	Other	09/11/02	06/08/06	06/08/06
Central York Sch. Dist.	2007	Bullying/Cyber-bullying	10/18/10	N/D	N/D
Greencastle Middle Sch.	2007	Bullying	11/09/05	N/D	N/D
Smith-Green Comm. Sch. Corp.	2011	Bullying	N/D	N/D	N/D
Beverly Hills Unified Sch. Dist.	2010	Other	04/26/11	N/D	N/D
Pembroke Pines Charter High Sch.	2010	Bullying	07/22/08	06/15/10	N/D
Lewis S. Mills High School	2010-2011	Bullying	01/31/03	09/08/08	05/11/09
Blue Mountain Sch. Dist.	2010-2011	Bullying/Cyber-bullying	12/11/08	N/D	N/D
Douglas County Schools	2011	Bullying	08/07/01	05/05/09	N/D
Berkeley County Schools	2012	Bullying	12/06	12/07	N/D
Hermitage Sch. Dist.	2008-2011	Other	07/20/09	09/20/10	N/D
Seaford Union Free Sch. Dist.	2011	Other	07/03/08	N/D	N/D

Note: The term “Other” refers to policies that do not specifically address traditional bullying or cyber-bullying. However, the words bullying, cyber-bullying, harassment, intimidation, or electronically transmitted appeared in the language of the policy.

N/D Indicates “No Dates”

N/A Indicates “Not Available”

### Findings for Question #1

Table 4.9 illustrates the findings for the first question. The findings reveal that not all the school districts mentioned in court cases had specific policies addressing cyber-bullying. From the different school policies retrieved, only one school policy specifically addressed the issue of cyber-bullying (see also Chart 4.15). The incident in that case occurred in 2002 and no dates were available about the timeframe the policy had been adopted. To that effect, it was not clear whether this particular policy was in effect during the actual incident. Furthermore, 13 school

policy documents contained the term “cyber-bullying” in their language. However, many of those policies did not clearly address the issue of cyber-bullying. There was no clear definition of the term “cyber-bullying.” In addition, there were no clear disciplinary actions mentioned in the text in the event of any violations.

As Table 4.9 shows, an asterisk symbol (\*) was used to designate the relevance of school policies that mentioned the term “cyber-bullying” in their text. For instance, one asterisk next to a school policy indicated the presence of the term cyber-bullying in their traditional bullying policy. This symbol also indicated that this particular school policy did not specifically address cyber-bullying. Nonetheless, the terms “cyber,” “electronic,” “Internet,” or “online” appeared in the policy document or the text. Two asterisks (\*\*) indicated that, not only the aforementioned terms were present in a traditional bullying policy, but also clear definitions and explanations of the terms were provided and violations associated with the terms were punishable under the traditional bullying policy. The presence of three asterisks (\*\*\*) indicated that there was not a clear policy on cyber-bullying. Still, the aforementioned terms were clearly defined and explained and violations were punishable under other types of policies, including student code of conduct policies or Acceptable Use Policies (AUPs).

Chart 4.13 illustrates that around 17 school policies (approximately 44 percent) specifically addressed traditional bullying. About 6 school policies (approximately 17 percent) did not clearly address traditional bullying or cyber-bullying. Nonetheless, those school policies included the term “cyber,” “electronic,” or “Internet” in their language. Many of those policies also addressed issues pertaining to harassment, intimidation, stalking, and impersonation. It must be noted that a peculiar overlap was discovered between the schools that had traditional bullying

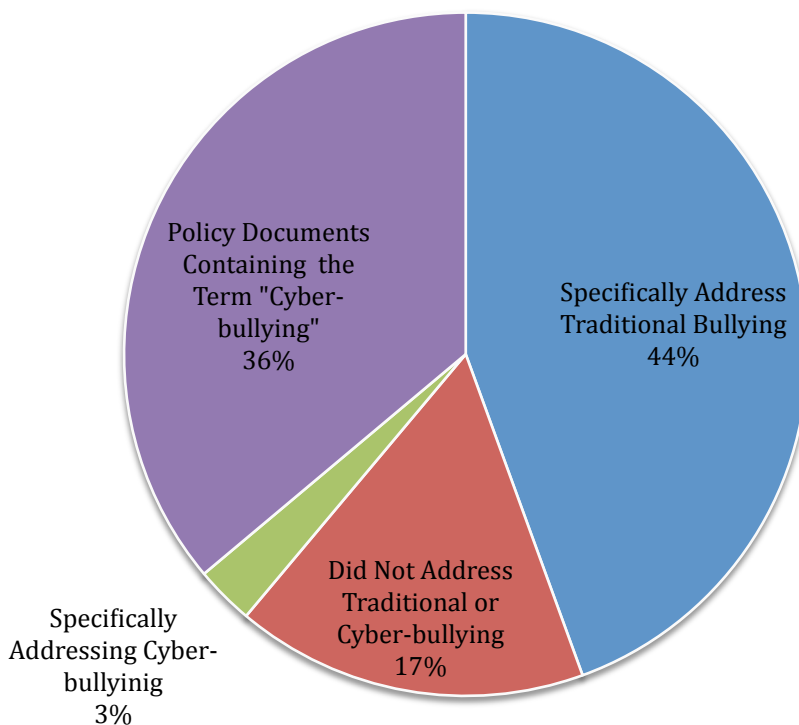
policies and the ones that had the “other” policies, which included the language pertaining to online communication issues. That is, in many of those policy documents, the word “electronic” had been used in a broad context, e.g., such a word was used as an addendum to existing school policies. Only one school district, the *Milford High School* (approximately 3 percent), had a clear policy on cyber-bullying. Consequently, the conclusion was that the majority of school districts did not have a clear policy on cyber-bullying (see Chart 4.15).

It is also worth noting that many school districts had policies that referenced or used in their language terminologies that included bullying or cyber-bullying. But those policies addressed other distinct problems. For example, some school policies were specifically designed for issues pertaining to harassment, intimidation, stalking, or impersonation. The terms “cyber,” “Internet,” “electronic,” “transmission,” “bullying,” or “cyber-bullying” were often mentioned within the language of those policies, even though they did not specifically address these issues. Similarly, several school policies referenced other sources in their policy. For instance, many school policies noted the Children’s Internet Protection Act (also known as CIPA) in the policy document, including other state and federal actions about online communications. Yet, no school district had policies that included all the aforementioned terms in a single policy document.

The overall picture that can be inferred from the data is that school districts’ current policy structure on the issue of cyber-bullying lacking in coherence, to say the least. As illustrated above, most school districts claim to have policies that effectively address cyber-bullying. In reality, however, a great deal of the policies retrieved in this study suggested the contrary. This image paints a bleak picture about the effects of school interventions in many schools across the country, which also suggests that most school administrators are devoid of a

clear guidance to initiate any successful intervention. For that reason, we can conclusively assert that a great majority of the school included in this study did not have any clear policy addressing online issues in general, despite the fact that 13 school policy documents contained the term “cyber-bullying” (approximately 36 percent). Put aside all the factors considered in this study, for instance, ignoring policy documents that only contained the term electronic communications, if we were to look at the whole picture, there is no doubt that from the 23 school districts mentioned in the 24 court cases, only 3 percent had specific policy documents that, one way or another, addressed cyber-bullying or online misconduct in general (see Chart 4.15).

**Chart 4.15: A View of School Policies on Cyber-bullying**



Sources: Data From The School Policy Documents Retrieved

**This Chart:** Shows that only a dismal amount of school districts had policies that directly addressed cyber-bullying. Similarly, a relatively small amount of school districts had policies that specifically addressed traditional bullying.



**QUESTION 2****To what extent the school administrators mentioned in the court opinions followed the disciplinary recommendations in their school policy documents?**

In order to determine whether the school administrators, particularly the ones mentioned in court cases, followed their schools' own policies, the types of disciplinary actions that they took against the students involved in each incident were identified, analyzed, and then compared with the recommended disciplinary actions stated in the respective school policy documents. For example, each court case was reviewed to determine the facts about the types of punishment(s) assessed to the student(s) involved. Alternatively, the policies of each of the school district mentioned in the cases were also reviewed in order to determine the types of punishments and/or disciplinary actions that were recommended by the school board for any types of violations.

To accurately answer the second question, a three-step procedure was devised. This process began with a careful examination of the texts contained within the policy documents. Subsequently, the criteria for punishment or the types of disciplinary actions, as stated in the school districts' policy documents, were located. Finally, this information was then compared with the actual disciplinary actions taken by school administrators in each court case.

**Findings for Question #2**

The first step entailed locating information pertaining to the disciplinary actions or the types of punishment students received. The court documents revealed several types of disciplinary actions that were taken by school administrators, including instances where no clear

disciplinary actions were assessed or no clear disciplinary actions were mentioned in the facts of the case.

Based on the background information provided in each court case, the types of disciplinary actions or punishments taken by school administrators against the students involved were thoroughly examined. After the analysis of the court documents, the policy of each school was also analyzed to determine the type of disciplinary actions it recommended in response to electronic bullying or cyber-bullying offenses. As noted above, while most schools had policies that included electronic misconduct or traditional bullying, a great majority did not have a clear policy on cyber-bullying. Due to this shortcoming, this inquiry also focused on the “other” policies addressing harassment and/or bullying in great detail, which, in most instances, also contained the terms: “electronic,” “cyber,” “Internet,” and “online.”

As outlined in Table 4.8, this search yielded a total of twenty-nine disciplinary actions or sanctions that were taken against the students by school administrators, as mentioned throughout the many court cases retrieved. It must be noted, in most cases, students were assessed more than one punishment for one particular incident. In some incidents, the student involved was, first, suspended and, later, expelled. All the same, this inquiry identified five types of punishments or disciplinary actions, which were often assessed to the students involved in online incidents (see also Chart 4.12).

Based on the court cases, the students involved in online related incidents in K-12 public schools often received the following disciplinary actions: suspension, expulsion, restriction of certain student activities, confiscation or seizure of student items, and in most instances, criminal charges were also brought. Suspension was, by far, the most assessed type of punishment.

Of the 24 court cases retrieved, school administrators suspended the students involved 15 times. Expulsion was the second most assessed type of punishment. This type of disciplinary action was assessed to students six times. Students were also assessed other types of punishments. For instance, in two separate incidents, students were restricted from taking part in student activities. Students' items, for example, cell phones, were also confiscated. This occurred at least in one occasion. In three online incidents, criminal charges were brought against the students involved. Surprisingly, in two separate occasions, no disciplinary action was taken (see Table 4.8).

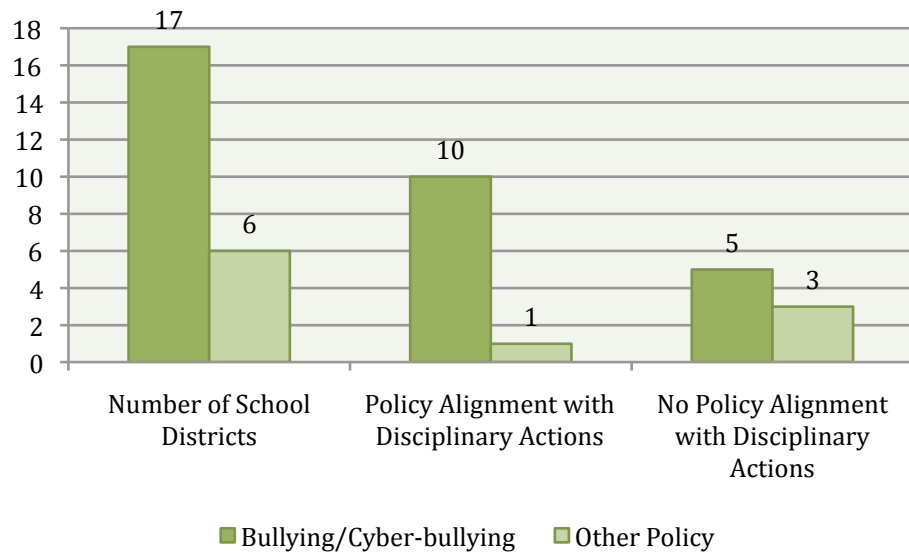
In the second step, information about the types of disciplinary actions mentioned in the different school district's policies were retrieved and analyzed. Of the 23 school districts mentioned in the court cases, except for the school districts for which a policy was not identified, the term "suspension" appeared in the policy documents of 12 school districts, as a form of disciplinary action for online incidents. In many instances, this term was present in conjunction with other terms, for instance, "in-school suspension" and "out-of-school suspension."

The term "expulsion" appeared in the policy documents of 16 school districts. In addition to that, in one instance, this term was accompanied by the phrase "recommendation for." The term "loss of privileges" or "deprivation of privileges" or "loss of access" or "revocation of computer access" appeared in the policy documents of nine school districts. These terms often

appeared in the same policy document as the term “exclusion from school activities.” The terms “search,” “seizure,” “confiscation,” or “criminal charges” were not present in any school district’s policy. The term “referred to law enforcement” or “law enforcement contacted” appeared in the policy documents of ten school districts (see Appendix J).

Some school districts did not have any clear recommendations for punishments in their policy documents. The findings indicate that at least one school district did not outline any recommendations for punishment. This particular school district was mentioned in two separate cyber-related court cases in which it prevailed only once. In both incidents, school administrators took the same type of disciplinary action against the students involved. Similarly, two school districts did not have any disciplinary recommendations mentioned in their policy documents. These school districts referred disciplinary matters to their broader policy documents on student conduct or student discipline (see Appendix J).

In the final step, school administrators’ actions, i.e., the types of disciplinary actions taken against the students involved in the incidents, were examined to determine whether they were aligned with the schools’ own policy documents. In order to establish any alignment, incompatibility, or discrepancies between school policy recommendations and school administrators’ actions, the disciplinary recommendations in each school policy document were compared with the actual disciplinary actions taken.

**Chart 4.16: School Policy Alignment With Disciplinary Actions**

Sources: Data From The School Policy Documents Retrieved

**This Chart:** Shows that while seventeen school districts had some form of bullying or cyber-bullying policies in place, at least six school districts had no such policies. School districts that had policies that either addressed traditional or cyber-bullying took disciplinary actions that were aligned with policy documents. School districts that had bullying policies in place also took disciplinary actions that were not aligned with their current policy documents.

Chart 4.16 illustrates that of the 17 school districts that had policies that either addressed traditional bullying or addressed some elements of cyber-bullying or that specifically addressed cyber-bullying (e.g., in the case of the *Milford High School*), 10 school districts applied or assessed one or more punishments to the students involved based on the disciplinary actions recommended in their own policy. From that same list, five school districts applied or assessed one or more punishments to the students involved that were outside the recommended disciplinary actions stipulated in their policy. Contrary to the disciplinary recommendations of their school's own policy documents, two school districts took no disciplinary actions against the students involved (see Table 4.12).

**TABLE 4.12**—Alignment between “Specific” School Policies and Disciplinary Actions

<b>Name of All the School Districts Cited in Court opinions</b>	<b>Bullying or Cyber-bullying Policy</b>	<b>Alignment with Disciplinary Actions</b>
Woodland R-IV School District	Yes	Yes
School District of Greenfield	Yes	Yes
Franklin Regional School District	Yes	Yes
Waterford School District	Yes	No
North Canton City Schools	Yes	No
Milford High School	Yes	Yes
Keystone Oaks School District	Yes	-
Nazareth Area School District	Yes	No
Weedsport Central School District	Yes	-
Central York School District	Yes	Yes
Greencastle Middle School	Yes	Yes
Smith-Green Community Sch. Corp.	Yes	No
Pembroke Pines Charter High School	Yes	Yes
Lewis S. Mills High School	Yes	No
Blue Mountain School District	Yes	Yes
Berkeley County Schools	Yes	Yes
Douglas County Schools	Yes	Yes
<b>Total: 16 Schools</b>	<b>Total: 17</b>	<b>10: Yes 5: No</b>

-Weedsport School District did not list disciplinary action in actual policy.

-For Keystone Oaks School District, no clear disciplinary actions were mentioned.

Alternatively, from the list of six schools districts that had the other policies, which did not necessarily apply to either traditional or cyber-bullying (i.e., policies designated “Other”), only in one instance, actual disciplinary actions were aligned with the recommended disciplinary actions stipulated in the school policy documents. In addition, in three instances, administrators’ disciplinary actions did not align with their school policy recommendations. However, policy information concerning two other school districts was either missing or was not clear (see Table 4.13).

**TABLE 4.13**—Alignment between “Other” School Policies and Disciplinary Actions

<b>Name of the School Districts Cited</b>	<b>“Other” Policy</b>	<b>Alignment with Disciplinary Actions</b>
Kent School District	Yes	-
Hoggard High School	Yes	-
Bethlehem Area School District	Yes	No
Beverly Hills Unified School District	Yes	Yes
Hermitage School District	Yes	No
Seaford Union Free School District	Yes	No
<b>Total: 7 Schools</b>	<b>Total: 6</b>	<b>1: Yes      3: No</b>

-Kent School District did not provide clear recommendations for policy violations.

-Hoggard High School referred the incident to law enforcement authorities. No clear disciplinary actions were stipulated in school disciplinary policy.

It must be noted that the policy information for *Kent School District*, which was also mentioned in two separate cases, was not clear as to which types of disciplinary actions that were recommended. The policy documents referred to the school’s broader policies on student conduct. Conversely, the appropriate sanctions for online infractions were not listed there. Similarly, the *Hoggard High School* also referred disciplinary matters to the schools’ student disciplinary policies. The incident was referred to the local law enforcement authorities. Even so, it was also unclear as to which part of the student discipline policy recommended such a disciplinary action.

Therefore, the findings were inconclusive for this question. It could not be determined whether school administrators’ actions aligned with school policies. The results were mixed. Moreover, because of the lack of information about the school policies, it became clear that a definite answer could not be obtained for this question.

### **QUESTION 3**

#### **To what extent specific elements of legal precedents were reflected in school policy documents on cyber-bullying?**

In order to determine whether specific elements of previous courts' rulings were reflected in cyber-bullying policies, it was important to compare and contrast the language contained in past court cases, i.e., legal precedents, to the language contained in school districts' current policies. It is important to note that, at this point, the findings from the first question had unequivocally demonstrated that most schools *did not have* a clear policy on cyber-bullying. Because a great majority of school districts did have policies that addressed aspects of online issues, it was paramount to determine whether those policies were aligned with legal precedents.

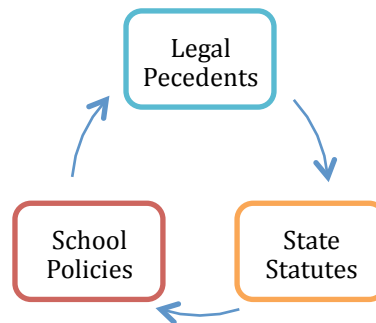
The chief objective was to discover potential themes, patterns, dissimilarities, or irrefutable discrepancies within the texts. Answering this question required a thorough analysis of school policies in conjunction with important landmark cases. In addition, state statutes were also retrieved, scanned, and analyzed. Throughout the process of reviewing school policies, it became apparent that without a clear understanding of the statutes of the states where the incident took place, interpretations of the findings could be erroneous. Subsequently, several state statutes were retrieved. This process allowed a better understanding of the language within the school policies. Since school policies are the results of state legislations, assessing state statutes afforded a deeper analysis of the relationship between legal precedents and school policies. Consequently, through a four-step process, the data were scanned, coded, and analyzed.



### *Relationship between the Data*

The presumption was that legal precedents should inform state statutes, which, in turn, should inform school policies. In other words, there should be a clear relationship between legal precedents, state statutes, and school policies (see Figure 4.2). Legal precedents and state statutes usually provide important insights in order to understand the legal foundations of school policies. When it comes to cyber-bullying issues, the expectation is that legal precedents should be reflected in state statutes. In other words, the language in the state statutes should be compatible with that of legal precedents. Similarly, the language within school policies should also be reflective of legal precedents. Hence, there should be no discrepancies between school policies, state statutes, and legal precedents.

**Figure 4.2—The Link Between The Data Collected**



Sources: Researcher/Author's conceptualization

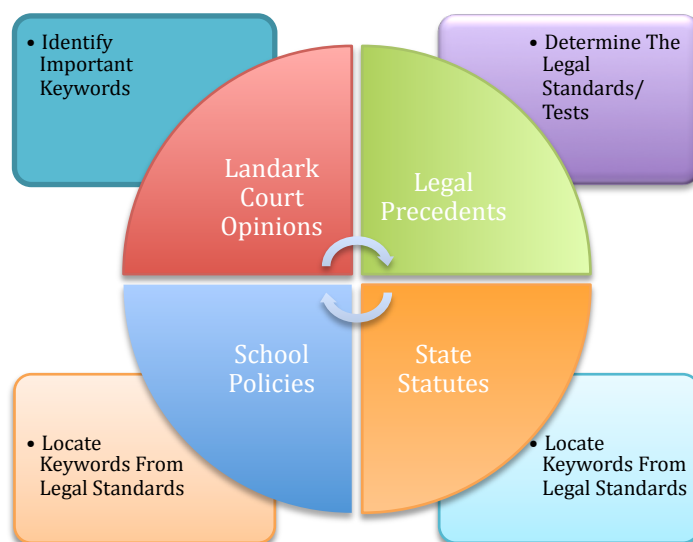
**This Figure:** Shows the link between the data collected. For instance, legal precedents led to state statutes, which in turn led to the enactment of school policies.

Before delving into the analysis of the data, it was crucial to identify important keywords in the language used in landmark court cases or legal precedents. As noted earlier, three important court cases, *Tinker* (1969), *Fraser* (1986), and *T.L.O.* (1985), which often serve as the basis for legal precedents in freedom of speech incidents, were retrieved. In order to determine

the appropriate keywords, the documents were visually scanned. As mentioned earlier, once the keywords contained in the legal standards had been determined, they were subsequently used as “piori coding,” which enabled a thorough analysis to the texts within documents, namely state statutes and school policies.

In the second step, statutes were retrieved from the National Conference of State Legislatures’ website and other state government websites. Each state’s statute was entered into the software (separately) and scanned. Individual results were reviewed and summarized. The objective was to assess the type of language used in those documents. Subsequently, the results were then compared with the type of language used in legal precedents. In the third step, the policy documents were scanned individually for the presence of the previously identified keywords from legal precedents. Finally, the results from each school were synthesized into one final summary (see Figure 4.3).

**Figure 4.3—Understanding the Data Collection Process**



Sources: Researcher/Author conceptualization

**This Figure:** Explicates the data collection process. For example, landmark court opinions were collected; legal precedents were determined; state statutes were collected; and school policies were retrieved.

### *Legal Precedents*

*Tinker*, *Fraser* and *T.L.O.* are considered the most influential court cases on matters pertaining to freedom of speech and search and seizure in public education. While cases like *Tinker* and *Fraser* are concerned with speeches that cause actual disruption or speeches that considered lewd and offensive, *T.L.O.* addressed situations pertaining to unlawful search of students. Similarly, the notion of “true threat” has also been evoked in several court cases.

An analysis of the aforementioned court cases revealed that the following words or phrases were often mentioned in court reasoning: “disruption,” “rights of others,” “reasonable,” “vulgar,” “lewd,” “plainly offensive,” and “true threat.” Further analysis yielded that these keywords often played a major role in the final court rulings on many issues. In other words, the presence or the absence of one or more of these words or phrases often determined the outcome of a case. Since these keywords were commonly used in the language of the courts, they constituted the legal standards many courts often used in their legal analysis of issues pertaining freedom of speech in public school. In this study, they were also used as codes in order to examine the texts of state statutes and school policy documents (see Table 4.14).

**TABLE 4.14**—Legal Standards or Legal Tests

<b>Legal Standards or Legal Tests</b>			
<b><i>Tinker</i> Standard</b>	<b><i>T.L.O.</i> Standard</b>	<b><i>Fraser</i> Standard</b>	<b>Other</b>
<i>Substantial Disruption</i>	<i>Reasonableness</i>	<i>Vulgar Speech</i>	<i>True Threat</i>
<i>Rights of Others</i>		<i>Lewd Speech</i>	
		<i>Plainly Offensive Speech</i>	

### *State Statutes*

Using the National Conference of State Legislature’s website, which offered a direct links to several state governments’ websites, several documents pertaining to state statutes on

cyber-bullying were located. This study included 15 state statutes. Electronic and hard copies for each state statute were retrieved. The documents were scanned both visually and electronically for important keywords. The main goal was to determine the presence of the terms “bullying” or “cyber-bullying.” Once those terms had been located, their definitions were thoroughly assessed in order to identify similarities, themes, and patterns.

The findings suggest that several states had statutes that clearly identified cyber-bullying, cyber-stalking, and cyber-harassment as important issues (see Chart 4.17). Those statutes also required school districts to develop the appropriate policies to address these issues. Of the 15 states mentioned in the court cases, 10 states had statutes that specifically addressed cyber-stalking; 14 states had statutes that addressed cyber-harassment; and 10 states had statutes that addressed cyber-bullying (see Table 4.15).

**TABLE 4.15**—Statutes on Cyber-bullying, Cyber-stalking, and Cyber-harassment

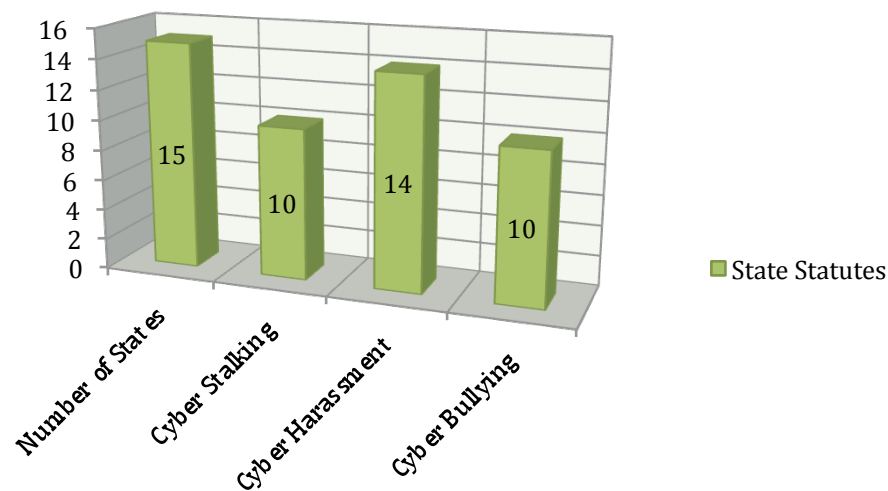
States	Cyber Stalking		Cyber Harassment		Cyber Bullying	
California	Yes		Yes		Yes	
Connecticut	No		Yes		Yes	
Florida	Yes		Yes		Yes	
Indiana	No		Yes		No	
Michigan	Yes		Yes		No	
Missouri	Yes		Yes		Yes	
Nevada	Yes		No		Yes	
New York	No		Yes		Yes	
North Carolina	Yes		Yes		Yes	
Ohio	Yes		Yes		No	
Pennsylvania	Yes		Yes		Yes	
Utah	Yes		Yes		Yes	
Washington	Yes		Yes		Yes	
West Virginia	No		Yes		No	
Wisconsin	No		Yes		No	
<b>15 States</b>	<b>10 Yes</b>	<b>5 No</b>	<b>14 Yes</b>	<b>1 No</b>	<b>10 Yes</b>	<b>5 No</b>

“Yes” The state had at least one statute that included this term.

“No” The state did not have any statute that included this term.

While the terms “cyber-bullying,” “cyber-stalking,” and “cyber-harassment” are often used interchangeably in several school policy documents, many states had statutes that clearly established a difference among the statutory definitions of those terms. For example, 7 states had statutory definitions that clearly distinguished among the three terminologies. Table 4.15 shows that many states had three distinct statutes, including “cyber-stalking,” “cyber-harassment,” and “cyber-bullying.” All three types of statutes contained distinct definitions.

**Chart 4.17: State Statutes, Traditional Bullying, and Cyber-Bullying**



Sources: Data From The State Statute Documents Retrieved

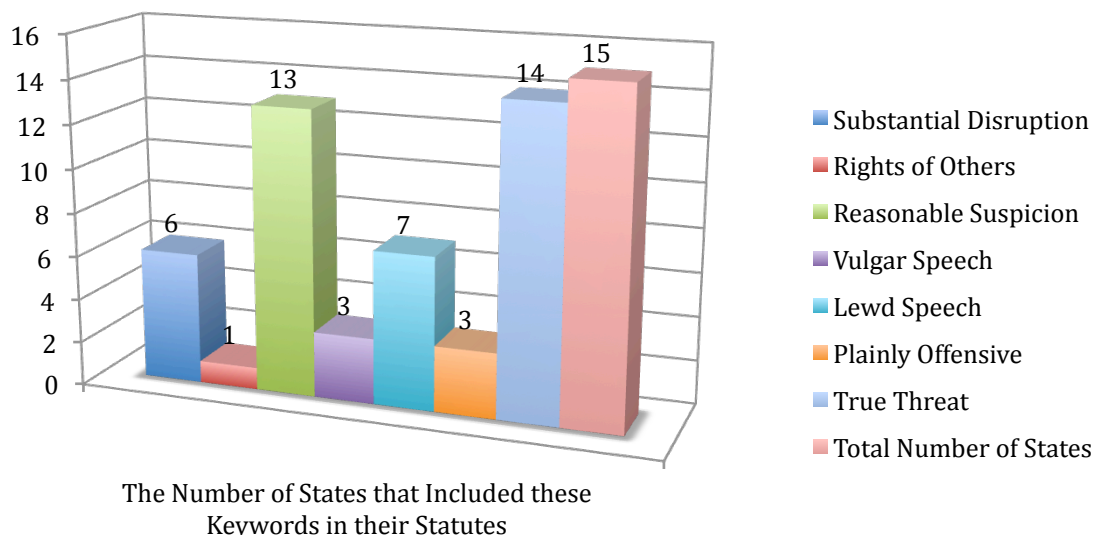
**This Chart:** Shows that many state statutes had wording that included the term cyber stalking, cyber harassment, and cyber-bullying.

Five states had statutory definitions for at least two different terminologies, and these statutes clearly established a distinction among them. For instance, some states had a combination of two separate statutes. While some states had a clear statute for cyber-stalking and cyber-harassment, others had statutes for cyber-bullying and cyber-harassment, and vice versa. Surprisingly, three states only had a single statute for only one terminology; in most cases, it was

for cyber-harassment. Even so, the language used in the statutory definition also included elements of the other two terminologies (see Table 4.15).

*Comparing and Contrasting State Statutes with Legal Precedents*

Using a word/phrase frequency analysis, the statutory definitions within each state statute were scanned and analyzed for the presence of the keywords identified from legal precedents. The findings suggest that several of those keywords were present in many state statutes. Still, there was no consistency about their presence; for instance, they were not evenly spread out within the documents. For example, Chart 4.18 shows that of the 15 state statute documents retrieved, 7 states had elements of the *Tinker* standard included in their statutes. Approximately 9 states had one or more elements of the *Frazer* standard included in their statutes and 13 states had one or more elements of the *T.L.O.* standard included in their statutes. About 14 states had the term “threat” included in their statutes. It is worth noting that, while many states had one or more of the standards included in their statutes, the state of New York did not have any elements of the three landmark cases mentioned in its current statutes (see Table 4.16). Surprisingly, that state had two distinct statutes, which also included cyber-harassment and cyber-bullying in their language.

**Chart 4.18: State Statutes and Legal Precedents**

Sources: Data From The State Statute Documents Retrieved

**This Chart:** Shows that legal precedents were present in many state statutes, including the terms true threat, reasonable suspicion, lewd speech, and substantial disruption.

**TABLE 4.16**—Legal Precedents and State Statutes

The Legal Precedents	The <i>Tinker</i> Test or Standard		<i>T.L.O.</i> Standard	The <i>Fraser</i> Test or Standard			Other Test
	<i>Substantial Disruption</i>	<i>Rights of Others</i>	<i>Reasonable Suspicion</i>	<i>Vulgar Speech</i>	<i>Lewd Speech</i>	<i>Plainly Offensive</i>	
<i>States Cited in the Cases Laws</i>							
California	X		X	X			X
Connecticut			X		X		X
Florida	X		X				X
Indiana					X	X	
Michigan			X				X
Missouri			X			X	X
Nevada			X				X
New York							X
North Carolina	X		X	X	X		X
Ohio		X	X				X
Pennsylvania	X		X		X		X
Utah	X		X				X
Washington	X		X		X		X
West Virginia			X	X	X	X	X
Wisconsin			X		X		X
<b>Total Number 15</b>	<b>6</b>	<b>1</b>	<b>13</b>	<b>3</b>	<b>7</b>	<b>3</b>	<b>14</b>

“X” indicated the presence of this term within the text of the document.

### *School Policies*

In this step, the different policy documents already retrieved from the school districts' websites were reviewed to determine whether they contained the keywords outlined in legal precedents. The policy documents of each school district were entered into the software to decipher the presence of legal precedents, and a word frequency analysis was then conducted.

### **Findings for Question #3**

The findings indicate that many school districts' policy documents contained one or more of the keywords outlined in legal precedents. For example, Chart 4.19 illustrates that 14 school policies contained the term "substantial disruption" in their language, as mentioned in the *Tinker* standard. Similarly, 9 school policy documents contained the term "reasonable suspicion" in their language, as mentioned in the *T.L.O.* standard. Moreover, 8 school policies contained one or two terms from the *Fraser* standard in their language. Surprisingly, 18 school policies contained the term "threat" in their language. Conversely, two school policy documents contained none of the legal standards in their language (see Table 4.17).



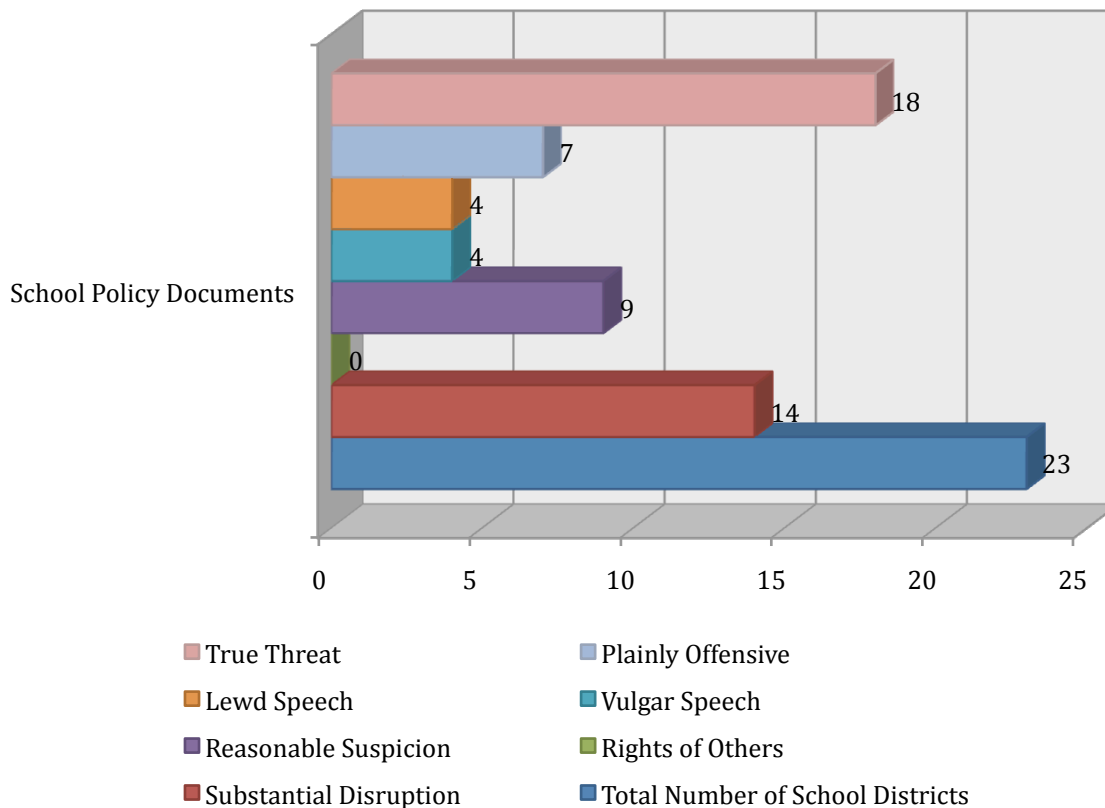
**TABLE 4.17**—Legal Precedents and School Policies

<b>School Policies</b>	<b>Tinker Standard</b>		<b>T.L.O. Standard</b>	<b>Fraser Standard</b>			<b>Other</b>
<i>The School Districts Cited in the Different Case Laws Retrieved</i>	<i>Substantial Disruption</i>	<i>Rights of Others</i>	<i>Reasonable Suspicion</i>	<i>Vulgar Speech</i>	<i>Lewd Speech</i>	<i>Plainly Offensive</i>	<i>True Threat</i>
Woodland School District	-	-	-	-	-	-	-
School District of Greenfield			X			X	X
Kent School District	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Hoggard High School			X		X	X	X
Franklin Regional School Dist.	X						X
Bethlehem Area School Dist.	X		X	X	X	X	X
Waterford School Dist.			X			X	X
North Canton City Schools			X				X
Milford High School	X		X				X
Keystone Oaks School Dist.	-	-	-	-	-	-	-
Nazareth Area School Dist.	X						X
Weedspport Central Sch. Dist.							X
Kent Sch. Dist. (Different case)	X						X
Central York Sch. Dist.	X						X
Greencastle Middle School							X
Smith-Green Com. Sch. Corp.							X
Beverly Hills Unified Sch. Dist	X			X			X
Pembroke Pines Charter High School	X		X			X	X
Lewis S. Mills High School	X						
Blue Mountain School Dist.	X						X
Douglas County Schools	X		X				
Berkeley County Schools	X		X				
Hermitage School District	X			X	X	X	X
Seaford Union Free Sch. Dist.	X			X	X	X	X
<b>Total Number</b>	<b>14</b>		<b>9</b>	<b>4</b>	<b>4</b>	<b>7</b>	<b>18</b>

While most school policies contained several elements of legal precedents, none contained all the different keywords in its language, at least in a single document. Some school policy document, however, did contain all the listed standards in their language throughout the different policy documents retrieved. For instance, two school policy documents contained in their language elements of all the listed standards, including the “other” standard. Conversely, 4 school policy documents only contained one legal standard in their language. As noted above, the *Tinker* standard and the term “true threat” were the most commonly used standards. Keywords such as “vulgar” and “lewd” were the least mentioned in the language of school

policy documents. Similarly, the keyword such as “rights of others” was almost never mentioned in the language of school policy documents.

**Chart 4.19: School Policy Documents and Legal Precedents**



Sources: Data From The School Policy Documents Retrieved

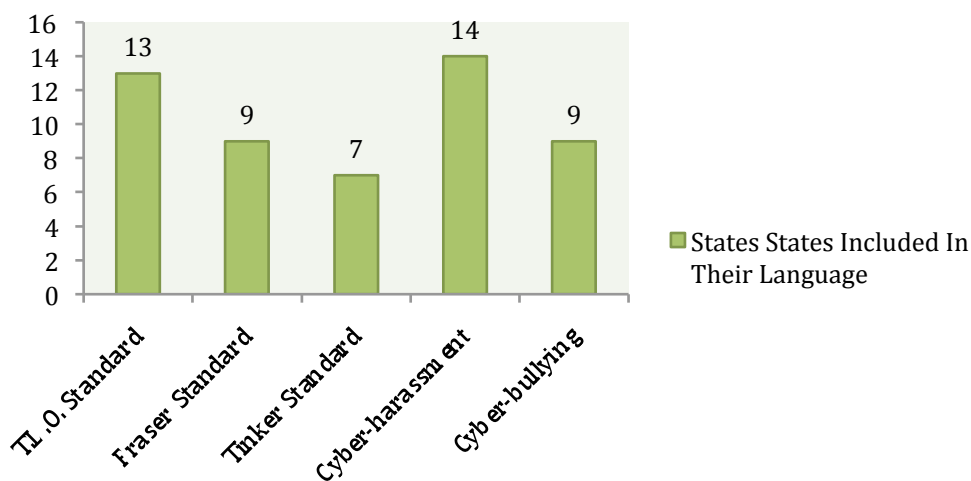
**This Chart:** Shows that many school policy documents included legal precedents terminologies in their wording. For example, the terms true threat, substantial disruption, reasonable suspicion, and plainly offensive were mentioned in many school policy documents.

### *Synthesizing the Findings for Question #3*

The findings from the three data sets suggested that legal precedents played a major role in the elaboration or the designing of state statutes (see Chart 4.20). Several states included elements of legal precedents in their statutes. Approximately 94 percent of state statutes contained one or more elements of legal precedents. For instance, 13 states included the *T.L.O.*

standard in their statutes, while 9 and 7 states included the *Fraser* and *Tinker* standards in their statutes, respectively. Similarly, 14 state statutes (approximately 94 percent) included definitions that clearly addressed cyber-harassment. Furthermore, nine state statutes (approximately 60 percent) included definitions that unequivocally addressed cyber-bullying.

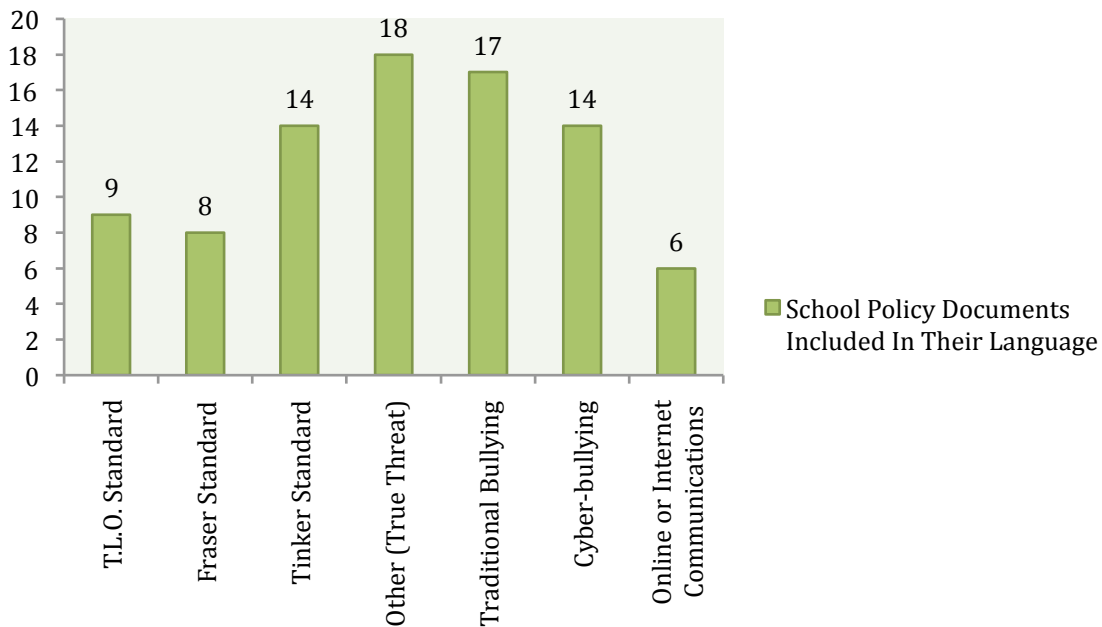
**Chart 4.20: State Statutes Included In Their Language**



Source: From The State Statute Documents Retrieved

**This Chart:** Shows that many state statutes included several important terms in their language. For example, most state statutes included the terms T.L.O., Fraser, Tinker, cyber harassment, and cyber-bullying in their language.

Alternatively, legal precedents were also present in many school policies. Chart 4.21 shows that approximately 78 percent of school policy documents contained one or more elements of legal precedents. While many school policies did not contain any elements of the legal precedents, the vast majority, approximately 18 school policies, did contain at least two legal standards in their language.

**Chart 4.21: School Policy Documents Included In Their Language**

Source: From The School Policy Documents Retrieved

**This Chart:** Shows that many school policy documents included in their language important terminologies, including T.L.O., Fraser, Tinker, True Threat, Traditional bullying, and Cyber-bullying,

#### **QUESTION 4**

##### **In what way legal precedents can explain the legal uncertainty about school interventions in cyber-bullying issues in K-12 public schools?**

Answering the fourth question required a thorough analysis of the different holdings within the cases retrieved. The objective was to decipher any themes and patterns within the reasoning of the courts. Court opinions were divided into groups, which consisted solely of final court decisions. As needed, previous court proceedings within each case were reviewed for further detail as the analysis of the data progressed. The three holding types, which had been identified earlier, are as follows: holdings for students, holdings for school districts, and holdings for both (see Figure 4.1). Through an ongoing interaction with the data, several themes and

patterns were identified. Below, the different court holdings are explored, and the identified themes and patterns are presented. In the next chapter, those themes and patterns are analyzed in depth.

### **The Holdings**

Holdings for students were more prevalent in cases litigated between 1998 and 2008, with the final court decision handed in 2011 (e.g., *Layshock v. Hermitage School District*). Approximately, eight cases were identified as in favor of students; the majority of the incidents occurred off campus. Some incidents, however, did take place on campus, while other incidents also occurred both on and off school grounds simultaneously. It is worth noting that, throughout this study, only in one occasion such an instance was found.

The holdings in which the school districts prevailed were litigated between 1998 and 2011. Approximately eight cases were also identified as in favor of school districts. In the majority of the cases, approximately six of them, the incidents occurred off school grounds. For many of those cases, the final decisions, at least in four of the cases, were entered in Appeals Courts, including decisions from State Supreme Courts (e.g., the Supreme Court of Pennsylvania and the Supreme Court of Indiana). In three of those four cases, the Court of Appeals “affirmed” previous court decisions in favor of the school districts. In one instance, the Court of Appeals vacated the decision of a previous court to the detriment of the student plaintiff-appellee (e.g., *Boucher v. School District of Greenfield*).

In the third holding group, eight court decisions were decided in favor of both students and school districts. These cases were litigated between 2002 and 2010, with the last decision

argued “*en banc*”<sup>22</sup> and entered in 2011. The majority of the incidents occurred off school grounds. The one incident that occurred on school grounds was the result of the student’s cell phone being confiscated by a teacher. The majority of the cases were litigated at the district court level. Approximately five cases were decided in United States District Courts, while two cases were decided in Appeals Courts (see Appendix D).

### **Holding Group I (Students Prevailed)**

*Beussink v. Woodland R-IV School District*  
*Missouri (1998)*  
30 F. Supp. 2d 1175

A high school student sued the school district after he was suspended for ten days. In this case, the student created a homepage in which he was very critical of the school, including school administrators. The homepage contained crude and vulgar language. The student sought summary judgment. During court proceedings, the high school principal acknowledged that he took disciplinary actions against the student because he was upset about the content of the homepage.

The court granted the plaintiff’s motion based on three criteria: (1) likelihood of success; (2) potential harm; and (3) public interest. The court argued that disliking or being upset by the content of a student’s speech was not an acceptable justification for limiting speech. The student was able to demonstrate a likelihood of success on the merits of the case. The student also showed irreparable harm because of the loss of First Amendment freedoms. The court argued

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<sup>22</sup> A French term, which translates in English “on the bench.” In legal terms, it is often used to indicate that all of the judges on an appeal court panel are participating in a case. Courts generally hear cases *en banc* when a significant issue is at stake or at the request of the parties (Hill and Hill, 2009, p. 152)

that the student faced the potential harm of losing First Amendment rights and not graduating with his class at the end of the year. The court also noted that public interest was served by granting injunctive relief, as that interest was best served by wide dissemination of ideas.

*Emmett v. Kent School District*  
Washington (2000)  
92 F. Supp. 2d 1088

A high school student sued the school district after he was suspended for five days. He sought temporary restraining order. In this case, the student used his home computer to create a website. He named the site: the “unofficial” homepage of the high school. The site contained mock "obituaries" of several students. The student (creator of the site) allowed visitors to vote on who should die next. The motion was granted in favor of the student. The court argued that school district provided no evidence that: 1) the mock obituaries and voting on the website were intended to threaten anyone and 2) the district failed to demonstrate that the student actually threatened anyone, or manifested any violent tendencies whatsoever. This lack of evidence indicated that the plaintiff had a substantial likelihood of success on the merits of his claim.

*North Carolina v. Mortimer*  
North Carolina (2001)  
42 N.C. App. 321; 542 S.E.2d 330

A student left a message on the school computer as a prank, which stated: “The end is near.” Upon the discovery of the message, the police were contacted. The student was charged according to the state statute (N.C. Gen. Stat. § 14-277.1), under the initial element of the crime of communicating threats, which stipulated that the accused must willfully threaten to physically injure the person or damage the property of another. The court noted that no one could articulate the threat posed by the message left on the computer.

*Killion v. Franklin Regional School District*  
Pennsylvania (2001)  
136 F. Supp. 2d 446

A student sued the school district, claiming that his First and Fourteenth Amendment rights were violated. The student published a "top ten" list, which made fun of the school athletic director. The comments included remarks that ridiculed the director's appearance, including the size of his genitals. While the school agreed to provide the student with the due process, as outlined in the Pennsylvania School Code, the school later notified the student of suspension hearing and was subsequently suspended. The court granted summary judgment in favor of the student. The court noted that defendants failed to satisfy *Tinker's* substantial disruption test.

*I.M.L. v. State of Utah*  
Utah (2002)  
2002 UT 110; 61 P.3d 1038; 460 Utah Adv. Rep. 28

A high school student created a website, which described the sexual history of other students. The student was arrested and he subsequently admitted creating the site. The student was charged under Utah's criminal libel statute (Utah Code Ann. §§ 76-9-501, 503). The court found that the statute was unconstitutional on its face. The statute, the court argued, did not comport with requirements laid down by the United States Supreme Court.

*Flaherty Jr. v. Keystone Oaks School District*  
Pennsylvania (2003)  
247 F. Supp. 2d 698

A student posted several messages from his parents' computer and one from school about an upcoming game with another high school team. The messages were believed to be abusive, harassing, inappropriate, and offensive. Disciplinary actions were taken against the student



because the student handbook prohibited such speech. The student claimed that his First Amendment rights were violated.

The court found that the breadth of the student handbook policies was overreaching in that the policies were not linked within the context of the text to speech. The court noted that this lack of emphasis could not clearly demonstrate that the student's actions substantially disrupt school operations. Similarly, because the terms abuse, offend, harassment, and inappropriate were not defined in any significant manner, the policies did not provide the students with adequate warnings of the conduct that is prohibited. Therefore, the court argued that the policy was vague. Alternatively, the court argued that the breadth of the policy document was overreaching in that the policy could be read to cover speech that occurs off the school's campus and not school related.

*A.B. v. State of Indiana (Greencastle)*  
Indiana (2007)  
885 N.E.2d 1223

A student posted, what were considered, derogatory comments on a webpage on the popular site myspace.com about the assistant principal. To view the webpage, however, the school principal, Mr. Shawn Gobert, removed the filtering from his computer. The content of the page was private, only persons accepted as friends by the creator could access the page. Nevertheless, the student created a public section of the page, which could be accessed by anyone. In that section, the student posted: "die....gobert...die." The state filed delinquency petition against the student. The state argued that if the actions committed by the student had been committed by an adult, it would be considered an identity deception, which would qualify as a Class C felony, harassment, and Class B misdemeanor.

The Juvenile Court found in favor of the state and ordered the student to be placed on nine months probation. On appeal, the court reversed and remanded the case with instructions. Similarly, the Supreme Court of Indiana reversed the judgment of the trial court, arguing that the state failed to prove that the student intended “to harass, annoy, or alarm” the school principal (885 N.E.2d 1223, p. 5).

*Layshock v. Hermitage School District*  
Pennsylvania (2008-2011)  
650 F.3d 205

A student filed suit against the school district after he was suspended, placed in an alternative education program, and banned from taking part of certain activities. In this case, the student used his grandmother's computer and created a fake "profile" of his high school principal. The profile included a photograph of the principal, which the student had copied from the district's website. The student claimed that his First Amendment rights were violated.

The Appellate Court decided in favor of the student on three grounds: 1) the district could not establish a sufficient *nexus* between his speech and a substantial disruption of the school environment, 2) the First Amendment could not tolerate the district stretching its authority into the home of the student's grandmother and reaching him while he was sitting at her computer after school in order to punish him for the expressive conduct that he engaged in there; and 3) his use of the district's web site did not constitute entering the school and the district was not empowered to punish his out of school expressive conduct under the circumstances.

### **Holding Group II (School Districts Prevailed)**

*Boucher v. School District of Greenfield*

Wisconsin (1998)

134 F.3d 821

A student filed a lawsuit against the school board, claiming constitutional torts and asking injunctive relief. The student was in his junior year in high school when he published a pseudonymous article in an underground school paper containing information, which enabled classmates to disrupt the school's computer system. The student was identified and expelled for one year.

The lower court granted the injunction in favor of the student and denied a stay pending appeal. The board appealed, and the Appeals Court vacated the injunction on the basis that the lower court erred in the fundamental question of constitutional tort. The appeals court argued that the lower court failed to address that claim of harm and therefore, the application of the test calling for a weighing of relative interests was erroneous. The injunction would undermine school discipline, the Appellate Court argued. Furthermore, the Court argued that it is more likely that the school board would prevail on the merits. Hence, the Court vacated the lower court's order as having been an abuse of discretion.

*J.S. v. Bethlehem Area School District*

Pennsylvania (2001-2002)

569 Pa. 638; 807 A.2d 847

In this case, the student claimed First Amendment violation (free speech). The student created a website from his home computer entitled "Teacher Sux" in which a number of pages consisted of derogatory, profane, offensive, and threatening comments about school staff, including a teacher, a Middle School principal, and another individual. The site was publically

accessible by others, including school staff and students. The website solicited funds to hire a “hit man” to kill the math teacher. The teacher became very upset and had to take a medical leave of absence. Other students became anxious over the contents of website. The principal determined that the website was disrupted of school's morale. The student was suspended for three days and was later expelled.

The court of Common Pleas Court affirmed the decision of the school district. Similarly, the Commonwealth Court (Appeals Court) affirmed the previous court's decision. In the state Supreme Court, the decisions were also affirmed on the basis that the website created disorder and significantly and adversely affected the delivery of instruction. Further, the school district was able to demonstrate that the website created an actual and substantial interference with the work of the school.

*Wisniewski v. Weedsport Central School District*  
New York (2007)  
494 F.3d 34

A student filed a lawsuit against a school district, claiming First Amendment violation, after the school board suspended him for one semester. In this case, the student used his parents' home computer and sent instant messages to other students. The message contained an icon—a drawing of a pistol firing a bullet at a person's head and words calling for the killing of the student's English teacher—which was determined by the school to be threatening, and in violation of school rules. It was also determined that the messages had caused disruption of school operations. The icon was sent to fifteen individuals, many of them were the student's classmates.

The United States District Court granted summary judgment in favor of the school. The appellate court affirmed the judgment on the basis that the con did not constitute protected speech under the First Amendment. The Court further noted that there was a reasonably foreseeable risk, which could potentially lead to material and substantial disruption of the school.

*Requa v. Kent School District*  
Washington (2007)  
92 F. Supp. 2d 1272

A high school student filed a lawsuit against the school district, after he was suspended (forty days, with twenty days held in abeyance) for posting a video about his teacher, whom he secretly filmed during class, on youtube.com. The video consisted of comments and footages taken from the classroom about the teacher. The student admits posting the video on the popular site. The student claimed that his First Amendment and Constitutional Due Process rights were violated. The student also claimed that the disciplinary action violated school's own policies on discipline and sought a temporary restraining order. The student argued that the disciplinary actions were a pretext for an underlying desire of the school to punish the plaintiff for exercising his rights to free speech. The school counter argued, by saying that the student was penalized for classroom conduct and not for his off-campus speech.

The United States District Court found that the student provided not evidence supporting the argument against the disciplinary action taken by the school. Hence, the student was unlikely to succeed (likelihood of success) on the merit of that claim. The court also found that the filming in the classroom constituted a material and substantial disruption. Therefore, the court rejected the student's attempt to characterize the video as "criticism" of the teacher. Similarly, the

court found that the student's irreparable injury claim was insufficient to compel the requested extraordinary remedy.

*M.T. v. Central York School District*  
Pennsylvania (2007)  
937 A. 2d 538

A student was suspended for violating the school's Computer Use Policy, by posting an unauthorized photograph on the school district's website. The student had a previous history in the school, for which he was suspended during the previous school year when he helped create a website where students could make fake school identification cards. In that incident, the student admitted helping another students hacked into the school district's computer system. The student was suspended for the remainder of the school year under the school policies, the State's Public School Code of 1949, and the several Pennsylvania Crimes Codes. Still, the student filed a lawsuit against the school board under Pennsylvania Statutes. The student claimed that school policy violated local, state, and federal laws, particularly within the context of the length of the suspension. The court of Common Pleas upheld the district's decision. Similarly, the court of Commonwealth Court affirmed the trial court's decision.

*Wynar v. Douglas County School District*  
Nevada (2011)  
2011 U.S. Dist.

In this case, a student was suspended for ten school days and was later expelled for sending an instant message to his friend, which contained threats to several female students. The student was arrested and removed from school during the investigation.

The student claimed that the school district violated: 1) Procedural Due Process; 2) Substantive Due Process; 3) First Amendment; 4) Negligence; and 5) Negligent Infliction of

Emotional Distress. The school district, on the other hand, was seeking summary judgment on all the claims. The United States District Court found in favor of the school district.

*Kowalski v. Berkeley County Schools*  
West Virginia (2012)  
652 F.3d 565

A student was suspended for using her home computer to create a webpage that was largely dedicated to ridiculing a classmate. The student was suspended for five days and was assessed social suspension, i.e., restricted from school activities, for ninety days. The student claimed that the school district violated her free speech rights, under the First Amendment, by punishing her for speech that occurred outside school grounds. She also claimed intentional or negligent infliction of emotional distress.

The United States District Court granted summary judgment in favor of the school district, which the student appealed. The Appellate Court upheld the trial court's decision on the basis of the following: (1) the nexus between the student's speech and the school district's pedagogical interests was sufficiently strong to justify the action taken by administrators in carrying out their role as the trustees of the student body's well-being; (2) the speech was materially and substantially disruptive in that it interfered with the school's work and collided with the rights of other students to be secure and to be let alone; and (3) it was foreseeable that her conduct would reach the school. Similarly, the student's due process claim failed because (a) she was on notice that administrators could regulate and punish the conduct at issue and (b) administrators were not required to provide a more extensive opportunity to allow her to justify her conduct since she admitted her conduct.

*Tyrrell v. Seaford Union Free School District*  
New York (2011)  
792 F. Supp. 2d 601

A student sued the school district, claiming Title IX based on sexual harassment from other students. The student argued that the school district failed to protect her against sexual harassment from other students. The court found that a website posting of photographs of the student engaged in sexual activity with another female student was not based on her gender, but rather, it was based upon the student's perceived lesbianism and/or bisexuality. The court found that the school district did not have actual notice of any alleged sexual harassment.

### **Holding Group III (Both Parties Prevailed)**

*Mahaffey v. Waterford School District*  
Michigan (2002)  
236 F. Supp. 2d 779

A student sued the school district, a school director, and a board of education, after he was suspended for creating a website with another student. The student was recommended for expulsion and a hearing was scheduled. The student claimed that his First Amendment and Due Process rights were violated. Further, the student claimed that federal and state disability and discrimination statutes were also violated. Both parties sought summary judgment. Initially, the court held that the regulation of the student's speech on the website without any proof of disruption to the school or on campus activity in the creation of the website was a violation of the student's rights under First Amendment. The court also held that the student failed to meet the requirements for a prima facie case of disability discrimination under the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., the Rehabilitation Act of 1973, 29 U.S.C.S. § 791 et seq., or the state persons with disabilities civil rights statute.



*Coy v. Canton City Schools*  
Ohio (2002)  
205 F. Supp. 2d 791

A student and his parents sued a school district, a school board, and two individuals after the he was disciplined for creating, maintaining, and publishing a website from his home computer. The student claimed that the defendants violated his First Amendment rights. The student also claimed that he was punished under the unconstitutionally vague and overbroad student conduct code. They further claimed that the individual defendants sensationalized the student's speech, which led the police to visit his home, also causing the internet service provider to discontinue hosting the website. They further claimed defendants' actions violated Ohio Const. art. I, § 11. Both parties sought summary judgment.

The court held that there was a genuine issue of material fact as to whether defendants were motivated by the content of the student's website or, as they claimed, motivated solely by the accessing of an unapproved site. Therefore, summary judgment on the federal and state First Amendment claims, as well as on the issue of qualified immunity, was improper. The court also held that the part of the student conduct code was unconstitutionally vague.

*Klump v. Nazareth Area School District*  
Pennsylvania (2006)  
425 F. Supp. 2d 622

After a teacher confiscated the student's cell phone, the student and his parents sued the school district, the superintendent, the assistant principal, and the teacher under the Pennsylvania Wiretapping and Electronic Surveillance Control Act and invasion of privacy. They also claimed defamation, violations of the Fourth Amendment and numerous articles in the Pennsylvania Constitution, and negligence. They claimed that the teacher and the assistant principal accessed

the student's text messages and voice mail and they falsely reported to news outlets that the student was suspected of being a drug dealer. The school district argued that the student display of the device was in violation of school policy. The district sought to remove the case from the federal court and ultimately moved to dismiss.

The court found that because the student did not engage in a communication that was intercepted, he lacked standing to bring a claim under 18 Pa. Cons. Stat. § 5725. On the other hand, on the issue of unlawful access to stored communications, the court found that the student did have standing under the 18 Pa. Cons. Stat. § 5741. At the same, the court found the school district was immune from the § 5741, invasion of privacy, and defamation claims in regards to 42 Pa. Cons. Stat. § 8541. The court, did not grant the superintendent a dismissal of the invasion of privacy and defamation claims on immunity grounds.

*T.V. v. Smith-Green School Corporation*  
Indiana (2011)  
267 F.R.D. 234

During a sleepover, several girls took photographs of themselves sucking on lollipops. Several captions were added in the pictures, which were lewd. A student identified as T.V., one of the students plaintiff, posted most of the pictures on her social media accounts (Myspace or Facebook). Other photos were also posted on the popular site: Photo Bucket. In some cases, the pictures were available to the public without a password. Upon discovering the photos, the school district suspended the students. Two students claimed that their first Amendment rights were violated. They argued that taking photographs of themselves outside of school and posted them on the internet was protected speech and did not constitute obscenity or child pornography under Ind. Code §§ 35-41-1-9, 35-42-4-4(b), (c), or 18 U.S.C.S. § 2256(8). The court argued that

no reasonable jury could conclude that the photos caused a substantial disruption to school activities or that there was a reasonably foreseeable chance of future substantial disruption.

Motions summary judgment by both parties granted in part and denied in part.

*J.C. v. Beverly Hills Unified School District*  
California (2010)  
711 F. Supp. 2d 1094

After a student was suspended for posting a video on YouTube, which featured an off-campus conversation with other students, the school district was sued. The student claimed that the school had no authority to discipline her for conduct since the event took place off school grounds. The conversation contained derogatory remarks about another student.

The court held that schools have had the authority to discipline students for off-campus speech if such speech caused a substantial disruption of school operations. The mere fact that other students were overheard discussing the video and that the subject of the video was upsetting did not constitute a substantial disruption to school activities. The court also noted that the school district and school administrators in particular were under the doctrine of qualified immunity, which protected them against monetary damages when acting in their quality as public officials.

*Evans v. Bayer*  
Florida (2010)  
684 F. Supp. 2d 1365

A student sued the school principal in his individual capacity after she was suspended for creating a group on Facebook, which named a teacher as the worst teacher she had ever met. Other students used the site to comment about their dislike of the teacher as well. The student

claimed that her First and Fourteenth Amendments rights were violated. The school principal sought to dismiss.

The district court found that the student failed to properly state a claim for injunctive relief. The court could not determine whether the student's conduct was in violation of a school policy. The court further noted that the student's speech could not be considered unprotected speech. Therefore, the court found that the student's actions were not disruptive, nor was her speech in any way lewd, vulgar, defamatory, promoting drug use or violence. The motion to dismiss was granted in part and denied in part.

*Doninger v. Niehoff*  
Connecticut (2010-2011)  
642 F.3d 334

A student claimed that because she posted a blog entry from home during non-school hours, she was prevented from running for senior class secretary. The student further claimed that she was prohibited from wearing a homemade printed t-shirt at a subsequent school assembly. Consequently, the student claimed that school officials violated her First Amendment and Equal Protection rights.

The district court granted one of the student's constitutional amendment claims, but also granted summary judgment to the school district. Both the student and the school district appealed. The Court of Appeals affirmed the granting of summary judgment for the school official and reversed and remanded the denial of the school's motion for summary judgment on the basis that it was reasonable for the school officials to conclude that the student's behavior was potentially disruptive. As a class representative--a person charged with working with school officials to carry out her responsibilities, the student was not free to engage in such behavior. On

the issue of wearing the t-shirt, the court argued that although a reasonable fact-finder could conclude that the officials were mistaken in assessing the likely impact of the t-shirt and thus the permissibility of prohibiting it. Even so, the court noted that such mistake was reasonable.

*J.S. v. Blue Mountain School District*  
Pennsylvania (2010-2011)  
650 F.3d 915

A student and her parents sued the school district after the student was suspended for creating an Internet "profile," which ridiculed the school principal. The page contained adult language and sexually explicit materials. The student claimed that her First Amendment rights were violated, including the parents' Fourteenth Amendment rights to raise and punish their child for out-of-school speech, which were outside the school district's authority.

The District Court granted summary judgment to the school district. The plaintiffs appealed. The Court of Appeal held that an undifferentiated fear of disturbance was insufficient to overcome free speech rights.

The Court noted that while the student's First Amendment rights were violated, nothing forced or prevented the parents from reaching their own disciplinary decision, nor were they forced to approve or disapprove of the conduct. On the issue of the constitutionality of the school policy, the Court found that the student handbook was explicitly limited to in-school speech, thus, the policies were constitutionally and not overbroad. The policies clearly defined when and where they applied, with specific examples, and articulated a comprehensible normative standard. Therefore, the policies were constitutional and not vague. The Court ordered summary judgment in favor of the school district. The court also found that the district did not violate the parent's Fourteenth Amendment substantive due process rights.

### **Identifying Themes and Patterns**

In order to assess the different court holdings outlined above, the documents were scanned for word repetitions (also known as Key-Word-In-Contexts or KWIC). By using this technique, words or phrases that occurred multiple times in the documents were identified and later compared with the keywords from legal precedents. The goal was to put these words or phrases in context in order to understand potential relationship among their usage in the reasoning of the court.

Within the three holding groups, several themes and patterns were identified. Many of those themes overlapped, depending on the case. As previously noted, many in several online incidents, a comment was posted on a webpage, which made fun of a school staff or other students. In other words, many of the same themes and patterns were present within the different holding groups.

The courts tended to base their arguments on five important issues: “qualified immunity,” “freedom of speech,” “threats,” “school policies,” and “libel.” In cases involving freedom of speech issues, words or phrases such as disruption, speech rights, reasonably foreseeable, or forecast were often used by the courts. In cases involving threat issues, words or phrases such as likelihood of success, material fact, evidence presented, public interest, or reasonably foreseeable were often used by the courts. In cases involving school policy issues, words or phrases such as constitutional rights, irreparable harm, discipline, vague, or overbroad were often used in the court reasoning. Additionally, cases involving in libel issues, words or phrases such as qualified immunity, emotional distress, irreparable injury, or deliberate indifference were often used in the court reasoning.

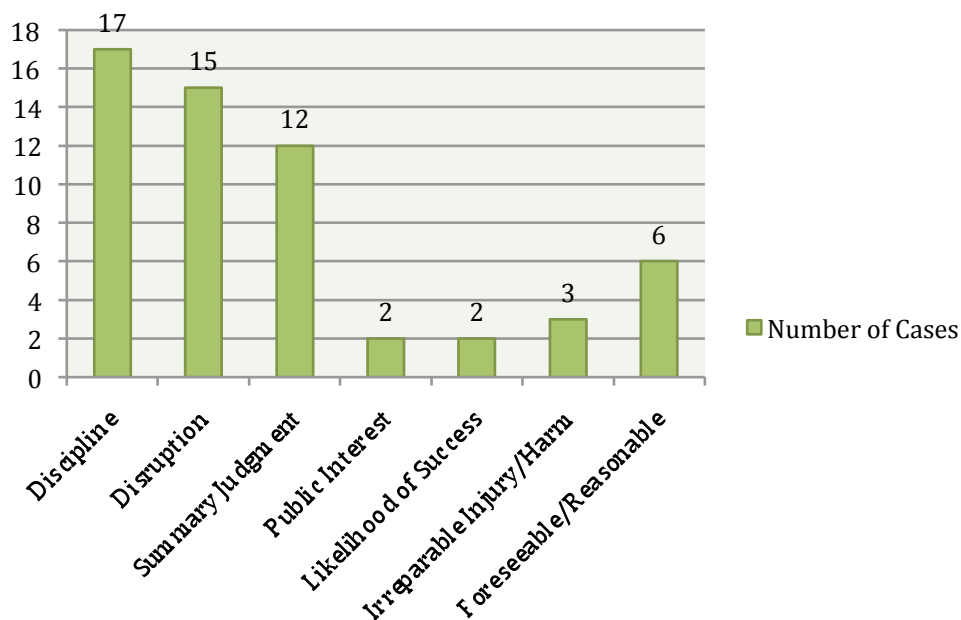
*Word/Phrase Frequency Analysis*

As illustrate in Chart 4.22, a word frequency analysis revealed the presence of several words or phrases. The analysis indicated that seventeen cases (approximately 71 percent) contained the word “discipline,” regardless of the location of the incident or the prevailing party. In fifteen cases (approximately 63 percent), the words “disruption,” “disruptive,” or “disrupt” appeared. The prevailing party or the location of the incident did not play a major role in the presence of these words. In all instances, their presence coincided with the word “discipline.” For example, in the case where the word disruption or disrupt was present, the word discipline or disciplinary was also present.

In 12 cases (approximately 50 percent), the phrase “summary judgment” was present. While the prevailing party did not affect the presence of this phrase, in many instances, in the cases where this phrase appeared, the words: “disruption” and “discipline” were also present. In cases where the prevailing parties were both students and schools, the word “qualified immunity” appeared several times. Words or phrases such as “rights,” “constitutional rights,” “due process,” and “speech rights” were also present in cases where both parties prevailed. A great majority of those cases also contained words such as “disruption,” “discipline,” and “suspension.” The phrase “public interest” was uttered only in two cases (approximately 8 percent). The phrase “likelihood of success” was also uttered twice, but in two different cases. The phrases “irreparable injury” and/or “irreparable harm” were uttered in three cases (approximately 13 percent). Their appearance coincided with the phrases “likelihood of success” and “public interest.”

Other words or phrases such as “foreseeable” or “reasonably foreseeable,” or “forecast” were also present in many cases. For instance, these words were uttered in six cases (approximately 25 percent). Their presence also coincided with other words or phrases such as “vague,” “overbroad,” “emotional distress,” “evidence presented,” “clear error,” “true threat,” “material fact,” “deliberate indifference,” “constitutional rights,” and “process rights.” They were also present in conjunction with words such as “discipline,” “qualified immunity,” and “summary judgment.”

**Chart 4.22: Most Frequently Used Words or Terms By Cases**



Source: From The Court Cases Retrieved

**This Chart:** Shows the most frequently used terminologies in court litigation. The terms discipline, disruption, summary judgment, and foreseeable or reasonable were often used in court documents.

#### *Answering Question #4*

As the analysis progressed, it was determined that the frequency of the words or phrases aforementioned was not peculiar. In many ways, they corresponded with previous findings,



which suggested the reasoning patterns of the courts. For example, in cases where the word “threat” was mentioned, the court reasoning was more likely to contain the phrase “evidence presented.” Similarly, in cases where the words or phrases “irreparable harm” were used, the words or phrases “likelihood of success” and/or “public interest” were likely to be mentioned in the court reasoning.

Therefore, in lieu of a specific answer to the fourth question, it could be said that the presence of those words or phrases in school policies was important in helping school administrators in their decision making process. The knowledge of these words or phrases could inform the decision to intervene in an online issue. These words or phrases appear to indicate what the courts is looking for in the legal arguments of the parties involved. It could be argued that the absence of these terms in many school policies seems to be the reason why any disciplinary action taken by a school administrator could be uphold or vacate by the courts. Hence, failure to include those words in school policies and making decision in accordance with the context in which those words were used in legal precedents could lead to legal uncertainty.

## Chapter 5

### ANALYSIS AND DISCUSSION

*“I believe in law. At the same time I believe in freedom. And I know that each of these things may destroy the other. But I know too that, without both, neither can long endure ... Law, freedom and justice—this trinity is the object of my faith.”*

—Supreme Court Justice Wiley Rutledge

#### Analysis of the Results

Between 1998 and 2011, there have been numerous disputes involving students and school districts on the issue of online free speech, especially in cases where the disciplinary actions were seen as violations of the U.S. Constitution. Sensational media headlines often played a critical role in the debate by not only increasing public perception, but also by playing the numbers about the true incidence of cyber-related activities in schools. Most public officials, namely legislators, school administrators, and teachers are often pressed to take immediate actions. Needless to say that parents are often very worried about the adverse effects of student speech on or off school grounds and the incapacity of school officials to control and reprimand speech activities that hamper the learning environment (Baldas, 2007; Chaker, 2007; Gomez, 2006, & Wagner, 2008). Yet, not all cyber-related disputes have led to litigation. Similarly, not all court proceedings about cyber-related issues have been published. Hence, the extent to which cyber-related litigation is pervasive is unknown and/or perhaps enormously overstated.

The presumption is that cyber-bullying incidents are increasing at an alarming rate. Within the last decade, cyber-bullying laws have also increased rapidly in response to social and public pressure (Harder, 2009). Between 1999 and 2010, state legislations have grown

exponentially comparing to other areas of the law. Debatably, while the courts are effortlessly blamed for the perceived insurgence of cyber-related issues, the role school districts play in these issues is often conveniently understated or ignored. It could be said that school officials have been largely unable to find satisfactory resolutions to cyber-related disputes; a failure that can be attributed to the fact that school districts do not have the higher grounds on these issues. Also, school officials have a stake in upholding the rules and regulations that they approved and implemented. Hence, they cannot objectively address such issues. Despite oppositions, the courts appear to be the only neutral grounds upon which to settle cyber-related disputes.

The findings outline several important issues, which are featured in this section. The following analysis centers on the results on school policies; it also links the role of state statutes to the design of inadequate school intervention and the legal consequences thereafter. For a better understanding of the issues, information contained in the court cases (see Appendix D) is thoroughly assessed so that the direction of the courts is clearly understood. The amalgam of court levels provides a fair representation of the views of the judicial branch on the issue of online speech. The chief argument by many legal scholars and school practitioners seem to convey the perception that jurisprudence on cyber-bullying offer little or no help to those seeking legal guidance. The findings in this study, however, appear to suggest otherwise. Let us explore!

### **Findings #1**

Contrary to popular assumptions, the findings for the first question suggest that a great majority of the school districts mentioned in the court cases between 1998 and 2011 did not have any clear policy addressing the issue of cyber-bullying. Even after the incident, most school

districts still did not have any policy in effect, which remotely addressed the issue that led to legal dispute in the first place. This begs the question as to the role of school districts or school policies in general in online intervention. In part, because most states have enacted statutes, which required school boards or school districts to develop new policies or to update current ones to include cyber-bullying, the presumption is that most schools have policies in this arena. The sad reality is that, at least based the data collected, only a fraction of school districts have policies that specifically addressed cyber-bullying or online speech on or off school grounds.

This information provides a rare glimpse into the origin of online freedom of speech issues in public schools; it also outlines that possible reasons why outcomes in those litigation tend to favor students, particularly in cases where “school policies were not specific enough in regards to where and when they applied,” as argued in *J.S. v. Blue Mountain School District* (p. 18). For example, in *Flaherty v. Keystone Oaks School District*, a case where the student prevailed, the court addressed the issue of school policy in online speech. In this case, the student plaintiff and his parents claimed that the school policy was unconstitutional, overbroad, and vague. They further stated that portions of the school policy allowed school administrators to punish student speech that was deemed “inappropriate, harassing, offensive or abusive” (p. 6). They also noted that the policy provided no clear guidelines for issues pertaining to on or off campus speech or speech in school sponsored events or activities.

The court pointed out that the school policy failed to delineate, in accordance with *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969), between speeches that caused a material or substantive disruption of school activities or speeches that are political. On the issue of ‘the reach’ of a policy, the court directly

linked school policies with state statutes, while noting that: “administrative interpretation or implementation of a policy must be reasonable within the context of the statute” (*Flaherty*, p. 6). In other words, a policy must reflect the statute it is emanated and, by all means, should reflect the requirements of the statute.

Citing *Killion v. Franklin Regional School District*, 136 F. Supp.2d 446, 458 (W.D. Pa. 2001), another court case in which the student prevailed, the court inferred that the specificity of a school policy should reflect that of a state statute on a particular issue or subject. Put another way, “A statute may be declared unconstitutional when it is sufficiently overbroad” (*Flaherty*, p. 6). Likewise, a policy can be declared overly broad for the same reason. The court emphasized on the importance of a school policy, particularly a policy that clearly define and explain the conduct it sought to prohibit, to a point where the court agreed with the plaintiff(s) that there are some serious issues with the school policy. Thus, the court found the school policy unconstitutionally overbroad and vague.

The court also noted that under the ‘void for vagueness doctrine,’ government rules and/or regulations might be declared void if they fail to provide adequate warnings about the conduct they seek to prohibit. Under this doctrine, a policy could be declared void if it fails to “set out adequate standards to prevent arbitrary and discriminatory enforcement” (*Flaherty*, p. 6). This argument seems accurate, in terms of the types of policies that are currently in effect in many school districts across the fifteen states included in this study.

Most of the policy documents analyzed in this study did not directly apply to cyberbullying. A great majority of those policies included in their language vague terms, for example, “online misconduct,” “electronic communication,” or “electronic transmission,” which were not

clearly defined in any length throughout the documents. As the court further noted, “Policies that are not just vague in definition, but also vague in application and interpretation such that they could lead to arbitrary enforcement” (*Flaherty*, p. 7), are problematic. One could argue that such policies are the source of the problem. Unfortunately, the majority of the school districts mentioned in this study had policies that—based on their language—could also lead to arbitrary enforcement, which in turn could lead to legal disputes or increase incidence of litigation.

An exception that is worth noting here is: The *Milford High School* (in *I.M.L. v. State of Utah*). This school district was the only one that had policies that clearly delineated between traditional bullying and cyber-bullying. This particular school district had two sets of policy documents, which clearly defined, explained, and outlined the types of on or off school conduct that were unacceptable and the types of disciplinary actions that school administrators should take against both activities. In this case, the court decided in favor of the student. It must also be noted that while this school district had clear policies on cyber-bullying, the state statute was not aligned with legal precedents. None of the elements of the *Fraser* standard were mentioned in the language of the current state statute (see Table 4.16).

As alluded to above, many school districts had policies that only addressed traditional bullying. Portions of those policies also mentioned electronic misconduct. Even so, the term “cyber-bullying” was absent in many of those policies. Shockingly, activities that were considered online misconduct were only punishable under other types of school policies. Not only the incorporation of clear definitions and explanations in a policy is important, but also the presence of legal precedents is equally quintessential. For most school policies, in spite of the absence of specificity on cyber-bullying or online speech issues, their non-adhesion to the

language of the United States Supreme Court's landmark cases is equally disconcerting and/or perhaps disadvantageous. Therefore, without the presence of those clearly laid out elements by the courts in a policy, a school district's likelihood of success in a dispute involving online speech and disciplinary actions dwindles considerably.

### **Findings #2**

Findings for the second question were inconclusive. More than half of the school districts that had a policy, which addressed either traditional bullying or online communications issues, implemented or took disciplinary actions that were aligned with the recommendations stipulated in their policy documents. The disciplinary actions taken by many school administrators (i.e., policies that specifically addressed bullying or online incidents), were compatible with their schools' own policy documents. In other instances, the types of punishments handed out to students were incompatible with the school's own policy documents or policy manual. In these instances, school administrators' actions were not aligned with their school's own policy.

Moreover, in cases where no clear policies on bullying or cyber-bullying were found, the findings suggested a similar pattern. For example, in the policies labeled "other," i.e., policies for which the terms "Internet," "cyber," or "electronic" were present, school administrators did not follow disciplinary recommendations. It must be noted that the information for at least two schools was not clear. Consequently, it could be concluded that, in cases where there were clear policies, school administrators tended to follow the recommendations for punishment or disciplinary actions, at least to some extent. On the other hand, in cases where no clear policies existed, disciplinary actions taken by school administrators were inconsistent and reflected only

their own judgment in the situation, which seems to add credence to the rational model approach, as illustrated in Bush (2003, p. 37).

From a legal perspective, allowing school administrators to use their own judgment on these issues could potentially be disastrous and costly for school districts. The alignment between disciplinary recommendations in school policies and the actual disciplinary actions taken by school administrators is not enough to justify those actions. Not only state statutes must align with legal precedents, school policies must also align with state statutes. Similarly, the implementation of those policies must also align with the text or the recommendations within the actual policy document. The mere fact of disciplining a student based on what is written in the policy without taking into account the context of which those disciplinary actions were designed to address is not enough. In other words, disciplinary actions must be reasonable within the boundaries of legal precedents.

Servance (2003) notes that because of cyber-bullying, controlling traditional bullying presents more challenges for school administrators. Without a clear guideline, school administrators are prone to react based on their emotional understanding of the situation at hand. The courts seem to agree with that assessment. For instance, in *Beussink v. Woodland R-IV School District*, 30 F. Supp. 2d 1175, the school principal acknowledged, “he was upset that the student message—a homepage on the Internet that was very critical of the high school he attended—had found its way ‘*into his school’s*’ classrooms.” The pronoun “His” strangely denotes a possession, which, in this instance, appears to be the principal’s classrooms, as if it was his personal property. The principal further testified that, “he made the determination to discipline *Beussink* immediately upon seeing the homepage” (p. 7).



The court noted that the principal's actions were not based upon any legal foundations, as stipulated by the United States Supreme Court. For example, the decision to discipline the student, in this case, was not based upon any "fear of disruption or interference with school discipline (reasonable or otherwise)" (p. 7). In other words, the disciplinary actions taken by the school principal was a complete disregard for legal precedents, which, as the court saw it, was a clear violation of the First Amendment rights of the student. The court further argued, "Disliking or being upset by the content of a student's speech is not an acceptable justification for limiting student speech under *Tinker*" (p. 7).

### **Findings #3**

While it could be inaccurate to argue that the language in the policy documents retrieved were compatible with the term "cyber-bullying," it could, nevertheless, be concluded that, specific elements of legal standards or legal precedents were, indeed, reflected in several policy documents of many school districts mentioned in the court cases. Nonetheless, the extent to which those policies could be considered cyber-bullying policies is unclear.

As argued earlier, there ought to be an unequivocal link between legal precedents, state statutes, and school policy (see Figure 4.2). As the courts inferred, it must exist a nexus between speech and substantial disruption. Moreover, school administrators' actions must also reflect this linkage; otherwise, as the court argued in, *Layshock v. Hermitage School District*, disciplinary actions taken in the absence of any clear disruption are unacceptable. When school policies are designed and implemented under such presumptions, i.e., only protecting schools' interests, there is the potential for a school district to stretch its authority to punish students for expressive

conduct engaged off school grounds, which, the court argued, the “First Amendment cannot tolerate” (*Layshock v. Hermitage School District*, 2011, p. 12).

The most fascinating aspect of the findings (for this question) is the fact that legal precedents, at least to some extent, were reflected in many school policies as well. While those same legal precedents were reflected in many state statutes, a great majority of state statutes directly addressed the issue of cyber-bullying separately. Contrary to state statutes, however, a great majority of school policies did not address cyber-bullying in a similar manner (see Tables 4.9, 4.11, 4.15, 4.16, and 4.17). Therefore, many of these school policies could be declared void and unconstitutional under the ‘void for vagueness doctrine’ articulated earlier.

Despite school policies’ alignment with legal precedents, other issues, such as incoherent language or instructions, could lead legal disputes. For instance, the findings suggest that the one legal precedent that was present in almost all state statutes and in the majority of school policies was “threat” (see Tables 4.16 and 4.17). Even so, courts tended to favor students in instances where school districts could not articulate the threat that they perceived in the expressive conduct of the students involved in the incidents. For example, in *Emmett v. Kent School District*; *North Carolina v. Mortimer*; and *Killion v. Franklin Regional School District*, the court noted that school districts could not present evident of the threat or provide the evidence of actual disruption, or demonstrate the likelihood of success on the merits. In other words, the schools could not show that the student intended to threaten anyone. Hence, the threat was only perceived to be true, when in fact, it was not the case.

In *J.S. v. Blue Mountain School District*, the court emphasized on the need for school districts to have policies that are sensible. In other words, policies that clearly and explicitly

indicate specific actions. Put another way, if a policy is intended to address cyber-bullying, it must clearly delineate actions pertaining to cyber-bullying. Similarly, the policy must articulate normative standards, which in this instance could be interpreted as the incorporation of legal standards into every aspects of the language of the policies.

#### **Findings #4**

As demonstrated in the three previous questions and their subsequent answers, some of the patterns identified within the courts' reasoning were also noted in many school districts' policy documents. To reiterate, of the 23 school policies retrieved, only one school district had policy documents that specifically addressed cyber-bullying. In that sense, I agree that the courts can be inconsistent in their approach. As per the findings, most school districts should not have prevailed. It seems evident that in most cases, some trial courts chose elements that satisfied a particular legal argument, which can create more confusion about the direction of the courts.

Fortuitously, courts of higher instances, including Appellate Courts or State Supreme Courts tended to overrule those trial courts' decisions. Arguably, this legal roller coaster tends to reinforce the notion that legal outcomes in cyber-bullying intervention or online speech issues are unpredictable. That being said, based on the patterns identified in this study, one could confidently infer that a lack of clear policy is the reason why cyber-bullying or online speech issues in general are so contentious, therefore, the reason why there are so much legal uncertainties on these issues. Consequently, any further discussions on the issue of school intervention must first demonstrate that school policies are adequate. Similarly, it must also be established that there is a clear distinction between cyber-bullying and online freedom of speech. Short of that, attempts to understand the policy implications of the findings could be erroneous.

## Discussion

Debatably, most legal commentators have strong opinions about what cyber-bullying is, and how the courts should go about addressing it. Some are convinced that the problem lies in the courtrooms and that the way the judicial system has handled this issue is inappropriate. For example, Erb (2008) argues that the use of the *Tinker* standard by the courts is simply “*absurd.*” On the opposite side of the spectrum, others have admitted that there is not a clear definition as to what constitute cyber-bullying. Harder (2009) notes that current school policies do not adequately guide school administrators on when they have jurisdiction over students’ online activities. Similarly, educational scholars have also argued that there is not a clear demarcation between traditional bullying and cyber-bullying, other than the fact that one takes place on the Internet, and as a result, has the potential to cause greater harm. Therefore, it could be argued that a clear assessment of the way the courts have handled such cyber-related issues is implausible, regardless of which side of the debate one happens to stand.

These views, perhaps these contradictory approaches, tend to polarize the debate even further. This study, while not centered on any particular set of ideological premises, was conducted in search for answers. As the findings suggest, there is another aspect to cyber-bullying that most scholars and educational practitioners alike may have overlooked or perhaps purposefully ignored. That is, cyber-bullying laws may not be as ineffective as most would argue; I would contend the opposite. All indications from this study suggest a misapprehension about what cyber-bullying truly is, and where cyber-bullying laws should apply.

As I delved deeper into this inquiry, the more I realized a fundamental dissimilarity between cyber-bullying and online free speech. Succinctly, the findings reinforced that

apprehension to a point where I am now convinced that the current debate over the usefulness of the courts on this issue is simply based on erroneous interpretations or erroneous labeling of certain phenomena in public schools or certain conduct by students. Within the next few pages, I will attempt to discuss that apprehension in the hope of shedding some lights on this issue.

### **Understanding the Findings**

The answer to the first question was in the negative. The majority of the school districts mentioned in the court cases *did not have policies* that specifically addressed cyber-bullying. Despite the fact that some school districts did have policies that included elements of bullying, harassment, or online misconduct in their language, in most cases, the types of disciplinary actions taken by school administrators were not always consistent with school districts' own policies. Not surprisingly, the findings, in this instance, were mixed. Therefore, the answer to the second question was *inconclusive*.

The third question, on the other hand, was also answered in the affirmative. The findings clearly established that legal precedents *played a major role* in state statutes. Succinctly, legal precedents were also reflected in many school policies. While legal precedents were present in the language of the majority of school policies, the extent to which those policies pertained to cyber-bullying and the extent to which those policies were applied to the right issues and in the appropriate circumstances remained elusive.

Even so, the fourth question succinctly demonstrated that the direction of the courts, when settling disputes pertaining to online freedom of speech issues in public schools, is clear and unequivocal. The different themes and patterns of reasoning identified throughout the cases

suggested that the courts have established certain parameters upon which arguments and final opinions are certain to include. Hence, one is left to ponder about the true nature of cyber-bullying issues. Perhaps cyber-bullying is just a term used arbitrarily to describe events or online incidents in public schools that are not necessarily related to the act of bullying.

### *Cyber-bullying versus Online Freedom of Speech*

While there is not a clear definition about cyber-bullying, most definitions include the words or phrases such as “students,” “use of electronic,” “use of the Internet,” “chat rooms,” “blogs,” “cell phones,” “instant messaging,” “texting,” and “sexting.” The National Conference of State Legislatures (2011) defines cyber-bullying as the “willful and repeated use of cell phones, computers, and other electronic communication devices to harass and threaten others.” In this definition, two important elements are worth noting: first, the word “willful” was used; and secondly, the word “repeated” was also used. Although some definitions include the words “severe” or “pervasive,” none of the words mentioned above were present in the background information of the cases. Shockingly, these words were never mentioned in the arguments of many school districts against the students (e.g., perpetrators) or during court proceedings. Thus, it could reasonably be argued that those cases were not necessarily about cyber-bullying.

There is a mistaken perception about the prevalence of cyber-bullying incidents in public schools. While acknowledging that not every incident is reported, the true incidence of cyber-bullying is probably lower than previously thought. For instance, Cohn (2007) reported a study, which stated that 90 percent of middle-school students had their feelings hurt online. While being hurt online is certainly not a wonderful experience for any child, it does not necessarily rise to the level of cyber-bullying or does not fall within the criteria of a bullying activity either.

There is also a misconception about school districts' capacity to intervene in cyber-bullying incidents. Most scholars have argued that schools should be allowed to intervene in order to prevent further harm to victims (Zande, 2009). As I reviewed the literature, I pondered over this argument and I got confused as to what the problem really is. Relying solely on the findings of this study, I can argue that school districts do enjoy broad latitude to address cyber-bullying issues. Then again, there has to be a clear distinction between cyber-bullying and cyber-speech. Currently, the line between the two concepts is blurry. Unfortunately, I would argue, most legal commentators are not providing the proper guidance to the average reader; one has a sense that every online comment, as long as it is not a compliment, is a cyber-bullying assault.

Most would agree that cyber-bullying is not free speech; likewise, cyber-speech is not unlawful. Hence, such speech should not be censored. In other words, activities pertaining to online freedom of speech do not constitute cyber-bullying. One is a fundamental constitutional right, which the First Amendment of the United States Constitution clearly affords to every citizen of this country; the other, on the other hand, in most states, is an offense, which civil or criminal laws have expressly addressed and punished. Put another way, for freedom of speech to occur, one needs to speak one's mind only once. Cyber-bullying has to contain two essential elements: (1) the Internet must have been used; and (2) the very act of bullying must have been perpetrated. Using the Internet to speak one's mind does not constitute cyber-bullying. Likewise, using the Internet to bully or harass others is in no way permissible under the First Amendment.

While the holdings discussed above are unparalleled, the divergent nature of the final decisions outlined in the court cases certainly supports the notion that, despite the existence of cyber-bullying laws, the outcomes in cyber-bullying litigation are unpredictable. For example,

among the different cases litigated, the total number of holdings was similar for all the parties, including holdings that included both parties (see Table 4.5). One could argue that this fact does not necessarily hurt the jurisprudence in this area of law; if anything, it shows a balanced system.

### *Understanding the Incongruence in State Statutes*

Some would argue, however that these unsettling characteristics of court outcomes confirm the belief that cyber-bullying laws are ineffective and ill-equipped to provide a clear guidance to school administrators. But one must wonder whether current laws are ineffective or whether they are applied to the wrong issues; the findings suggest the latter. As illustrated in Appendix H, out of the 24 court cases included in this study, only six cases mentioned bullying activities. Moreover, the extent to which these bullying activities were pervasive to a point where the victims could argue emotional distress or irreparable harm remained elusive.

As underlined in the review of the literature, both traditional and cyber bullying are not uniformly defined. However, the National Conference of State Legislatures (2011) notes that cyber-bullying and cyber-harassment are sometimes used interchangeably. Surprisingly, the findings suggest that state statutes tended to define both terms differently. For instance, California<sup>23</sup> statute (section 48900) defines traditional bullying as a “Willfully used force or violence upon the person of another, except in self-defense.” Even so, the statute clearly warned that: “A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of the subdivisions...” (section 48900). In

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<sup>23</sup> California Education Code Section 32260-32262



order words, the authority of a school board or a school district is bound by the requirements of the aforementioned statute, particularly when it comes to the types of disciplinary actions that can be assessed to students. The statute further notes that the term ‘bullying’ must mean one or more acts perpetrated by a pupil or group of pupils (section 48900.2, 48900.3, or 48900.4, California Education Code Section 32260-32262).

The state of Florida<sup>24</sup>, on the other hand, defines traditional bullying as “a systematic and chronic infliction of physical hurt or psychological distress on one or more students” (Florida 1006.147, Bullying and harassment prohibited: Jeffrey Johnston Stand Up for All Students Act, 2008). The state of Missouri defines traditional bullying as “intimidation or harassment that causes a reasonable student to fear for his or her physical safety or property” (160.775. 1., L. 2006 S.B. 894, A.L. 2010 H.B. 1543). Conversely, in the statute of Nevada (NRS 392.915, NRS 2001 Special Session, 184; A 2009, 690), cyber-bullying is defined in the following manner:

“A person shall not, through the use of any means of oral, written or electronic communication, including, without limitation, through the use of cyber-bullying, knowingly threaten to cause bodily harm or death to a pupil or employee of a school district or charter school with the intent to: (a) Intimidate, harass, frighten, alarm or distress a pupil or employee of a school district or charter school; (b) Cause panic or civil unrest; or (c) Interfere with the operation of a public school, including, without limitation, a charter school.”

While the above definitions reflect or incorporate aspects of legal precedents, they are, nevertheless, insufficient to convey to both school staff and students the true nature of cyber-bullying activities. For instance, in these definitions, the term cyber-bullying is not clearly defined. It could be argued that these definitions do not explain or provide any detail as to what

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<sup>24</sup> The 2011 Florida Statutes. 1006.147 Bullying and harassment prohibited. “Jeffrey Johnston Stand Up for All Students Act.” History.—s. 1, ch. 2008-123.

the act of cyber-bullying really entails. That is to say, they only offer some rudimentary guidelines for school boards to follow while designing their policies.

From a different spectrum, the state of North Carolina (§ 14-458.1. Cyber-bullying; penalty, G.S. 15A-146. (2009-551, s. 1.), where the *Hoggard School District* is located, defines cyber-bullying in a different manner. In this definition, not only the state provides a lengthy explanation of the term cyber-bullying, but it also provides clear examples as to the kinds of activities that could be considered cyber-bullying. The statute is as follows:

“Cyber-bullying: (a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following: (1) With the intent to intimidate or torment a minor: a. Build a fake profile or Web site; b. Pose as a minor in: 1. An Internet chat room; 2. An electronic mail message; or 3. An instant message; c. Follow a minor online or into an Internet chat room; or d. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.

(2) With the intent to intimidate or torment a minor or the minor's parent or guardian: a. Post a real or doctored image of a minor on the Internet; b. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords; or c. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor. (3) Plant any statement, whether true or false, tending to provoke or that actually provokes any third party to stalk or harass a minor. (4) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network). (5) Sign up a minor for a pornographic Internet site. (6) Without authorization of the minor or the minor's parent or guardian, sign up a minor for electronic mailing lists or to receive junk electronic messages and instant messages, resulting in intimidation or torment of the minor.”

The most important aspect of this statute is the phrase “use of a computer repeatedly” to torment others. None of these criteria was present in the different incidents analyzed in the court

cases retrieved. With a definition so complete, my expectation was very high about the types of school policy documents I would retrieve for the school district involved in the litigation from that particular state. Surprisingly, and perhaps to my dismay, this school district did not have any clear policy either on traditional bullying or cyber-bullying (see Tables 4.17, 4.22, and 4.24).

### *The Role of the Courts*

While many school districts perceive their responsibilities as enforcers of school boards' rules, students, on the other hand, vowed not to relinquish their fundamental constitutional rights to capricious regulations and policies, particularly when considering that school administrators enjoy a considerable amount of discretionary powers in the way they approach these matters. For that reason, seeking judicial remedies in legal disputes pertaining to online incidents seems to be the inevitable—perhaps the reasonable—path to solving such conflicts. Still, the argument is that the courts have been inconsistent on this issue.

As Dunn and West (2009) argue, “judicial remedies are not set in institutional or constitutional stone but are constantly evolving” (p. 43). Within the last few decades, court decisions have helped shape education law considerably. On certain issues, notably online speech issues, most scholars have argued that courts seemed devoid of a clear sense of direction as to how to best approach this issue. But the courts should be the only impartial arbiters.

In times of legal uncertainty, lower courts tend to look in the direction of the United States Supreme Court for guidance. At this point, the highest court of last resort seemed unwilling to take any case pertaining to online freedom of speech in public schools. As noted earlier, the Supreme Court recently denied certiorari to many school districts seeking closure in

several prominent court decisions related to cyber-bullying. While this Court offered no apparent reasons for its seemingly disinterest in this issue, many observers have offered countless motives, including that “the right case has not come along” to finally settle these matters.

Current laws are good, only school policies are inadequate. Perhaps the U.S. Supreme Court has no intention of taking any case pertaining to cyber-bullying until the issues are clear and schools have a firm grasp of the types of online behaviors or conduct they seek to prohibit. It is true that this high Court has not addressed cyber-bullying cases. On the other hand, it has dealt with freedom of speech in public schools in the past. Those decisions are precisely the legal framework of current schools’ policies. As long as the issues are concerned with freedom of speech, there is no need for the U.S. Supreme Court to get involved, regardless of the location of the speech. On the other hand, as noted above, bullying or harassment is an offense punishable by law, which means that the high Court has absolutely no obligation to intervene in this matter.

### **About the School Policies**

To reiterate a previous assertion, there is no clear distinction between cyber-bullying and online speech. Similarly, there is not a clear distinction between traditional bullying and cyber-bullying. Nevertheless, the National Crime Prevention Center (2010) notes that traditional bullying includes everything from receiving threats, being physically assaulted, being ostracized, or being called derogatory names. According to the Texas Education Agency (also known as TEA), the act of bullying occurs:

“When a person is exposed, repeatedly and over time, to negative actions on the part of one or more other persons, and he or she has difficulty defending himself or herself. Bullying is aggressive behavior that involves unwanted, negative actions. Bullying involves a pattern of behavior repeated over time. Bullying involves an imbalance of power or strength.”

Put another way, cyber-bullying only occurs when a minor is targeted. That is to say, the act of cyber-bullying must have been perpetrated or instigated by a minor against another minor. As appendix H outlines, not in all the cases other students had been the targets. “Once adults become involved, it is a plain and simple case of cyber-harassment or cyber-stalking. Adult cyber-harassment or cyber-stalking is never called cyber-bullying” (Texas Education Agency, 2012). As argued earlier, these actions are punishable under the law. Hence, there is no need for the courts to allow school officials to intervene. If indeed, those actions have been perpetrated, schools can refer the matter to the appropriate law enforcement authorities. If the issue is concerned with freedom of speech, then, the courts have already established the criteria for disciplinary actions (e.g., there ought to be a substantial disruption of school operations).

As argued in previous chapters, the issues currently surrounding online incidents are murky; even the name of the phenomenon is not clear. It could be argued that this apparent confusion about the nature of the issues is based on erroneous interpretations of court decisions, which is possibly the result of many commentators desensitizing or minimizing the importance of court holdings. A great deal of legal commentators on the issue of cyber-bullying disagrees with the use of *Tinker* or *Fraser* by the courts to adjudicate on online speech. But little alternatives are offered to the courts. Similarly, rarely school policy issues have been debated.

It appears like from the perspective of many legal analysts on this issue, every online incident in K-12 public schools falls under the category of cyber-bullying. As noted earlier, the phenomena attributed to cyber-bullying are not even settled as to what they really entail. I would contend that not every comment posted online by a student constitutes cyber-bullying. Of course, it is not a good situation to see a student getting away with just an insignificant punishment after

he or she lambasted another student over the Internet. But in a democratic society where true discourse is the fundamental principle that holds the different societal fabrics together, everyone is entitled to his or her opinion.

As I reflected on this issue, I wondered, what is the difference when a scholar publishes an article criticizing the progress of a school district? Arguably, some articles are often as insulting toward school administration as a student can be. Granted, those articles often target school performance. Their criticisms are usually viewed as constructive, therefore, acceptable. But current school policies do not discipline cyber-bullying. As shown throughout this dissertation, many interventions, while grounded on rational logic, are hasty and are rooted in a complete disregard toward the rule of law.

From that perspective, while I do not condone students' attitudes toward school staff, it could be argued that students are entitled to their opinion as well. Students have a right to voice their views about other students or school personnel. Thus, a student's perception about school staff can be extricated from their online comments. It could be argued that just like a scholar who use the appropriate language or jargon to relate an observation, be it empirical or otherwise, the student probably used the cyber-space to voice his or her opinions. Sadly, most students choose offensive language to voice their displeasure. As the courts argued, in the event of no disruption of school activities, students should not be disciplined for voicing their opinion.

The undertone of the debate about online incidents or cyber-bullying in general suggests that students have no rights to criticize or to voice their dislike about school officials or other students. As I combed through the data, I found no evidence to support the notion that the courts

agree with offensive languages and have displayed no interest in allowing schools to take control of the school environment; rather the courts are not ready to censor student speech.

### **The Policy Issues**

Many of the school policies analyzed in this study had one common problem: they lacked specificity on the issue of cyber-bullying. While those policies mentioned situations pertaining to online misconduct, they were not concise enough to establish a clear distinction between cyber-speech and cyber-bullying. Commentators have argued that policymakers and judges have two options when it comes to cyber-bullying: strengthen civil and criminal remedies or allow schools the discretion to punish abusive Internet speech (Gombu, 2006; Erb, 2008). Currently, civil or criminal procedures are not a tangible alternative for victims of cyber-bullying; they have had little success in prosecuting cyber-bullies (Erb, 2008). The argument is that reinforcing the civil and criminal remedies would be a better alternative.

In the course of this study, however, an important observation is worth noting. For example, because current school policies did not specifically address cyber-bullying, administrators lacked the direction as to how to properly intervene on online incidents. The following issues are worth outlined: (1) No clear definition of what constitute cyber-bullying; (2) No clear distinction between cyber-bullying and traditional bullying; (3) No clear administrative guidance as to how to act in cyber-related issues; (4) No clear administrative solutions to administrative issues and/or problems related to the Internet; (5) No clear understanding of the role of school administrators in off-campus issues; (6) No clear understanding of the role of the school district in cyber-bullying issues; and (7) State laws or statutes address cyber-bullying on an individual basis (no universal approach to dealing with cyber-bullying). Hence, it could be

inferred from this study that there is a need for a different approach to policy-making. Current policies are the reasons why school interventions tend to lead to legal disputes and litigation.

### **Understanding the Decision to Intervene**

Using the rational model, it could be inferred that school administrators were not operating without a clear guidance; rather the guidance itself was misguided. Not to be redundant, it seems like the documents many school administrators relied upon to make their decisions were based on an erroneous interpretation of the laws. This situation, in it of itself, does not make the laws bad; rather it is an indication that the laws are badly enforced.

As alluded to earlier, while state statutes followed legal precedents, many school policies did not include important aspects of those precedents—from their respective statutes—in their policy documents. In many instances, school policies were not as thorough in their language about online interventions as the state statutes were. Within that perspective, the argument against the usefulness of cyber-bullying laws is not as strong as one would think. Before cyber-bullying laws could be seen as incapable of guiding school administrators in their decision to intervene in online disputes, it must be proven that interventions are indubitably based on the prescribed requirements of those laws.

Currently, there are a number of discrepancies between school policies and cyber-bullying laws. What the law prescribes is rarely what the policies require for intervention. However, unless the decision to intervene was completely non-rational (e.g., spontaneous or impulsive), most decisions to intervene were based on some sets of formal intervention guidelines, which the school district, as a hierarchical organizational structure, approved before



hand. To that effect, since the guidelines for intervention is incoherent, particularly when it comes to existing laws, not surprisingly, legal outcomes are sure to be incongruent or inconsistent. Consequently, there is a need for a better approach to online intervention policies.

## Chapter 6

### RECOMMENDATIONS AND CONCLUSION

*“The trouble with research is that it tells you what people were thinking about yesterday, not tomorrow. It’s like driving a car using a rearview mirror.”*

—Bernard Loomis

Most scholars or school practitioners on educational issues believe that cyber-bullying laws, in their current state, are devoid of clear guidelines to help school administrators address cyber-bullying situations. This narrative on this issue is laden with anti-court opinions and anti-cyber-bullying legislations. To counter this argument, I would contend that there is not a clear distinction between bullying and harassment. Not surprisingly, this paucity regarding a clear delineation about these phenomena can have serious implications for school districts when implementing and enforcing the laws (Sacks & Salem, 2009). Arguably, cyber-bullying laws, as imperfect as they can be, are not responsible for the legal hurdles or perhaps the legal labyrinth in which many school districts often find themselves. One could argue that, only erroneous interpretations of the laws, in terms of the requirements set forth by legal precedents on freedom of speech issues in public school by both policymakers and school administrators are to blame.

It is not surprising that the United States Supreme Court refuses to take cyber-bullying cases. While the Supreme Court has not provided a reason for declining to hear these cases, perhaps it is because legal options at the lower court levels have not yet been exhausted. Succinctly, one could argue that the relevancy of current laws on cyber-bullying still matters and their applications should not be ignored. Currently, cyber-bullying laws are viewed by many as, absurd, irrelevant, inconsistent, incompatible, and unfair, just to name a few. Even so, no one has

called for a complete overhaul of those laws. If anything, legal commentators are asking for more laws, which, to some extent, is baffling.

### *Understanding the Arguments*

In most instances, state statutes followed the law and the jurisprudence. Many states tended to use the terms “bullying and harassment” interchangeably; in most cases, those terms are used synonymously (Stuart-Cassel, Bell, & Springer, 2011). Strangely, this study found that most state statutes clearly established a difference between traditional bullying, cyber-bullying, cyber-stalking, and cyber-harassment (see Table 4.15). The argument is that short of a clear guidance, it could be very difficult for school districts to respond to off-campus bullying conduct, which is due to the fact that it could be very challenging identifying not only the issues, but also the student(s) involved (Hinduja & Patchin, 2011).

As previously argued, the potential for legal issues, particularly claims of constitutional violations are always there. While many state laws clearly gave school districts to authority to design or develop policies to address the issues properly, in most cases, school policies did not reflect the requirements of those statutes. In most instances, policy documents did not take into account the settle differences between bullying and cyber-bullying. Policymakers tended to exclude or perhaps failed to incorporate the requirements of state statutes in the language of their policy documents. Consequently, there is always room for erroneous interpretations or erroneous implementation of those policies.

Although as per their state statutes, most school districts should have the authority to intervene in online situations, provided that there is a legitimate or a compelling pedagogical

disruption. However, many school policies simply tended to exclude certain terminologies or definitions in their policy documents, which are important in order to inform the decision to intervene. In the majority of the cases reviewed, school policies did not clearly delineate between cyber-bullying, traditional bullying, and other forms of online misconduct. Similarly, school administrators did not always follow their school's own policy, particularly when it comes to assessing disciplinary actions. The problem seems to reside, not in cyber-bullying laws, rather in the design and the implementation procedures of school policies.

A recent study on the effects of state laws and policies on traditional bullying found that, while there is not a clear definition as to what constitutes the act of bullying, most state laws often relied on research-based definitions, which tended to emphasize the intentional nature of the bullies to cause serious harms to others (Stuart-Cassel, Bell, & Springer, 2011). In this 2011 study, 50 state legislations were reviewed at length and several issues were analyzed.

The study found that while definitions on the act of bullying varied greatly across state lines, the common language used across the board included some of the concepts outlined in legal precedents. For example, the terms "hostile educational environment," "reasonable person," "general harms," "threats of fear of harm," "physical harm," or "property damage" were often mentioned in state laws (Stuart-Cassel, Bell, & Springer, 2011). Moreover, they also found that most state laws mandated school districts to establish preventive bullying programs. States laws also required school districts to implement policies that incorporated the specific language of the statute to their policy documents. In other words, local definitions must conform to the ones contained within the laws (Stuart-Cassel, Bell, & Springer, 2011).

The aforementioned study focused on 20 school districts across the country to determine the relationship between state legislation and local policy development. The study found that in states where the laws are thorough in their requirements, school districts tended to follow those requirements. In other words, school districts tended to expand the scope of their policy beyond the minimum legal expectations when the state laws provided a clear guidance for the course of actions by expanding the issues.

Similarly, as demonstrated throughout this dissertation, in instances where school policies were clear and unequivocal, as to the types of behavior they sought to prohibit, school administrators tended to adopt disciplinary actions that were compatible with the recommendations within the policy documents. By all accounts, it could be argued that when the laws are clear and policies are also concise, school administrators are more in-tuned with the implications of their interventions. Hence, implementing the right policy is paramount.

Arguably, the questions posed in this dissertation were almost axiomatic in their simplicity. Nonetheless, the answers are far less clear-cut. The findings of this current study suggest that, in many cases, school administrators were muddling in the decision-making process. In other instances, school administrators responded intuitively or impulsively to the situation at hand. It is common knowledge in school administration that any poor evaluation of the situation could lead to disastrous outcomes. Hence, there is no point in belaboring the obvious. School districts need to rethink their approach to interventions in online issues. This is the reasonable path to take before cyber-related laws or the court opinions, for that matter, can be considered ineffective or inefficient.

### **A New Approach to Cyber-bullying Policy**

Because cyber-bullying is perceived as a growing problem in education, it is easier to associate any online-related incidents to this phenomenon, regardless of the presence of the act of bullying. To that effect, there is a need for a new approach in school policy on this issue. School districts must adopt policies that clearly delineate the conduct or the behavior they are punishing. Currently, existing policies do not provide school officials with tools to distinguish the crucial elements of the phenomenon they are punishing. To that effect, school districts must develop a strategy to make sure that:

(1) School officials understand that there is a clear difference between traditional bullying, cyber-bullying, cyber-speech, and other forms of cyber-related incidents.

(2) When it comes to cyber-bullying incidents, the element of bullying must be present. The act of bullying must have been perpetrated in conjunction of the use of the Internet. In the absence of these facts, the incident should not be labeled and/or addressed as cyber-bullying.

(3) School officials must understand that in cyber-related incidents or cyber-speech, only the element of the Internet must be present. The determination of an incident as cyber-speech must be made in accordance with guidelines established by the courts.

(4) If it can be determined that the act of bullying occurred, the proper authority must be contacted. School districts should not act as law enforcement agencies. School administrators should not take it upon themselves to perform the duties of law enforcement authorities and punish or discipline students for activities that are clearly unlawful.

(5) School officials are required to follow the guidelines within school policy documents.

### **Policy Recommendations for Policymakers**

The findings suggest that current school policies are inadequate and inefficient to facilitate sound interventions. School districts must design policies that follow the guidelines established by the courts in legal precedents. Functionally, any policy on school interventions must take in to account some of the most salient arguments contained in past court opinions, which can offer a clear framework to develop sensible policy guidelines. The next few paragraphs outline some of the reasons why students prevailed in court, thus the reasons why school districts were more likely to lose are also outlined. Finally, the best approaches to designing sound policies are summarized in bullet points.

#### *Why Students Prevailed*

Based on the patterns that emerged from the past court cases included in this study, the courts tended to decide in favor of students when school districts did not differentiate between “vulgar,” “lewd,” and “political” speeches. Similarly, school districts that failed to establish “sufficient nexus” between student speech and “substantial disruption” of school activities or stretched their authority by taking disciplinary actions against students in online incidents were more likely to lose in courts. For the same reason, in situations where students demonstrated the “likelihood of success” on the merits of their legal claims or demonstrated “irreparable harm,” they were more likely to prevail in courts. Alternatively, court decisions often noted that public interest must be served. To that effect, it is imperative that school policies take into account these key issues when designing their policy.

Moreover, when it comes to situations pertaining to “threat,” success or failure in courts is generally incumbent on whether school districts could articulate the “evidence of threat.” A school district that could not demonstrate that the student involved intended to “threat anyone,” for instance, there was an actual threat or the student manifested violence or had violent tendencies, would most likely lose the case. In addition, school districts that could not provide evidence of “actual disruption” would most likely lose the case.

When it comes to legal precedents, a school district’s policy that did not reflect the requirements of the United State Supreme Court (as shown in Table 4.17) would most likely lose the case. In libel cases, students who successfully demonstrated “actual malice” on the part of school officials tended to prevail. Students also prevailed in cases where: 1) The terms included in school policy documents were not defined in any significant manner; 2) There was no link between school policies and student speech; 3) The breadth of school policies was not clearly defined; school policies did not clearly cover speech that occurred off campus or not school related issues; and 4) Students were not provided with adequate warnings of the conduct that was prohibited.

#### *Why School Districts Prevailed*

The courts would generally decide in favor of school districts when it could not be demonstrated that school officials had violated constitutionally protected property interest of students or parents. School districts were more likely to prevail in courts when they: 1) Gave the student involved the opportunity to characterize the conduct at issue; 2) Gave the student oral or written notice of the charges against him or her; 3) Provided explanations of the evidences that



authorized them to act; 4) Gave the student the opportunity to present his or her side of the story; and 5) School officials could establish the existence of sufficient facts to reasonably forecast a “substantial disruption” or foresee a “material interference” with school activities.

The courts also noted that when allegations of threats are made, school districts must consider the threat in the light of the entire factual context. For example, it is imperative that school districts determine whether there is the presence of “inter alia.” In other words, there is a nexus between student speech and school pedagogical interests. Similarly, school districts must demonstrate that the speech in question was “materially and substantially disruptive.” In other words, the speech interfered with school works or activities, or the speech collided with the rights of others. Furthermore, the courts noted that it must be foreseeable that student conduct would reach school. Alternatively, modification of disciplinary actions must conform to school policy documents. The courts generally expect a clear alignment between school policy and disciplinary actions. Hence, the courts would decide in favor of both school districts and students (e.g., simultaneously) when the two parties could demonstrate the existence of one or more of the different criteria outlined above.

On issues pertaining to search and seizure, vagueness or unconstitutionality of school policies, and school administrators’ immunity, some specific patterns have also emerged. These patterns suggested that the courts would find a particular school policy constitutional, a search reasonable, or would grant qualified immunity status to a school administrator when: 1) School policies explicitly indicated certain actions; 2) School policies clearly defined when and where

they applied, with specific examples; 3) School policies articulated normative standard; and 4) School policies addressed unprotected speech.

The courts have also noted that on the issue of qualified immunity, school officials must be properly afforded such an immunity status. When it comes to intervention in online issues, reasonable school officials should be able to determine unlawful conduct. It is objectively reasonable for school officials to conclude that a particular student conduct could be potentially disruptive. Similarly, certain mistake on the part of school officials could be considered reasonable.

When it comes to issues pertaining to the doctrine of qualified immunity for individuals or school districts, the courts argued that school administrators, as public officials, must be prevented from being sued for monetary damages. Then again, the courts clearly delineated between the types of immunity afforded to school districts and individuals. For instance, school districts are entitled to qualified immunity, while individuals are qualified to such an immunity status only when they are acting in their official capacity.

As echoed throughout this document, across the board, there is a tendency to overlook the responsibility of school districts in online issues. The perception is that the courts are the sole culprits on these matters. Thus, only the judiciary system should receive all the blame associated with all the squeamishness of ill-planned interventions. As the findings suggest, the legal implications of interventions are often the results of misguided school policies. Hence, the design of proper school policies is the best approach to mitigate potential legal complications, which in turn could bolster a school district's ability to control or refrain cyber-related incidents.

*Developing Sound and Sensible Policies*

In order to strengthen school districts' modes of intervention in online incidents and perhaps to guarantee a particular outcome in legal disputes, school policies should include some, if not all, of the key issues outlined above. To properly deal with cyber-bullying and online speech issues in general, the hereinabove points should be carefully considered by policymakers. However, it is also paramount that policy documents reflect the following recommendations:

1. ***School policies must include legal precedents in their language:*** As demonstrated in the findings, the courts often relied upon past case laws, namely *Tinker*, *Fraser*, and *T.L.O.* to adjudicate in online speech issues. Despite the fact that most state statutes included legal precedents in their language, school policies tended to overlook the importance of clearly underlining those languages in their policy documents. Consequently, the key components of a well-designed school policy must reflect the legal precedents, as outline in both state statutes and in the United States Supreme Court's landmark cases.
2. ***School policies must clearly define cyber-bullying or online speech in accordance with state statutes:*** The direction of the courts is clear and unequivocal. In the absence of a clear disruption of school operations, the courts are more likely to find in favor of students. Similarly, school districts' inability to articulate their actions, particularly in situations when students' online activities were perceived as threats, would guarantee decisions in favor of students. As a result, it is paramount that school policies are clearly defined. School policies must clearly delineate between traditional bullying and cyber-bullying. School policies must also determine the types of online speeches that are prohibited, particularly when school materials are not used in the incident.

3. ***School policies must be clear, sensible, and concise:*** The courts noted that school administrators should not intervene in online situations without a clear guidance as to the conduct they are punishing. As the literature suggests, cyber-bullying or perhaps online incidents in general must be taken within the context in which they occurred. A “one-size fits all” approach is not recommended under any circumstances. Therefore, a zero-tolerance policy approach is amply discouraged and is seen as not ideal to dealing with the types of online situations, which have the potential to escalate into freedom of speech matters. Each incident must be approached individually and each solution must be tailored to respond to a particular situation.
4. ***School administrators must be required to align disciplinary actions with school policy requirements:*** The findings suggest that in cases where school administrators were devoid of a clear guideline as to the types of disciplinary actions that were necessary in an online incident, the actual disciplinary punishment assessed to the students involved tended to vary considerably. In many instances, school administrators did not follow the requirements of their school policy. Consequently, school administrators must be given clear directives as to the appropriate actions that they must take on these issues. Moreover, school administrators should be required to implement the disciplinary actions recommended in their school policy documents. In other words, school districts should limit discretionary loopholes in the implementation of school policies addressing cyber-bullying, traditional bullying, or any other types of online incidents in general.
5. ***The role of school districts and school officials must be clearly defined in online issues:*** School districts must develop three sets of policy documents. School districts should have

policies that clearly address traditional bullying, cyber-bullying, and any online infractions. Similarly, online protected speeches must be clearly delineated. Those policies must clearly define each phenomenon in accordance with state statutes. The role of school officials must clearly define in those documents. For instance, a school administrator must clearly understand his or her limitations to addressing activities that are criminal in nature. In the event that it can be demonstrated that a student has perpetrated a crime, regardless of the location, as long as the school or other students are involved, the proper law enforcement authorities must be contacted and the matter must be transferred to them. If disciplinary actions are necessary on the part of the school district, such actions should be taken based on the outcomes of the criminal investigation by law enforcement authorities.

### **Recommendations for Future Researchers**

This study is a preliminary assessment of cyber-bullying issues in K-12 public schools. As outlined in previous chapters, the findings might not apply to a larger population. The number of court cases selected is unlikely representative of all the school districts involved in cyber-bullying litigation or online speech litigation. Therefore, additional inquiries should incorporate more court cases, including unpublished cases, to obtain a deeper understanding of the issues.

Similarly, the real effects of disciplinary actions in online incidents are virtually unknown. In some of the cases retrieved, many students were disciplined more than once. It is not clear whether the disciplinary actions taken by school administrators have the potential to help deter the occurrence of such incidents. This area of cyber-bullying or online issues in general requires additional inquiries. It would be interesting to learn about the recidivism rate.

Although the issue of race was not mentioned in-depth in this study, it was noted that when it comes to zero tolerance policy approaches in public schools, minority students were more likely to be disciplined than their white counterparts. This area of online incidents is also unclear. Future inquiries should look into the race of the students involved in online incidents. Perhaps, race is a determinant factor when school administrators decide to intervene, particularly in cases where other students were targeted. In addition, it would be interesting to determine whether other socioeconomic factors played a role in school intervention. To that effect, future researchers in those areas would amply benefit from the debate on the issue of cyber-bullying or online speech intervention in general.

### **Conclusion**

Despite the obstacles encountered on the road to collecting the data, this study was successful in answering all the research questions it sought to assess. One of the major points of contention outlined in this document is that cyber-bullying incidents are on the rise. However, the findings could not confirm or infer the validity of this argument from the retrieved data. Due to the fact that locating the appropriate case laws was such a difficult task, it could reasonably be inferred that cyber-bullying litigation are probably not as rampant as previously thought.

Similarly, while many observers believe that school districts are devoid of a clear legal guidance on cyber-related interventions, the data suggested otherwise. By and large, it appears like, when it comes to interventions in cyber-bullying or online issues in general, school districts do have choices; and those choices are emblazoned in the language of many state statutes and past court opinions. However, in most cases, school districts did not have a clear policy that addressed the phenomena associated with online interventions. A great majority of school

districts did not have a clear policy on cyber-bullying. The crux of the debate is that current laws are simply ineffective. This study, however, found that current laws are good; rather school policies are extremely problematic; that is, they do not take into account the dicta set forth by the courts.

Currently, school administrators are misguided or misinformed about their role in cyber-related issues. In most cases, school districts do not delineate between cyber-bullying activities and student speech. Hence, schools districts must develop policies that take into account the jurisprudence, i.e., policies must follow legal precedents. What constitute cyber-bullying must be clear and unequivocal. When such incidents occur, school officials must follow the guidelines set forth in school policy documents and not overreacting or responding in accordance to their emotional state at the time.

Cyber-bullying is a new phenomenon with old characteristics; it contains many of the attributes of traditional bullying. Whether on schoolyards or elsewhere, the act of bullying is never admissible. Contrary to popular assumptions, school districts are not without a clear guidance on this issue. School districts must follow courts' guidelines in their policy. Likewise, school administrators must implement requirements contextually, i.e., they must take into account that, as McLeod (2008) suggests, on the outset of an incident, regardless of its severity, it must not be presumed that a student has no right to free speech. Therefore, school policy must clearly define the phenomenon of cyber-bullying. When a cyber-bullying incident occurs or has been identified, school administrators should report the incident(s) to the proper law enforcement authorities and let them decide the necessary actions; if need be, students can be disciplined afterwards.

This study highlighted two important points in the debate over the usefulness of cyber-bullying laws. First, it succinctly demonstrated that the laws are not the issue; rather school policies are in need of a new approach. Second, the subsequent discussions of the findings outline that, in many cases, it appeared like the term cyber-bullying was conveniently used to advance deeply seated views as to the proper place of student in the school settings. I would contend that whatever the reason that foster cyber-bullying or online incidents in general, it should not fall within the penumbra of cyber-bullying laws or the courts. As Shariff and Churchill (2010) note, there are deeply rooted societal issues, which must not be ignored when dealing with online incidents. For instance, the prevalence of social forms of expressions, which often encompass abuse, threats rooted in homophobic, racism, sexism, and other discriminatory attitudes often permeate both traditional and cyber-bullying issues. For that reason, blaming the courts or existing laws is not a smart way to go about dealing with these issues. There are much more fundamental or societal issues that need to be address first. Arguably, having the right policies to reprimand such behaviors when they occur could be seen as the first step toward addressing the real problems.

The undertone of the debate suggests that, many of the people who believe that the courts should do more, share the sentiment that children have no business challenging the authority of adults in public schools or children have no rights to ridicule others, including school personnel. The problem here is that students do have the right to speak their minds and the Internet provides the opportunity or perhaps the venue for students to express their views without the fear of being disciplined under the premise or claims of school disruption, which, in most instances, cannot be easily substantiated in online incidents, unless it truly happened. In other words, such claims are



even harder to substantiate in off-campus issues. To that effect, any attempts to limit or restrict that right are indeed in violation with the constitutional guarantees for freedom of speech.

In no way does this study suggest that the courts should condone cyber-bullying or any bullying activities on or off school grounds. As an impartial entity, the courts cannot condone the violation of an individual's freedom of speech, which is guaranteed under the First Amendment of the United States Constitution. To abridge—without oversimplification—the central characteristics of the current debate over the use of legal precedents such as the *Tinker* and the *Fraser* standards by the courts in order to adjudicate on cyber-bullying or online speech issues can only be seen as a continuity of the media hypes, which is solely aimed at shaping public opinions on this issue. The consequences of such hypes, I would contend, could ultimately lead to the legalization of Internet censorship in American public schools.

Finally, the findings in this study confirmed or rejected several of the initial expectations. I was amazed to see that contrary to the many arguments outlined in the literature review, boys, as opposed to girls, were more likely to post comments online. I was also astonished by the fact that contrary to what was suggested in the literature, which purported that, in many cases, no one really knows what to do, the opposite was much more evident. The jurisprudence is clear; it is reflected in most state statutes, and to some extent, in most school policy documents. To that effect, no one can really claim that they do not know what to do, because, in most instances, the direction that schools should follow is clear and unequivocal and stated within the language legal precedents. To that effect, my understanding of cyber-bullying has drastically changed, as a result of this study. I hope that after reading this lengthy exposé, you will share that sentiment.

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## APPENDICES

### APPENDIX A—Initial Search of Court opinions

<b>Lexis-Nexis Academic Search (December 2011)</b>						
<b>Search #</b>	<b>Terms</b>	<b>Connectors</b>	<b>New Term(s)</b>	<b>Location/Date</b>	<b>Results</b>	<b>Relevance</b>
#1	Cyber bullying	Or	Cyberbullying	Everywhere/all available dates/all federal and states courts	Zero	None
#2	Cyber bullying	And	Education	Everywhere/all available dates/all federal and states courts	Zero	None
#3	Cyber bullying	And	Bullying in public schools	Everywhere/all available dates/all federal and states courts	Zero	None
#4	Cyber bullying	None	None	Everywhere/all available dates	Zero	None
#5	Cyber bullying	Or	Cyber harassment and Public schools	Everywhere/all available dates/all federal and states courts	Zero	None
#6	Cyber bullying	Or	Cyber stalking and School Districts	Everywhere/all available dates	Zero	None
#7	Cyber stalking and cyber harassment and Cyber bullying	And	Public schools	Everywhere/all available dates/all federal and states courts	Zero	None
#8	Cyber bullying	Or	Cyber harassment, Cyber stalking	Everywhere/all available dates/all federal and states courts	32 Cases	All irrelevant to cyber bullying
#9	Cyber bullying	In same paragraph	School district and school administrators	Everywhere/all available dates/all federal and states courts	45 Cases	Only 3 cases relevant to cyber bullying
#10	Free speech	In same paragraph	Off-campus and school discipline	Everywhere/all available dates	7 Cases	All cases relevant to cyber bullying
#11	* Using the Shepardizing technique, the citations from the 7 cases yielded 24 cases.					

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**APPENDIX B—Cases by Geographic Region**

Case Name	Location	Citation
Beussink v. Woodland R-IV Sch. Dist.	Missouri	30 F. Supp. 2d 1175; 1998 U.S. Dist. LEXIS 20449
Boucher v. Sch. Dist. of Greenfield	Wisconsin	134 F.3d 821, 1998 U.S. App. LEXIS 453, 26 Media L. Rep. (BNA) 1394 (7th Cir. Wis. 1998)
Emmett v. Kent Sch. Dist.	Washington	92 F. Supp. 2d 1088; 2000 U.S. Dist. LEXIS 4995
North Carolina v. Mortimer	North Carolina	42 N.C. App. 321; 542 S.E.2d 330; 2001 N.C. App. LEXIS 81
Killion v. Franklin Regional Sch. Dist.	Pennsylvania	136 F. Supp. 2d 446; 2001 U.S. Dist. LEXIS 3490
J.S. v. Bethlehem Area Sch. Dist.	Pennsylvania	569 Pa. 638; 807 A.2d 847; 2002 Pa. LEXIS 2124
Mahaffey v. Waterford Sch. Dist.	Michigan	236 F. Supp. 2d 779; 2002 U.S. Dist. LEXIS 25345
Coy v. Canton City Schools	Ohio	205 F. Supp. 2d 791; 2002 U.S. Dist. LEXIS 7713
I.M.L. v. State of Utah	Utah	2002 UT 110; 61 P.3d 1038; 460 Utah Adv. Rep. 28; 2002 Utah LEXIS 171
Flaherty Jr. v. Keystone Oaks Sch. Dist.	Pennsylvania	247 F. Supp. 2d 698; 2003 U.S. Dist. LEXIS 2874
Klump v. Nazareth Area Sch. Dist.	Pennsylvania	425 F. Supp. 2d 622, 2006 U.S. Dist. LEXIS 15328
Wisniewski v. Weedsport Central Sch. Dist.	New York	494 F.3d 34 (2d Cir. 2007), cert. denied 128 S. Ct. 1741 (2008).
Requa v. Kent Sch. Dist.	Washington	92 F. Supp. 2d 1272; 2007 U.S. Dist. LEXIS 40920
M.T. v. Central York Sch. Dist.	Pennsylvania	937 A. 2d 538; 2007 Pa. Commw. LEXIS 611 OR 597 Pa. 723; 951 A.2d 1168; 2008 Pa. LEXIS 961
A.B. v. State of Indiana (Greencastle)	Indiana	885 N.E.2d 1223; 2008 Ind. LEXIS 363
T.V. v. Smith-Green School Corporation	Indiana	267 F.R.D. 234; 2010 U.S. Dist.
J.C. v. Beverly Hills Unified Sch. Dist.	California	711 F. Supp. 2d 1094; 2010 U.S. Dist. LEXIS 54481
Evans v. Bayer	Florida	684 F. Supp. 2d 1365; 2010 U.S. Dist. LEXIS 12560
Doninger v. Niehoff,	Connecticut	642 F.3d 334; 2011 U.S. App. LEXIS 8441
J.S. v. Blue Mountain Sch. Dist.	Pennsylvania	650 F.3d 915; 2011 U.S. App. LEXIS 11947
Wynar v. Douglas County Sch. Dist.	Nevada	2011 U.S. Dist. LEXIS 89261
Kowalski v. Berkeley County Schools	West Virginia	652 F.3d 565 2011 U.S. App
Layshock v. Hermitage Sch. Dist.	Pennsylvania	650 F.3d 205; 2011 U.S. App. LEXIS 11994 or 496 F. Supp.2d 587 (W.D. Pa. 2007) Or 593F. 3d 249, 256–257(3dCir. 2010)
Tyrrell v. Seaford Union Free Sch. Dist.	New York	792 F. Supp. 2d 601; 2011 U.S. Dist. LEXIS 61418

### APPENDIX C—Background Information

Name of the Cases Retrieved	Plaintiffs/Appellants	Defendant/Appellee	Incident Location	Disciplinary Action(s)	Legal Remedy Sought	Legal Claim(s)	Prev. Party
Beussink v. Woodland R-IV School District	Student	School	Off-Campus	Suspension	Constitutional Violations	First Amendment	Student
Boucher v. Sch. Dist. of Greenfield	Student	School Board	Off-Campus	Expulsion	Constitutional Torts	First Amendment	School District
Emmett v. Kent Sch. Dist.	Student	School District	Off-Campus	Suspension	Restraining Order	First Amendment	Student
North Carolina v. Mortimer	State	Student	On-Campus	Criminal: Defendant was Charged	Threats/Crimes, Motion to Dismiss	Insufficient Evidence	Student
Killion v. Franklin Regional Sch. Dist.	Student	School District	Off-Campus	Suspension	Summary Judgment	First, Fourteenth Amendment, and Due Process	Student
J.S. v. Bethlehem Area Sch. Dist.	Student	School District	Off-Campus	Suspension, Expulsion hearings	Appeal	First Amendment	School District
Mahaffey v. Waterford Sch. Dist.	Student	School District	Off-Campus	Suspension	Summary Judgment Constitutional Claims	Freedom of Speech, Due Process, State and Federal Discrimination violations	Both
Coy v. Canton City Schools	Student	School District, School Board, Two individuals	Off-Campus	Suspension, Expulsion	Summary Judgment School policies unconstitutional	First Amendment, free speech	Both
I.M.L. v. State of Utah	Student	State	Off-Campus	Suspension, Expulsion, Criminal: Defendant was Charged	Criminal Libel	First Amendment, Tort Liability	Student
Flaherty Jr. v. Keystone Oaks Sch. Dist.	Student	School District	Both Off-Campus and On-Campus	None: Disciplinary actions not clear	Summary Judgment, School policies unconstitutional	First, Fourteenth Amendments, and PA Constitution	Student
Klump v. Nazareth Area Sch. Dist.	Student	School District, Superintendent, Assistant Principal, Teacher	On-Campus	Seizure: Cell phone Confiscation	Wiretapping and Electronic Surveillance Control Act, "Invasion of Privacy, Defamation, Fourth Amendment, PA Constitution, Negligence	Federal and State Search and Seizure	Both
Wisniewski v. Bd. of Educ. Weedsport Central Sch. Dist.	Student	School District, Superintendent	Off-Campus	Suspension	Threats	First Amendment	School District
Requa v. Kent Sch. Dist.	Student	School District	On-Campus	Suspension	Suspension violates school policy	First Amendment, Due Process	School District
M.T. v. Central York	Student	School	On-	Expulsion	School Policy	Constitutional	School

Sch. Dist.		District	Campus			rights	District
A.B. v. State of Indiana	State	Student	Off-Campus	Criminal Charges: Student received probation	Identity deception, Class C Felony, Harassment, Class B Misdemeanor	First Amendment	Student
T.V. v. Smith-Green School Corporation	Student	School District	Off-Campus	Restriction from Extracurricular Activities	Protected speech	First Amendment	Both
J.C. v. Beverly Hills Unified Sch. Dist.	Student	School District	Off-Campus	Suspension	Summary Judgment	First Amendment, Due Process	Both
Evans v. Bayer	Student	Individual	Off-Campus	Suspension	Injunctive Relief	First and Fourteenth Amendment	Both
Doninger v. Niehoff,	Student	Individual	Off-Campus	Restriction on student	Summary Judgment	First Amendment, Equal Protection	Both
J.S. v. Blue Mountain Sch. Dist.	Student	School District	Off-Campus	Suspension	Vague School Policy	First Amendment, Fourteenth Amendment	Both
Wynar v. Douglas County Sch. Dist.	Student	School District	Off-Campus	Suspension, Expulsion	Procedural and Substantive	First Amendment, Due Process, Negligence or Tort	School District
Kowalski v. Berkeley County Schools	Student	School District	Off-Campus	Suspension	Intentional and Negligent Infliction of emotional distress	First and Fourteenth Amendment	School District
Layshock v. Hermitage Sch. Dist.	Student	School District	Off-Campus	Suspension	Summary of Judgment	First Amendment	Student
Tyrrell v. Seaford Union Free Sch. Dist.	Student	School District	Off-Campus	None	Summary Judgment	Title IX, Sexual Harassment, Due Process	School District

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**APPENDIX D—Litigation by Court Level**

The Name of the Court Cases Retrieved	Year of Court Cases	The Trial Court Level	Court of Appeals Level	State Supreme Court Level	U.S. Supreme Court Level
Beussink v. Woodland R-IV Sch. Dist.	1998	U.S. District Court			
Boucher v. Sch. Dist. of Greenfield	1998	U.S. District Court	U.S. Court of Appeals: Seven Circuit		
Emmett v. Kent Sch. Dist.	2000	U.S. District Court			
North Carolina v. Mortimer	2001	County Superior Court	Court of Appeals of NC		
Killion v. Franklin Regional Sch. Dist.	2001	U.S. District Court			
J.S. v. Bethlehem Area Sch. Dist.	2001-2002	Court of Common Pleas	Commonwealth Court of PA	Supreme Court of PA	
Mahaffey v. Waterford Sch. Dist.	2002	U.S. District Court			
Coy v. Canton City Schools	2002	U.S. District Court			
I.M.L. v. State of Utah	2002	Juvenile Court, Fifth District: Beaver County	Utah Court of Appeals	Supreme Court of Utah	
Flaherty Jr. v. Keystone Oaks Sch. Dist.	2003	U.S. District Court			
Klump v. Nazareth Area Sch. Dist.	2006	U.S. District Court			
Wisniewski v. Bd. of Educ.	2007	U.S. District Court	U.S. Court of Appeals: Second Circuit		Certiorari Denied (2008)
Weedspert Central Sch. Dist.					
Requa v. Kent Sch. Dist.	2007	U.S. District Court			
M.T. v. Central York Sch. Dist.	2007	Common Pleas Court, County of York	Commonwealth Court of PA	Appeals Denied (2008)	
A.B. v. State of Indiana	2007	Juvenile Court: Putnam Circuit Court	Court of Appeals of Indiana	Supreme Court of Indiana	
T.V. v. Smith-Green School Corporation	2011	U.S. District Court (2010); U.S. District Court (2011)			
J.C. v. Beverly Hills Unified Sch. Dist.	2010	U.S. District Court			
Evans v. Bayer	2010	U.S. District Court			
Doninger v. Niehoff	2010-2011	U.S. District Court	U.S. Court of Appeals: Second Circuit		Certiorari Denied (2011)
J.S. v. Blue Mountain Sch. Dist.	2010-2011	U.S. District Court	U.S. Court of Appeals: Third Circuit		Certiorari Denied (2012)
Wynar v. Douglas County Sch. Dist.	2011	U.S. District Court			
Kowalski v. Berkeley County Schools	2012	U.S. District Court	U.S. Court of Appeals: Fourth Circuit		Certiorari Denied (2012)
Layshock v. Hermitage Sch. Dist.	2008-2011	U.S. District Court	U.S. Court of Appeals: Third Circuit		
Tyrrell v. Seaford Union Free Sch. Dist.	2011	U.S. District Court			

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**APPENDIX E—Demography of Incidents**

<b>Case Name</b>	<b>Location</b>	<b>Gender</b>	<b>School Grade</b>
Woodland R-IV School District	Missouri	1. Male	High School
Boucher v. Sch. Dist. of Greenfield	Wisconsin	1. Male	High School
Emmett v. Kent Sch. Dist.	Washington	1. Male	High School
North Carolina v. Mortimer	North Carolina	1. Male	High School
Killion v. Franklin Regional Sch. Dist.	Pennsylvania	1. Male	High School
J.S. v. Bethlehem Area Sch. Dist.	Pennsylvania	1. Male	Eighth Grade: Middle School
Mahaffey v. Waterford Sch. Dist.	Michigan	1. Male	High School
Coy v. Canton City Schools	Ohio	1. Male	Middle School
I.M.L. v. State of Utah	Utah	1. Male	High School
Flaherty Jr. v. Keystone Oaks Sch. Dist.	Pennsylvania	1. Male	High School
Klump v. Nazareth Area Sch. Dist.	Pennsylvania	1. Male	High School
Wisniewski v. Weedsport Central Sch. Dist.	New York	1. Male	Eighth Grade: Middle School
Requa v. Kent Sch. Dist.	Washington	1. Male	High School
M.T. v. Central York Sch. Dist.	Pennsylvania	1. Male	Tenth Grade: High School
A.B. v. State of Indiana	Indiana	1. Female	Middle School
T.V. v. Smith-Green Sch. Corp.	Indiana	2. Females	Tenth Grade: High School
J.C. v. Beverly Hills Unified Sch. Dist.	California	1. Female	High School
Evans v. Bayer	Florida	1. Female	High School
Doninger v. Niehoff,	Connecticut	1. Female	High School
J.S. v. Blue Mountain Sch. Dist.	Pennsylvania	1. Female	Middle School
Wynar v. Douglas County Sch. Dist.	Nevada	1. Male	High School
Kowalski v. Berkeley County Schools	West Virginia	1. Female	Senior: High School
Layshock v. Hermitage Sch. Dist.	Pennsylvania	1. Male	High School
Tyrrell v. Seaford Union Free Sch. Dist.	New York	1. Female	Tenth Grade: High School

**APPENDIX F—Litigation and Legal Claims**

<b>Name of the Cases Retrieved</b>	<b>First Amend.</b>	<b>Fourth Amend.</b>	<b>Fourteenth Amend.</b>	<b>Tort Liability</b>	<b>School Policy Issues</b>	<b>Other</b>
Woodland R-IV School District	Free Speech	None	None	None	None	None
Boucher v. Sch. Dist. of Greenfield	Free Speech	None	None	Constitutional Tort	None	None
Emmett v. Kent Sch. Dist.	Free Speech	None	None	None	None	None
North Carolina v. Mortimer	None	None	None	None	None	Insufficient Evidence
Killion v. Franklin Regional Sch. Dist.	Free Speech	None	Due Process	None	None	None
J.S. v. Bethlehem Area Sch. Dist.	Free Speech	None	None	None	None	None
Mahaffey v. Waterford Sch. Dist.	Free Speech	None	Due Process	None	None	Federal and State Disability Discrimination Statutes violations
Coy v. Canton City Schools	Free Speech	None	None	None	Unconstitutional, vague, and overbroad	State Constitution violations
I.M.L. v. State of Utah	Free Speech	None	None	Tort Liability	None	Criminal Libel, Defamation
Flaherty Jr. v. Keystone Oaks Sch. Dist.	Free Speech	None	Due Process	None	Unconstitutional, vague, and overbroad	PA Constitution art. 1 & 7
Klump v. Nazareth Area Sch. Dist.	None	Search and Seizure	None	Negligence	None	PA Const. art. 1 & 8 PA Wiretapping and Electronic Surveillance Control Act, Invasion of Privacy, Defamation
Wisniewski v. Bd. of Educ. Weedsport Central Sch. Dist.	Free Speech	None	None	None	None	None
Requa v. Kent Sch. Dist.	Free Speech	None	Due Process	None	Suspension violates school policy	None
M.T. v. Central York Sch. Dist.	None	None	None	None	School Policy	Constitutional rights
A.B. v. State of Indiana	Free Speech	None	None	None	None	Identity deception, Class C Felony, Harassment, Class B Misdemeanor
T.V. v. Smith-Green School Corporation	Free Speech	None	Due Process	None	None	None
J.C. v. Beverly Hills Unified Sch. Dist.	Free Speech	None	None	None	None	None
Evans v. Bayer	Free Speech	None	Due Process	None	None	None
Doninger v. Niehoff,	Free Speech	None	Equal Protection	None	None	None
J.S. v. Blue Mountain	Free	None	Due Process	None	Vague School	None



Sch. Dist.	Speech				Policy	
Wynar v. Douglas County Sch. Dist.	Free Speech	None	Due Process	Negligence or Tort	None	Procedural and Substantive
Kowalski v. Berkeley County Schools	Free Speech	None	Due Process	None	Intentional and Negligent Infliction of emotional distress	None
Layshock v. Hermitage Sch. Dist.	Free Speech	None	None	None	None	None
Tyrrell v. Seaford Union Free Sch. Dist.	None	None	Due Process	None	None	Title IX, Sexual Harassment

**APPENDIX G—Overview of Legal Remedy Sought and Court Decisions**

Case Name	Legal Remedy Sought		Court Decision	
	By Student	By School District	The Decision	In Favor
Woodland R-IV Sch. Dist.	Preliminary injunction	Defendant: None	Preliminary injunction granted	Student
Boucher v. Sch. Dist. of Greenfield	Plaintiff: Preliminary injunction	Defendant: Appealed previous court order	Preliminary injunction vacated	School District
Emmett v. Kent Sch. Dist.	Plaintiff: Restraining order to enjoin	Defendant: None	Restraining order granted	Student
North Carolina v. Mortimer	Defendant: Appealed previous court order	State/Plaintiff: Charged defendant	Reversed and vacated	Student
Killion v. Franklin Regional Sch. Dist.	Plaintiff: Summary judgment	Defendants: Summary judgment	Summary judgment granted	Student
J.S. v. Bethlehem Area Sch. Dist.	Plaintiff: Appealed previous courts order	Defendants: None	Affirmed	School District
Mahaffey v. Waterford Sch. Dist.	Plaintiff: Summary judgment	Defendants: Summary judgment	Summary judgment granted	Both
Coy v. Canton City Schools	Plaintiff: Summary judgment	Defendants: Summary judgment	Summary judgment granted	Both
I.M.L. v. State of Utah	Defendant: Appealed previous courts order	State/Plaintiff: Charged defendant	Reversed	Student
Flaherty Jr. v. Keystone Oaks Sch. Dist.	Plaintiff: Summary judgment	Defendant: None	Summary judgment granted	Student
Klump v. Nazareth Area Sch. Dist.	Plaintiffs: Claimed Constitutional Torts, invasion of privacy, defamation, and wiretapping	Defendants: Removed case to federal court or Moved to dismiss	Motions granted in part to both	Both
Wisniewski v. Weedsport Central Sch. Dist.	Plaintiffs: Appealed previous courts order	Defendants: None	Affirmed	School District
Requa v. Kent Sch. Dist.	Plaintiff: temporary restraining order	Defendants: None	Motion denied	School District
M.T. v. Central York Sch. Dist.	Appellant: Appealed previous courts	Defendants: None	Trial court's order affirmed	School District
A.B. v. State of Indiana	Appellant/Defendant: Appealed previous courts	State/Plaintiff: Charged defendant	Reversed and remanded with instructions	Student
T.V. v. Smith-Green School Corporation	Plaintiff: Summary judgment	Defendants: Summary judgment	Motion to strike denied. Summary judgment granted in part. Motion for supplemental authority granted.	Both
J.C. v. Beverly Hills Unified Sch. Dist.	Plaintiff: Summary judgment	Defendants: Summary judgment	Motions granted for both	Both
Evans v. Bayer	Plaintiff: Claimed Constitutional Torts	Defendant: Moved to dismiss	Motions granted and denied in part	Both
Doninger v. Niehoff,	Plaintiff: Appealed previous courts	Appellant/Defendants: Appealed previous courts	Affirmed in part and reversed in part	Both
J.S. v. Blue Mountain Sch. Dist.	Plaintiff: Appealed previous courts	Defendants: None	Motion for plaintiff: Reversed and remanded. Motion for defendant: Affirmed	Both
Wynar v. Douglas County Sch. Dist.	Plaintiff: Claimed Constitutional Torts	Defendants: Summary judgment	Motion for summary judgment granted	School District
Kowalski v. Berkeley County	Plaintiff: Appealed	Defendants: None	Affirmed	School

Schools	previous courts			District
Layshock v. Hermitage Sch. Dist.	Plaintiff: None	Appellant/Defendants: Appealed previous courts	Motion for summary judgment granted	Student
Tyrrell v. Seaford Union Free Sch. Dist.	Plaintiff: Claimed Title IX sexual harassment	Defendants: Summary judgment	Motion for summary judgment granted	School District

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**APPENDIX H—Type of Incidents and Location**

Case Name	The Type Of Incidents	Targeted Students	Targeted School	Bullying Involved	Threats Involved	Incident Location	Punishment Type
Beussink v. Woodland R-IV School District	Student posted comments on website	No	Yes	No	No	Off Campus	Suspension
Boucher v. Sch. Dist. of Greenfield	Student hacked into school computer System	No	Yes	No	No	Off Campus	Expulsion
Emmett v. Kent Sch. Dist.	Student posted mock obituaries of other students	Yes	Yes	No	Yes	Off-Campus	Suspension
North Carolina v. Mortimer	Student left threatening message on school Computer	No	No	No	Yes	On Campus	Criminal: Defendant was Charged
Killion v. Franklin Regional Sch. Dist.	Student created a “top ten” list	No	Yes	No	Yes	Off Campus	Suspension
J.S. v. Bethlehem Area Sch. Dist.	Student posted derogatory comments on Website	No	Yes	No	No	Off Campus	Suspension, Expulsion hearings
Mahaffey v. Waterford Sch. Dist.	Student posted comments on website	Yes	No	No	No	Off Campus	Suspension
Coy v. Canton City Schools	Student posted offensive materials on website	Yes	No	Yes	No	Off Campus	Suspension, Expulsion
I.M.L. v. State of Utah	Student posted offensive materials on website	Yes	No	Yes	No	Off Campus	Suspension, Expulsion, Criminal: Defendant was Charged
Flaherty Jr. v. Keystone Oaks Sch. Dist.	Student posted comments on website	Yes	No	Yes	No	On and Off Campus	None: Disciplinary actions not clear
Klump v. Nazareth Area Sch. Dist.	Display cell phone on school grounds	No	No	No	No	On Campus	Seizure: Cell phone Confiscation
Wisniewski v. Bd. of Educ. Weedsport Central Sch. Dist.	Icon containing threatening display	No	Yes	No	Yes	Off Campus	Suspension
Requa v. Kent Sch. Dist.	Student posted video about teacher	No	Yes	No	No	On Campus	Suspension
M.T. v. Central York Sch. Dist.	Student helped hack school computer System	No	Yes	No	No	On Campus	Expulsion

A.B. v. State of Indiana	Student posted comments on website	No	Yes	No	No	Off Campus	Criminal Charges: Student received probation
T.V. v. Smith-Green School Corporation	Students posted photograph on website	Yes	No	No	No	Off Campus	Restriction from Extracurricular Activities
J.C. v. Beverly Hills Unified Sch. Dist.	Student posted video on website	Yes	No	Yes	No	Off Campus	Suspension
Evans v. Bayer	Student posted comments on website	No	Yes	No	No	Off Campus	Suspension
Doninger v. Niehoff,	Student posted comments on website	No	Yes	No	No	Off Campus	Restriction on student
J.S. v. Blue Mountain Sch. Dist.	Student posted comments on website	No	Yes	No	No	Off Campus	Suspension
Wynar v. Douglas County Sch. Dist.	Student sent instant message about other students	Yes	No	No	Yes	Off Campus	Suspension, Expulsion
Kowalski v. Berkeley County Schools	Student posted comments on website	Yes	No	Yes	No	Off Campus	Suspension
Layshock v. Hermitage Sch. Dist.	Student posted comments on website	No	Yes	No	No	Off Campus	Suspension
Tyrrell v. Seaford Union Free Sch. Dist.	None	Yes	No	Yes	No	Off Campus	None

**APPENDIX I—School Districts and Websites**

#	Name	Date	School Districts' Websites Links
1	Woodland R-IV Sch. Dist.	1998	<a href="http://www.woodland.k12.mo.us/">http://www.woodland.k12.mo.us/</a>
2	Sch. Dist. of Greenfield (N)	1998	<a href="http://www.greenfield.k12.wi.us/">http://www.greenfield.k12.wi.us/</a>
3	Kent Sch. Dist.	2000	<a href="http://www.kent.k12.wa.us/site/default.aspx?PageID=1">http://www.kent.k12.wa.us/site/default.aspx?PageID=1</a>
4	Hoggard High Sch.	2001	<a href="http://www.nhcs.net/hoggard/">http://www.nhcs.net/hoggard/</a> <a href="http://www.nhcs.net/">http://www.nhcs.net/</a>
5	Franklin Regional Sch. Dist.	2001	<a href="http://www.franklinregional.k12.pa.us/">http://www.franklinregional.k12.pa.us/</a>
6	Bethlehem Area Sch. Dist.	2001-02	<a href="http://www.beth.k12.pa.us/">http://www.beth.k12.pa.us/</a>
7	Waterford Sch. Dist.	2002	<a href="http://www.waterford.k12.mi.us/">http://www.waterford.k12.mi.us/</a>
8	North Canton City Sch.	2002	<a href="http://www.northcantonschools.org/nccs/">http://www.northcantonschools.org/nccs/</a>
9	Milford High Sch.	2002	<a href="http://www.mhs.beaver.k12.ut.us/">http://www.mhs.beaver.k12.ut.us/</a> <a href="http://www.beaver.k12.ut.us/">http://www.beaver.k12.ut.us/</a>
10	Keystone Oaks Sch. Dist.	2003	<a href="http://www.kosd.org/education/district/district.php?sectionid=1">http://www.kosd.org/education/district/district.php?sectionid=1</a>
11	Nazareth Area Sch. Dist.	2006	<a href="http://www.nazarethasd.k12.pa.us/nazarethasd/site/default.asp">http://www.nazarethasd.k12.pa.us/nazarethasd/site/default.asp</a>
12	Weedsport Central Sch. Dist.	2007	<a href="http://www.weedsport.org/">http://www.weedsport.org/</a>
13	Kent Sch. Dist. (Different case)	2007	<a href="http://www.kent.k12.wa.us/site/default.aspx?PageID=1">http://www.kent.k12.wa.us/site/default.aspx?PageID=1</a>
14	Central York School District	2007	<a href="http://www.cysd.k12.pa.us/education/components/scrapbook/default.php?sectionid=1">http://www.cysd.k12.pa.us/education/components/scrapbook/default.php?sectionid=1</a>
15	Greencastle Middle Sch.	2007	<a href="http://www.greencastle.k12.in.us/home">http://www.greencastle.k12.in.us/home</a>
16	Smith-Green Comm. Sch. Corp.	2011	<a href="http://www.sgcs.k12.in.us/">http://www.sgcs.k12.in.us/</a>
17	Beverly Hills Unified Sch. Dist.	2010	<a href="http://www.beverlyhills.k12.ca.us/">http://www.beverlyhills.k12.ca.us/</a>
18	Pembroke Pines Charter High Sch.	2010	<a href="http://pinescharter.net/">http://pinescharter.net/</a> <a href="http://www.browardschools.com/schoolboard/">http://www.browardschools.com/schoolboard/</a>
19	Lewis S. Mills High Sch.	2010-11	<a href="http://www.region10ct.org/">http://www.region10ct.org/</a> <a href="http://www.region10ct.org/schools/LSM/index.html">http://www.region10ct.org/schools/LSM/index.html</a>
20	Blue Mountain Sch. Dist.	2010-11	<a href="http://www.bmsd.org/">http://www.bmsd.org/</a>
21	Douglas County Sch.	2011	<a href="https://www.dcsdk12.org/">https://www.dcsdk12.org/</a>
22	Berkeley County Sch.	2012	<a href="http://www.berkeley.k12.sc.us/">http://www.berkeley.k12.sc.us/</a>
23	Hermitage Sch. Dist.	2008-11	<a href="http://www.hermitage.k12.pa.us/">http://www.hermitage.k12.pa.us/</a>
24	Seaford Union Free Sch. Dist.	2011	<a href="http://www.seaford.k12.ny.us/seaford/site/default.asp">http://www.seaford.k12.ny.us/seaford/site/default.asp</a>

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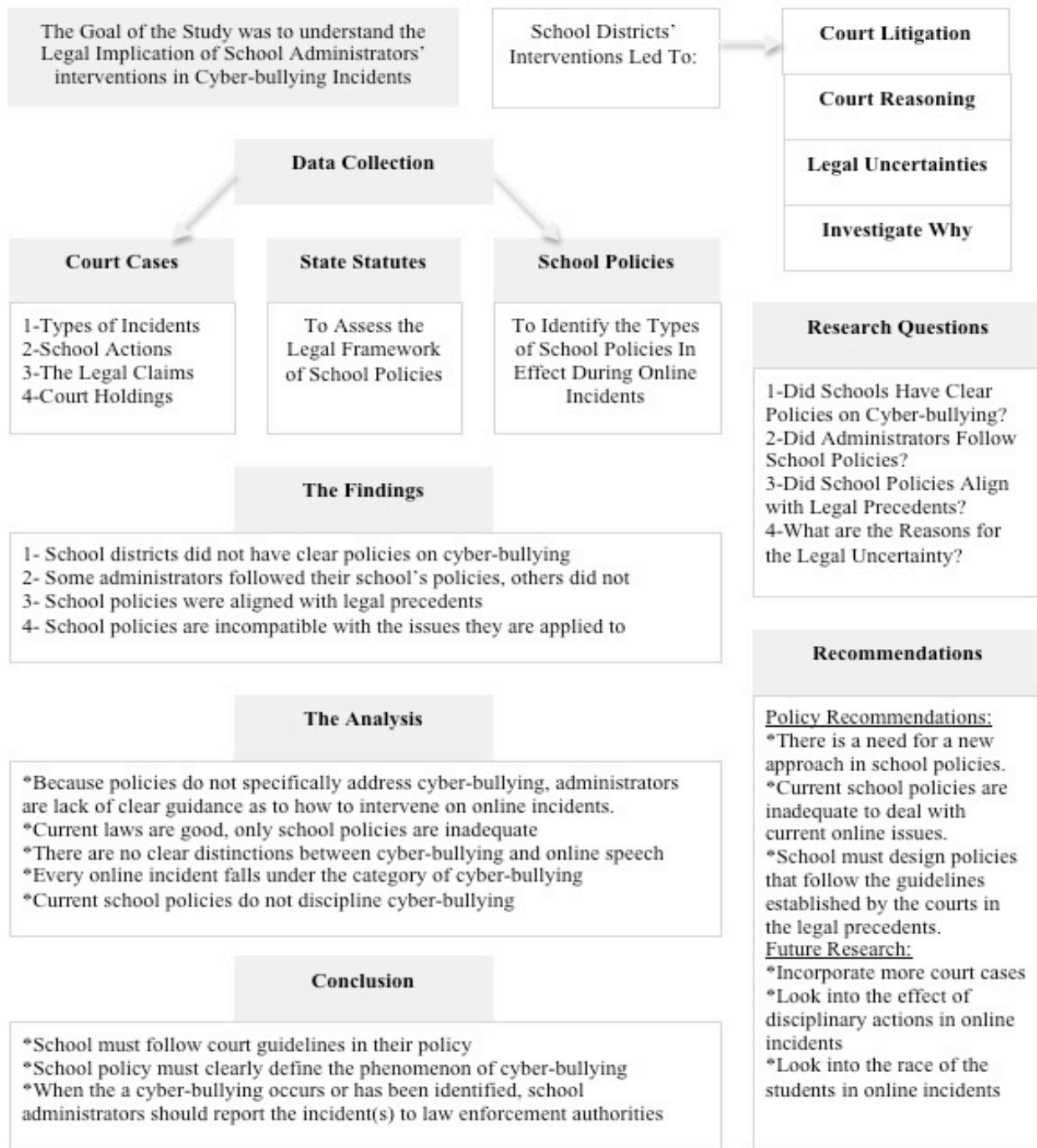
**APPENDIX J—Recommended and Implemented Disciplinary Actions**

Name of School Districts Involved in Online Incidents	Important Language Used in School Policies: List of Recommended or Approved Disciplinary Actions	Implemented Disciplinary Actions
Woodland R-IV School District	Lost of privileges, classroom detention, conference with teacher, parents contacted, conference with principal, in- or out-of-school suspension, expulsion, law enforcement contacted	Suspension
School District of Greenfield	Reprimand, suspension, expulsion	Expulsion
Kent School District	No clear recommendations for punishment	Suspension
Hoggard High School	Referred to student discipline policy	Criminal Charges
Franklin Regional School District	Counseling or parent conference, detention, suspension, expulsion	Suspension
Bethlehem Area School District	Loss of access, additional disciplinary action consistent with existing school policy, referral to the authorities	Suspension, Expulsion hearings
Waterford School District	Expulsion, referred to law enforcement officials	Suspension
North Canton City Schools	Expulsion, referred to law enforcement officials	Suspension, Expulsion
Milford High School	Loss of privileges, expulsion, report to law enforcement	Suspension, Expulsion, Criminal Charges
Keystone Oaks Sch. Dist.	Suspension, recommendation for expulsion	None: Disciplinary actions not clear
Nazareth Area Sch. Dist.	Counseling with the school, parental conference, loss of privileges, transfer, exclusion from school activities, detention, suspension, expulsion, counseling/therapy, referral to law enforcement officials	Seizure: Cell phone Confiscation
Weedsport Central Sch. Dist.	Referred to District Code of Conduct	Suspension
Kent Sch. Dist./Different case	Same as Above*	Suspension
Central York School District	Parental notification, detention, suspension, expulsion	Expulsion
Greencastle Midd. Sch.	Expulsion, referred to law enforcement officials	Criminal Charges: Student received probation
Smith-Green Com. Sch. Corp.	Expulsion, referred to law enforcement officials	Restriction from Extracurricular Activities
Beverly Hills Unified Sch. Dist.	Suspension, expulsion, transfer to alternative programs, denial of privileges to participate in extracurricular activities	Suspension
Pembroke Pines Charter High Sch.	Form positive behavioral interventions up to, but not limited to suspension	Suspension
Lewis S. Mills High School	Warning, detention, suspension, expulsion	Restriction on student
Blue Mountain Sch. Dist.	Counseling with the school, parental conference, loss of privileges, transfer, exclusion from school activities, detention, suspension, expulsion, referral to law enforcement officials	Suspension
Douglas County Schools	Suspension, expulsion, classroom removal	Suspension, Expulsion
Berkeley County Schools	Disciplinary actions, expulsion, admonishment, temporary removal from classroom, deprivation of privileges, classroom or administrative detention, referral to disciplinarian, in- or out-of-school suspension, referral to law enforcement	Suspension
Hermitage Sch. Dist.	Loss of access, cancellation of access privileges, legal proceedings	Suspension
Seaford Union Free Sch. Dist.	Revocation of computer access privileges	None

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## APPENDIX K: The Study In a Nutshell

### APPENDIX A: A Legal Analysis in Conjunction with a Content Analysis: The Study In A Nutshell





# Vita

## WOODLER V. BIEN AIME

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August 2012

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### EDUCATION & PROFESSIONAL

<b>GRADUATE</b>	Graduation: August 2012
Pennsylvania State University	<ul style="list-style-type: none"><li>• Doctor of Philosophy in Educational Leadership (Ph.D.)<ul style="list-style-type: none"><li>◦ Dissertation Oral Defense May 2012</li></ul></li></ul> <p><u>Title of Dissertation:</u> Cyber-Bullying Policies in K-12 Public Schools: An Analysis of the Legal Implications of School Interventions</p>
<b>GRADUATE</b>	Attended Full-Time
United States	<ul style="list-style-type: none"><li>• Master of Public Administration (M.P.A.)</li></ul>
<b>UNDERGRADUATE</b>	Attended Full-Time
United States	<ul style="list-style-type: none"><li>• Bachelor of Science in Criminal Justice (B.S.)</li></ul>
<b>OTHER EDUCATION</b>	Professional & Academic
Foreign Country	<ul style="list-style-type: none"><li>• Police Academy</li><li>• Medical School</li></ul>
<b>PROFESSIONAL</b>	Other Professional Experience
Foreign Country	<ul style="list-style-type: none"><li>• Spanish &amp; English Teacher/Instructor</li><li>• Police Officer</li></ul>