

# COVERING CYBERBULLYING: Getting beyond the myths



*Media coverage of online bullying is important, but oversimplified stories that just repeat clichés don't contribute to public awareness – they contribute to bad public policymaking. Many states and school districts have enacted unconstitutional and educationally unsound “anti-bullying” policies in response to a perceived suicide epidemic. These policies are at best ineffective and at worst counterproductive, resulting in the suspension or expulsion of innocent kids that sets them on the path to becoming dropouts. Good journalists should push beyond clichés and to ask: “Are these policies legal? Do they provide clear notice of what speech is and is not punishable? Do they invite censorship of criticism of school policies and school officials? Do wrongfully accused students have a meaningful opportunity to appeal and clear their names?”*

## MYTH 1. “Teen suicide [or gay teen suicide] is at **epidemic** levels.”

While the loss of any young life is heartbreaking, and efforts to deter youth suicide are laudable, there is zero statistical support for declaring a “suicide epidemic.” The most reliable authority on the subject, the U.S. Centers for Disease Control and Prevention, reports no statistically significant change in youth suicides over the last 20+ years. People 24 and under are in fact the least likely age cohort to take their own lives – and always have been since the CDC began keeping track. Suicide is more than twice as common among adults age 25 to 64. The widespread misperception that young people are suicide-prone is driven by the statistical reality that suicide is a leading cause of death for kids because they rarely die from diseases associated with aging. Thus, suicide (and accidents) become, by default, the primary reasons that teens die. Similarly, the notion that gay kids attempt or commit suicide at “epidemic” levels appears to be rooted in anecdotes and misquoted statistics rather than research. (Likewise, the media is awash with “junk science” guesstimates that anywhere from 20 to 60 percent of students are cyberbullied each year. The most authoritative survey, published by the U.S. Department of Education’s National Center for Education Statistics, found in 2011 that just **9 percent** of students ages 12 to 18 reported having been bullied online – one-third as many as were bullied in-person during school.)

“[F]rom a scientific perspective, there is certainly no gay suicide epidemic.”

*Prof. Ritch Savin-Williams  
Professor of Human Development and Director of the  
Sex & Gender Lab, Cornell University  
Interviewed on NPR’s “All Things Considered”  
Oct. 21, 2010*

## MYTH 2. “School violence is *out of control*.”

Overzealous policies making more and more student behavior punishable by suspension, expulsion or even arrest are at times justified by claims of an “epidemic” of school violence. Statistics say otherwise. The National Center for Education Statistics and the CDC each reported in 2012 that violent deaths and injuries at school have declined substantially since peaking around 1993. As Attorney General Eric Holder and Education Secretary Arne Duncan declared in January 2014, zero-tolerance discipline for minor acts of misconduct has itself needlessly damaged many thousands of young lives. Even the National School Boards Association – which normally supports legislation giving schools greater authority to punish students – declared in an April 2013 report that out-of-school suspensions had reached “crisis” proportions. An exhaustive Texas A&M study published in July 2011 followed 1 million Texas students from 7<sup>th</sup> through 12<sup>th</sup> grades. It found that more than one-half of them experienced at least one suspension, and 31 percent had at least one out-of-school suspension. Of the students who’d experienced a suspension, their average number of suspensions over the course of a middle school/high school career was eight. There is no evidence that school discipline is excessively tolerant or permissive, and ample evidence that this generation of students is the “most punished” in modern history.

“[T]he student success we need to see in our schools will remain unattainable if millions of students continue to miss classroom time because of suspensions.”

*“Addressing the Out-of-School-Suspension Crisis: A Policy Guide for School Board Members”  
April 2013  
Available through the  
National School Boards Association*

## MYTH 3. “Cyberbullying has *caused* [NUMBER/STATISTIC] suicides.”

Since the vast majority of students who experience online cruelty do not harm themselves, it is a dangerous oversimplification to draw a cause-and-effect between cyberbullying and suicide. Perhaps the most famous “cyberbullying suicide” case of all time, the 2009 death of

“The more we insist that bullying is the ‘cause’ behind these suicides, the more we lose sight of the other factors that also likely played a role; and the more we insist that suicide is the ‘normal’ outcome of bullying, the more we may actually be driving kids to that very idea.”

*Deborah Temkin, Ph.D.  
Bullying Prevention Manager  
Robert F. Kennedy Center for Justice & Peace  
“Stop Saying Bullying Causes Suicide”  
Writing in The Huffington Post  
Sept. 27, 2013*

Phoebe Prince in South Hadley, Mass., turned out not to involve very much “cyberbullying” at all. In her authoritative 2010 look at the case for *Slate*, attorney-author Emily Bazelon concluded that almost none of the hostility directed toward Phoebe took place online, and that media reports of widespread social-media postings encouraging Phoebe to kill herself or celebrating her death were greatly exaggerated. Cyberbullying, Bazelon reported, “played a secondary role” in what the media oversimplified as a “cyberbullying suicide.”

#### MYTH 4. “*Schools can punish kids for online speech that is ‘inappropriate’ or ‘offensive.’*”

At a public school (including charter schools), the First Amendment protects the rights of students to engage in lawful speech – even on school grounds during the school day, let alone when they are at home on Saturday using Twitter. The Supreme Court decided in *Tinker* (1969) that schools may not punish students for the content of their speech – even during class – unless the speech “materially” and “substantially” disrupts school operations. In the *Morse* case (2007), the Supreme Court overwhelmingly rejected a

*“Journalism, when practiced at its best, is meant to be provocative; that is, to cause people to talk. If anecdotal evidence that students talked during school hours about something they read equated to ‘disruption,’ then even the best journalism – in fact, especially the best journalism – will be subject to prior restraint and to disciplinary sanction.”*

Frank D. LoMonte  
Executive Director, Student Press Law Center  
“Reaching Through the Schoolhouse Gate”  
ACS Issue Brief, February 2009

school’s claim that it could punish a student’s speech at a school-sponsored event on the grounds that it was “offensive.” The First Amendment and the Due Process Clause require that any government regulation on speech be clear and specific so that those being regulated have fair notice of what speech is punishable – and those doing the punishing cannot selectively discipline only those with disfavored views.

The federal courts are split on whether the *Tinker* “substantial disruption” standard is the right measure of schools’ authority over

online speech outside of school premises. In the view of some judges and legal commentators, off-campus speech cannot be equated with on-campus speech, and a more protective standard is required when speech happens on the Internet during students’ off-hours. The Supreme Court has never yet heard a case involving punishment of students for online speech. Absent a decision from the Supreme Court, it is incorrect to assume that schools’ power to punish online speech is equivalent to their authority over in-school speech.

## MYTH 5. “Regardless of the First Amendment, schools can punish speech if they’re just **‘following their own policies.’**”

This is a chestnut that school administrators and school lawyers have gotten accustomed to repeating. It’s not true. The Constitution trumps school policies, and a school policy giving students fewer rights than those guaranteed by the First Amendment is legally void. Discipline under such a policy would be thrown out in court if challenged. Likewise, a state statute empowering schools to punish speech “contrary to school purposes” – actual wording from a bill the Indiana legislature narrowly rejected – would be unconstitutional unless (at minimum) it requires proof of a material and substantial disruption of school. A state agency, including a public school, can always give students *more* rights than the bare minimum protected by the Constitution, but cannot give fewer. The Constitution is a floor on the government’s treatment of individuals, not a ceiling.

## MYTH 6. “It’s not really’ punishment’ if schools only take away a **‘privilege.’**”

Schools are prone to claim that, if the “only” discipline they impose is banning a student from sports or other extracurricular “privileges,” the discipline doesn’t violate the students’ constitutional rights. This is false. Any government action intended to inhibit speech that would have the effect of “chilling” a reasonable person from speaking can violate the First Amendment. In a 1967 ruling (*Keyishian v. Board of Regents*), the Supreme Court rejected the idea that a government agency couldn’t violate a person’s constitutional rights by “merely” taking away a discretionary “privilege.”

In an August 2011 ruling, a U.S. district judge in Indiana soundly rejected a school’s contention that it could punish two female athletes by kicking them off the volleyball team for sex-themed horseplay during an off-campus slumber party that ended up on YouTube. “[A] student cannot be punished with a ban from extracurricular activities for non-disruptive speech,” said the judge in

Schools and colleges have a well-documented history of using their authority over on-campus student speech to silence whistleblowers who are trying to call the public’s attention to school shortcomings. A compilation of some of the worst abuses appears on the SPLC’s “Cure Hazelwood” website: [www.curehazelwood.org](http://www.curehazelwood.org).

*T.V. v. Smith-Green Community School Corp.* (The judge also struck down, as unconstitutionally vague, a school regulation subjecting students to discipline for out-of-school behavior that “brings discredit or dishonor” on the school.)

## RESOURCES FOR FURTHER RESEARCH

-*Tinker v. Des Moines Independent Community School District* (1969)  
[http://scholar.google.com/scholar\\_case?case=15235797139493194004&q=tinker+v.+des+moines&hl=en&as\\_sdt=80006](http://scholar.google.com/scholar_case?case=15235797139493194004&q=tinker+v.+des+moines&hl=en&as_sdt=80006)

-*Morse v. Frederick* (2007)  
[http://scholar.google.com/scholar\\_case?case=10117776825257150184&q=morse+v.+frederick&hl=en&as\\_sdt=80006](http://scholar.google.com/scholar_case?case=10117776825257150184&q=morse+v.+frederick&hl=en&as_sdt=80006)

-White House Stopbullying.gov, Media Guidelines  
<http://www.stopbullying.gov/news/media/index.html>

-Frank D. LoMonte, "Reaching Through the Schoolhouse Gate: Students' Eroding First Amendment Rights in a Cyber-Speech World," ACS Issue Brief, February 2009  
[https://www.acslaw.org/sites/default/files/LoMonte\\_Issue\\_Brief.pdf](https://www.acslaw.org/sites/default/files/LoMonte_Issue_Brief.pdf)

-Emily Bazelon, "What Really Happened to Phoebe Prince," *Slate*, July 20, 2010  
[http://img.slate.com/media/31/100721\\_Bull-E\\_final\\_3.pdf](http://img.slate.com/media/31/100721_Bull-E_final_3.pdf)

-Berkman Center for Internet & Society at Harvard University, Final Report, Symposium on Youth Meanness & Cruelty, Feb. 29, 2012  
[http://cyber.law.harvard.edu/publications/2012/kbw\\_final\\_report\\_symposium\\_on\\_youth\\_meanness\\_and\\_cruelty](http://cyber.law.harvard.edu/publications/2012/kbw_final_report_symposium_on_youth_meanness_and_cruelty)

-National Center for Education Statistics, "Indicators of School Crime & Safety: 2012"  
<http://nces.ed.gov/programs/crimeindicators/crimeindicators2012/tables.asp>

-Council of State Governments, School Discipline Consensus Project  
<http://csgjusticecenter.org/youth/projects/school-discipline-consensus-project/>

-"Addressing the Out-of-School-Suspension Crisis: A Policy Guide for School Board Members," April 2013  
<http://www.nsba.org/Board-Leadership/Surveys/Out-of-School-Suspension-Policy-Guide/Out-of-School-Suspension-Report.pdf>

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