

## **I. Introduction**

The tragic stories of Megan Meier, Phoebe Prince, and Jessica Logan, young girls bullied to the point of suicide, are three examples of a number of youth suicides that have garnered national attention in recent years. In many of these cases, the bullying involved a modern phenomenon referred to as cyberbullying. Cyberbullying is a growing problem for schools, parents, and, of course, children. There are many issues regarding cyberbullying that have been discussed at length given its recent thrust into the media spotlight. Topics such as precise definitions, criminalization, how it differs from traditional bullying, and the school’s role in policing such behaviors are popular with the media and legal analysts alike. However, there seems to be a large piece of the puzzle missing from cyberbullying discussions: the parents.

A parent’s role, rights, and responsibilities in regards to cyberbullying should be first and foremost in any discussion, yet there is a deadening silence on the issue in the legal analysis of this new trend. Much of the discussion is based on the school’s rights and responsibilities to the students. While this is undoubtedly important, these discussions must be balanced with a discussion involving the parents as well. The focus of this Article will be on parental rights and responsibilities, whether their child is the victim or perpetrator, and how these issues interplay with the rights and responsibilities of schools and children themselves.

The Article will begin with a basic discussion of the case law regarding the constitutional rights of parents generally. Part III will examine case law dealing with the interplay of parents, children and schools and will discuss the history of how that relationship has progressed. Part IV will examine cyberbullying in terms of how it is defined, how it is different from traditional bullying, and how it poses new problems when applied to the

traditional case law examined in Parts II and III. Lastly, Part V will discuss what responsibilities parents should have and propose solutions to the issues raised regarding parents and cyberbullying. Parents should be first and foremost in any discussion about child behaviors, and their rights and responsibilities regarding the issue should carry great weight when determining what is in the best interests of their own children. The conversation regarding cyberbullying must shift from the current discussion of who has a “right” that might be violated, to a new discussion that revolves around who has a “responsibility” to stand up and fight this growing problem. It seems clear that parents have the greatest responsibility in this regard but their role is being woefully ignored in the legal community. As one mother of two boys attending a small rural high school explained, “Although it is very hard to monitor everything that a teen is doing over the internet, it is our responsibility [as parents] to be a positive influence and to be aware of what our children are involved in [online].”<sup>1</sup>

## **II. The Constitutional Rights of the Parent**

In order to begin any discussion of parental rights and responsibilities regarding their children, it is necessary to establish the Constitutional foundation for these rights as determined by the Supreme Court. The scope of parental rights is generally made up of four Supreme Court cases. The first, *Meyer v. State of Nebraska*, held that parents have a Fourth Amendment fundamental right to bring up their children as they see fit, even with respect to their education.<sup>2</sup> Only two years later, the Court reiterated its holding in *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*.<sup>3</sup> The Court held that the parent’s right to control the way their child is

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<sup>1</sup> Interview with Laura Marsic (Dec. 14 2010).

<sup>2</sup> *Meyer v. State of Nebraska*, 262 U.S. 390, 400 (1923).

<sup>3</sup> *See Pierce v. Soc’y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925) (holding that parents have a right to control their child’s upbringing).

raised set out in *Meyer* could not be hindered without a “reasonable relation to some purpose within the competency of the state.”<sup>4</sup> While the Court has recognized that a parent’s right to control their child’s upbringing is a fundamental right, the Court interestingly does not use the language of strict scrutiny that is usually associated with fundamental Constitutional rights. Instead, the Court seems, in *Pierce*, to use a rational basis test in which the state must only have a rational relation to a legitimate governmental interest in order to infringe on a certain right. This may have a definite impact on the constitutionality of state interference in cases of cyberbullying as will be discussed in Part IV.

In addition to the aforementioned seminal cases on the subject of parental rights, two cases regarding different religious groups further expanded the concept of when parents have rights and when the state may intervene with those rights. In *Prince v. Commonwealth of Massachusetts*, the Court conceded that generally parents have the rights asserted in *Meyer* and *Pierce*; however these rights are not absolute.<sup>5</sup> In fact, the Court recognizes that parental rights can be permissibly restricted if the child’s best interest or welfare is at stake.<sup>6</sup> It is important to note that this is not altogether different from the language in *Pierce* regarding a reasonable purpose for state intervention. The difference here is that the purpose itself is finally identified: the child’s best interest. The Court recognizes that the child has an interest here and that it may be in the best interests of the child for the state to intervene with parental rights in certain situations.

The right of the state to intervene in the child’s best interests was clarified in the last of the four cases regarding parental rights. In *Wisconsin v. Yoder*, the Court explained that *Prince* was confined to a narrow scope and that a parent’s right can be limited in cases where the

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<sup>4</sup> *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 535 (1925).

<sup>5</sup> *Prince v. Commonwealth of Mass.*, 321 U.S. 158, 165 (1944).

<sup>6</sup> *Id.* at 166.

parental action will “jeopardize the health or safety of the child, or have a potential for significant social burdens.”<sup>7</sup> Here, it is clear that the Court is limiting the state’s right to intervene to severe cases and seems to assume that fit parents will generally operate in the best interests of their children. Whether this assumption is accurate is, of course, up for debate. However, what is clear is that the Court established, through these four cases, that parents generally have a fundamental right to control the upbringing of their children that can only be infringed upon by the state in extreme cases for the purpose of the child’s best interest or another reasonable state purpose. This standard is extremely important in determining when, in cases of cyberbullying, the legislature or school has a right to intervene in a child’s behavior.

### **III. The Interplay of the Constitutional Rights of the School, Parent, and Child**

While the cases discussed above do not generally appear in a legal discussion of cyberbullying, the following cases have been dissected and applied regularly in legal articles and even subsequent lower court cases dealing with the issue. First, there are general limitations to free speech that have been outlined by the Court that may be applicable here. The Court has determined that speech is not protected if it is: obscene, profane, libelous, “fighting words,” or “serious expressions of intent to commit unlawful violence to a particular individual or group.”<sup>8</sup> In addition to these general limitations, there are also cases regarding the restriction of free speech in a school context. There are five main cases which set out the applicable case law regarding the interplay between the First Amendment and a school’s right to infringe upon that right. While most of these cases deal with student rights rather than parental rights, they are extremely applicable to cyberbullying issues and must be established prior to any discussion of the new problems that cyberbullying brings to the application of these standards. In fact, student

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<sup>7</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972).

<sup>8</sup> *See* *Chaplinsky v. State of N.H.*, 315 U.S. 568 (1942).; *See* *Watts v. U.S.*, 394 U.S. 705 (1969) (holding separately these exceptions to protected speech).

rights cases implicate questions of parental responsibility when their students indeed have the right to free speech unencumbered by the school, but that speech still may be harmful, as is often the case in cyberbullying.

In the seminal case, *Tinker v. Des Moines Independent Community School District*, the Court determined that absent “a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views” and that “school officials do not possess absolute authority over their students.”<sup>9</sup> The Court set forth a test in order to determine when the school had a right to interfere with a student’s First Amendment right to free speech. Under *Tinker*, a student’s right to free speech is restricted by the requirement that the speech cannot “materially and substantially” disrupt the educational environment or interfere with the rights of others.<sup>10</sup> This disruption can either be an actual disruption or a disruption that is reasonably foreseeable.<sup>11</sup> This test has been often applied in a number of different cases, and the definition of a “material and substantial” disruption has been somewhat clarified throughout the years, most recently in the cyber-bullying cases to be discussed in Part IV. However, the definition of an interference with the rights of others has not been made quite as clear and might be very influential in litigation regarding cyberbullying.<sup>12</sup>

In *Bethel School District No. 403 v. Fraser*, regarding student First Amendment rights, the Court determined that “vulgar and lewd speech” is likewise not protected speech in a school setting as it “undermines the school’s basic educational mission.”<sup>13</sup> The Court recognized that schools have an interest in teaching socially appropriate behavior by example and that schools

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<sup>9</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 511 (1969).

<sup>10</sup> *Id.* at 513.

<sup>11</sup> *Id.*

<sup>12</sup> Karly Zande, *When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying*, 13 BARRY L. REV. 103, 117 (2009).

<sup>13</sup> *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986).

have the right to decide what constitutes offensive language.<sup>14</sup> While this holding is clearly important, the Court also indicated a limitation on the right to free speech in cases of “sexually explicit” speech where the “audience may include children.”<sup>15</sup> This limitation may be especially significant in cases of cyberbullying which, as will be discussed below, may be sexual with a potentially limitless and unknown audience.

Similarly, the Court carved out another free speech exception in the school context in *Hazelwood School District v. Kuhlmeier*, in which the Court held that “educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.”<sup>16</sup> While *Hazelwood* is clearly a very important case generally for student free speech issues, it is not often involved in cyberbullying as such speech is not likely to be school sponsored. On the other hand, a case that has not been often addressed in cyberbullying discussions, but which may be significant, is *Walker-Serrano ex. rel. Walker v. Leonard*.

In *Walker-Serrano*, the court determined that “age and maturity” should be taken into account in cases of student speech and that elementary school children require a greater degree of control and thus their speech is protected to a lesser extent.<sup>17</sup> The court determined that considerations of age could fit under its previous *Tinker* standard as well.<sup>18</sup> This case is important for a few main reasons. First, the age of the cyberbullies may change the analysis of how protected their online speech is under the First Amendment. Second, the court also stated that the degree to which the student is simply mimicking a parent’s viewpoint is relevant to this

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<sup>14</sup> *Id.* at 681.

<sup>15</sup> *Id.* at 684.

<sup>16</sup> *Hazelwood Sch. Dist. V. Kuhlmeier*, 484 U.S. 260, 273 (1988).

<sup>17</sup> *Walker-Serrano ex. rel. Walker v. Leonard*, 325 F.3d 412, 416 (3rd Cir. 2003).

<sup>18</sup> *Id.* at 417.

analysis, which indicates a certain amount of interest by at least one court in the parent's role in student speech.<sup>19</sup> Lastly, the court affirmed that school discipline is "an area within the comprehensive authority of the [s]tates and of school officials."<sup>20</sup>

The most recent case dealing with student speech was decided in 2007. *Morse v. Frederick*, like *Bethel* and *Hazelwood*, does not use the *Tinker* standard of analysis, but instead seems to carve out another narrow exception to student free speech rights.<sup>21</sup> The Court held that a school may "restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use."<sup>22</sup> The Court found that, even though the speech was not necessarily on school grounds, it was a school event and was thus on-campus, declining to comment on off-campus speech which is often at issue in cyberbullying cases.<sup>23</sup> Another important point in *Morse* was the Court's assertion that the holding in the *Fraser* case should not be construed broadly to include "any speech that could fit under some definition of offensive."<sup>24</sup> This language is extremely significant in cases of cyberbullying in which the definition of what is offensive may vary greatly.

In summary, parents, students, and the school have many rights and responsibilities pertaining to free speech. Students, like all individuals, have the basic right to free speech, yet there are exceptions for certain types of speech that the Supreme Court has ruled unworthy of protection.<sup>25</sup> In addition, while at school, students have the same rights to free speech they enjoy outside of school grounds, except speech that is materially and substantially disruptive, or may

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<sup>19</sup> *Id.* at 418.

<sup>20</sup> *Id.* at 419.

<sup>21</sup> See *Morse v. Frederick*, 551 U.S. 393 (2007) (holding that a *Tinker* analysis is not necessary in a case dealing with promotion of drug use).

<sup>22</sup> *Morse*, 551 U.S. at 403.

<sup>23</sup> *Id.* at 400-01.

<sup>24</sup> *Id.* at 409.

<sup>25</sup> See *Chaplinsky v. State of N.H.*, 315 U.S. 568 (1942); See *Watts v. U.S.*, 394 U.S. 705 (1969) (holding that there are such exceptions to free speech as were discussed previously).

become so, speech that is vulgar and lewd, and speech that is sexually explicit.<sup>26</sup> Similarly, parents have the same basic right to free speech as students, but they also have a right, and therefore a responsibility, to the upbringing of their children as was discussed in Part II.<sup>27</sup> The right to rear children as parents see fit may be taken into consideration in cases of student speech as well, specifically the extent to which the student's speech is actually the parent's viewpoints.<sup>28</sup> From examining the above case law it is clear that courts have focused much more intensely on students and schools than on parents in student speech cases. Lastly, schools have a right to control student speech in school sponsored venues for legitimate purposes and also have the right to restrict speech that promotes illegal drug use.<sup>29</sup> The school also has the right to take age and maturity into account when making decisions about student speech.<sup>30</sup> The above discussion of cases regarding the rights of parents, students, and the school may be somewhat lengthy, but it is very important to have a clear understanding of the relevant case law before discussing the modern and complex problems that cyberbullying presents.

#### **IV. Cyberbullying: New Technologies and the Complications Involved**

It is no secret that new technologies such as the internet, cell phones, and social networking sites have forever changed the issues that parents and schools encounter. One teacher at a large urban high school explained that the problem is that "it is very difficult for schools and parents to keep up with all of the technology these students have available to them. Most of the

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<sup>26</sup> See *Tinker v. DesMoines Independent Community School District*, 393 U.S. 503, 511 (1969); See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986) (holding that on-campus speech is restricted in certain ways that does not apply to off-campus speech).

<sup>27</sup> See *Meyer v. State of Nebraska*, 262 U.S. 390, 400 (1923) (holding that parent's have a right to control their child's upbringing).

<sup>28</sup> See *Walker-Serrano ex. rel. Walker v. Leonard*, 325 F.3d 412, 416 (3rd Cir. 2003) (stating that younger children's speech is less protected).

<sup>29</sup> See *Hazelwood Sch. Dist. V. Kuhlmeier*, 484 U.S. 260, 273 (1988); See *Morse v. Frederick*, 551 U.S. 393 (2007) (holding that there are such exceptions to school speech that do not require a *Tinker* analysis).

<sup>30</sup> See *Walker-Serrano ex. rel. Walker v. Leonard*, 325 F.3d 412, 416 (3rd Cir. 2003) (holding that younger children require more protection and therefore are afforded less right to freedom of speech on-campus).

students have access to the internet on their phones so they are constantly connected.”<sup>31</sup> Parents are often unfamiliar with the technology at issue and thus feel powerless to control their children’s online conduct.<sup>32</sup> The prevalence of such technology, and the lack of clear boundaries it creates, has resulted in a grey area as to who is responsible for policing behavior such as cyberbullying.

There is also a grey area as to the precise definition of cyberbullying itself. However, cyberbullying can be defined generally as “any child, preteen, or teen that is tormented, threatened, harassed, humiliated, embarrassed, or otherwise targeted by another child, preteen, or teen using the [i]nternet, interactive and digital technologies or mobile phones.”<sup>33</sup> While most definitions of cyberbullying require both parties to be minors, this is not set in stone. In fact, it is unclear if both parties must be minors, only one, or neither.<sup>34</sup> However, it is generally recognized that cyberbullying involves minors, while the same behavior among adults rises to the level of cyberharassment.<sup>35</sup>

In addition, while traditional bullying has always been a problem in schools, certain elements of cyberbullying create a far greater and more dangerous problem. Both types of bullying involve aggression, an imbalance of power, and repetition; however the anonymity of technology and the fact that bullies need not face their victims face-to-face causes many bullies to be harsher and more aggressive than they ever would have been in person.<sup>36</sup> The nature of instant communication, coupled with anonymity, also diminishes a juvenile’s already low

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<sup>31</sup> Interview with Erin Siedelmann (Dec. 12, 2010).

<sup>32</sup> Jaana Juvonen PhD and Elisheva F. Gross PhD, *Extending the School Grounds?-Bullying Experiences in Cyberspace*, J. OF SCH. HEALTH, September 2008, Vol. 78 No. 9 at 497.

<sup>33</sup> Sarah O. Cronan, *Grounding Cyberspeech: Public Schools’ Authority to Discipline Students for Internet Activity*, 97 KY. L. J. 149, 149 (2008).

<sup>34</sup> Kate E. Schwartz, *Criminal Liability for Internet Culprits: The Need for Updated State Laws Covering the Full Spectrum of Cyber Victimization*, 87 WASH. U. L. REV. 407, 410 (2009).

<sup>35</sup> Cronan, *supra* note 26, at 149.

<sup>36</sup> Zande, *supra* note 11, at 109.

impulse control.<sup>37</sup> In addition, unlike traditional bullying, which allowed for a “safe haven” at home, cyberbullying creates a situation in which victims have no escape from their attackers.<sup>38</sup> Not only is there no escape, but there may be no chronological end to cyberbullying. Traditional bullying happens during school hours and in the years an individual attends school. However, cyberbullying can be spread to thousands of people for extended periods of time; years after the actual acts are even perpetrated.<sup>39</sup> Such intense forms of bullying can result in victims who have trouble concentrating, demonstrate physical symptoms, fear and avoid attending school, receive poorer grades, and who may even retaliate on school grounds.<sup>40</sup> However, it is necessary to keep in mind that bullies themselves have problems relating to others, communicating effectively, and have trouble in the adult world.<sup>41</sup> Cyberbullying has also become dangerously prevalent. In one study, 72% of youth reported at least one instance of cyberbullying in the past year.<sup>42</sup> It is clear that, while bullying itself is not new, cyberbullying presents a much more serious problem for parents, schools, and students alike.

Indeed, the courts have also had trouble determining the best way to deal with the problem of cyberbullying. As discussed before, technology has no boundaries. This creates a grey area involving what activities are on-campus, and therefore the purview of schools, and which are off-campus, and thus the purview, hypothetically, of parents. While the Supreme Court has laid out the standards set forth above for student free speech, cyberbullying has created confusion as to how that standard should be applied. For instance, in *J.S. ex rel. H.S. v. Bethlehem Area School District*, the court determined that a website, created by a student at

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<sup>37</sup> Schwartz, *supra* note 27, at 413.

<sup>38</sup> Zande, *supra* note 11, at 111.

<sup>39</sup> *Id.* at 110.

<sup>40</sup> *Id.* at 112.

<sup>41</sup> Mary Sue Backus, *OMG! Missing the Teachable Moment and Undermining the Future of the First Amendment-TISNF!*, 60 CASE W. RES. L. REV. 153, 157.

<sup>42</sup> Juvonen and Gross, *supra* note 25, at 500.

home that targeted a teacher and a principal, was not protected free speech as it created disorder and significantly impacted education in a negative way.<sup>43</sup> The court required, in their words, a “sufficient nexus” between the website and the school campus.<sup>44</sup> In determining this nexus, the court considered whether the content had been accessed on school grounds and whether it was targeted specifically at some aspect of the school.<sup>45</sup> However, the court also stated in dicta that it did not “rule out” the possibility that, in some cases, purely off-campus speech may be “subject to regulation or punishment by a school district if the dictates of *Tinker* are satisfied.”<sup>46</sup>

Other court decisions, such as *Donniger v. Niehoff* and *Winiewski v. Board of Education*, support the conclusion that non-violent off-campus speech related to the school may be considered on-campus speech for the purposes of allowing school discipline under *Tinker*.<sup>47</sup> However, other courts have refused to allow schools to discipline students for off-campus speech, even in very similar instances.<sup>48</sup> In *Layshock v. Hermitage School District*, the court held that simply accessing the materials on-campus did not make it on-campus speech.<sup>49</sup> *Layshock* also sets forth that the boundaries of school authority are not geographical but should be based on a test of whether the student is “in the district’s charge at school functions.”<sup>50</sup> As stated previously, the facts of *Layshock* are similar to the cases mentioned above, but the court seems to require a higher standard of disruption and nexus between the activities and the school campus.<sup>51</sup>

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<sup>43</sup> *J.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847, 869 (2002).

<sup>44</sup> *Id.* at 865.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 864.

<sup>47</sup> *See Donniger v. Niehoff*, 527 F.3d 41 (2nd Cir. 2008); *See Winiewski v. Board of Educ. of Weedsport Central Sch. Dist.*, 494 F.3d 34 (2nd Cir. 2007) (holding, in cases of online activity, that off-campus speech materially and substantially disrupted school grounds).

<sup>48</sup> *See Layshock v. Hermitage Sch. Dist.*, 496 F. Supp. 2d 587 (2007) (holding that online activity was not sufficiently on-campus speech).

<sup>49</sup> *Layshock v. Hermitage Sch. Dist.*, 496 F. Supp. 2d 587, 598 (2007).

<sup>50</sup> *Id.*

<sup>51</sup> *See Layshock v. Hermitage Sch. Dist.*, 496 F. Supp. 2d 587 (2007) (each of the aforementioned cases dealt with student speech in an online setting that was directed at school teachers or administrators).

In fact, the majority of courts have ruled similarly to *Layshock*.<sup>52</sup> The split in decisions makes it entirely too clear that schools run the risk of legal action if they discipline students, yet run the risk of greater public safety issues if they do not. Some state legislatures have taken notice of this problem and have begun to enact laws that require schools to adopt anti-cyberbullying disciplinary procedures.<sup>53</sup> There has even been a recent call for national anti-bullying legislation.<sup>54</sup>

Based on the cases discussed above, most of the legal action stemming from acts of cyberbullying seems to come from the parents of cyberbullies suing based on First Amendment claims. While it is understandable that parents want to protect their child's right to free speech, it is uncertain whether being litigious in this situation is the best message to send to children struggling to identify whether their behaviors are appropriate. Alternatives to this approach will be discussed in Part V. On the other hand, there has recently been an increase in cases brought instead by the parents of bullied children, seeking new and alternative methods of combating cyberbullying. For instance, some parents have begun bringing claims against cyberbullies, schools, and city officials under Title IX if the bullying is sex-related or the Individuals with Disabilities Act if the bullying is disability related.<sup>55</sup> Other parents have even asked school districts for relief based on a new concept of "bullycide," in which students are bullied to the

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<sup>52</sup> Todd D. Erb, *A Case for Strengthening School District Jurisdiction to Punish \Off-Campus Incidents of Cyberbullying*, 40 ARIZ. ST. L. J. 257, 265 (2008).

<sup>53</sup> Matthew C. Reudy, *Repercussions of a Myspace Teen Suicide: Should Anti-Cyberbullying Laws Be Created?*, 9 N. C. J. L. & TECH. 323, 336 (2008).

<sup>54</sup> See Jason A. Wallace, *Bullycide in American Schools: Forging a Comprehensive Legislative Solution*, 86 IND. L. J. 735 (2011).

<sup>55</sup> See Jason A. Wallace, *Bullycide in American Schools: Forging a Comprehensive Legislative Solution*, 86 IND. L. J. 735 (2011) (outlining cases in which parents brought claims based on Title IX); See also T.K. and S.K., Individually and on Behalf of L.K.. v. N.Y.C. Dep't of Educ., No. 10-CV-00752, 2011 WL 1549243 (E.D.N.Y. Apr. 25, 2011) (parents brought claims based on the IDEA).

point of suicide.<sup>56</sup> While it is still unclear if being litigious in these situations is most effective, these most recent cases perhaps signal that parents are at least becoming more aware of the problems cyberbullying creates and are seeking assistance in protecting their children and the children of others in their community.

## V. Parental Rights and Responsibilities

Up until now, this Article has simply laid out the problem facing parents regarding cyberbullying. However, it is clear that parents are dealing with uncharted territory and need actual guidance and solutions. It is easy to forget that the internet is a relatively new phenomenon and that the prevalence of social networking, instant messaging, and blogging has skyrocketed only in recent years. Parents are unsure how to police their children's use of technology generally and are even more uncertain of how to react when a cyberbullying situation occurs. Books, articles, and websites such as "Stop Cyberbullying," are great resources for parents.<sup>57</sup> However, more is required to be certain that the discussion shifts from that of litigious parents and zealous school administrators arguing over who has the "right" to control student speech, to a discussion of parental responsibility for their child's actions and reactions to online activity. Unfortunately, as one educator explained, "schools, parents and the whole community should be working to raise each child, but the reality is this isn't happening."<sup>58</sup>

Parents need to be educated regarding the best way to react whether their child is the bully, bullied, or bystander. Given that the courts have been wary of allowing schools to control off-campus behaviors, and the great weight the Supreme Court has given to the right of parents

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<sup>56</sup> See Jason A. Wallace, *Bullycide in American Schools: Forging a Comprehensive Legislative Solution*, 86 IND. L. J. 735 (2011).

<sup>57</sup> See WiredKids, Inc., *What's the Parents' Role In This?*, [http://www.stopcyberbullying.org/parents/whats\\_the\\_parents\\_role.html](http://www.stopcyberbullying.org/parents/whats_the_parents_role.html) (last visited Feb. 20, 2011) (explaining a parent's best plan of action when dealing with cyberbullying); See N.E. WILLARD, *CYBERBULLYING AND CYBERTHREATS: RESPONDING TO THE CHALLENGE OF ONLINE SOCIAL AGGRESSION, THREATS, AND DISTRESS* (Research Press 2007) (outlining a full guide for cyberbullying solutions for parents).

<sup>58</sup> Interview with Molly Creely (Jan. 9, 2011).

to raise their own children, parents are the most effective means to solving the growing cyberbullying problem. Parents must take the rights given to them by the courts and embrace them as responsibilities for protecting their own children as well as the children in their community. Parents must become more proactive in their child's online lives rather than trying to allow them freedoms which could be exponentially more dangerous than the more simple freedoms their parents allowed them.

For example, guidebooks can be an extremely important resource for parents, educating them about what exactly constitutes cyberbullying, the devastating impact it may have on a child, and more importantly, how to combat it. For instance, it is important for parents to know that often a child is not simply a bully or a victim, but can switch roles even within one incident, making it harder for a parent to know how to react to the situation.<sup>59</sup> The best advice a parent can receive is to stay involved in their child's online activities, even if it seems as if you are being invasive.<sup>60</sup> Parents should keep the computer in a public room of the house, monitor their child's internet activities, and most importantly, communicate with their child about what online behaviors are appropriate and which are not.<sup>61</sup> Simply allowing children to know that they can confide in their parents, without judgment, is an integral first step to preventing and counteracting cyberbullying behaviors. This advice goes for whether the child may be a bully, victim, or bystander. No matter the situation, a child must feel they can communicate with their parents about the way they are feeling and a parent has a responsibility to instill their child with values that will make cyberbullying less likely. Values such as self-awareness, empathy, and effective decision making can go a long way towards preventing bullying and bystander inaction,

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<sup>59</sup> WiredKids, Inc., *What's the Parents' Role In This?*, [http://www.stopcyberbullying.org/parents/whats\\_the\\_parents\\_role.html](http://www.stopcyberbullying.org/parents/whats_the_parents_role.html) (last visited Feb. 20, 2011).

<sup>60</sup> N.E. WILLARD, *CYBERBULLYING AND CYBERTHREATS: RESPONDING TO THE CHALLENGE OF ONLINE SOCIAL AGGRESSION, THREATS, AND DISTRESS* 272 (Research Press 2007).

<sup>61</sup> *Id.*

while self-confidence and resilience are essential in preventing a child from being or feeling victimized.<sup>62</sup> This parental advice may seem obvious, or even somewhat patronizing, however it is essential that parents be willing to learn about this new phenomenon and to do everything in their power to combat it. Even near-perfect parents, watching out for obvious dangers, may miss the silent dangers lurking within their own home computer.

## VI. Conclusion

Parents, first and foremost, need to be a support system for their children. As everyone can surely recall, the middle and high school years are filled with insecurities, self-doubt, and boundary testing. Today, these issues are all aired online, which may be liberating for young people, but also has the potential to have disastrous consequences. Children often resist telling their parents about being bullied online because they are afraid that their access to technology will be limited or taken away.<sup>63</sup> In one study, 90% of cyberbullied youth reported not telling any adult.<sup>64</sup> However, other studies show that children are more likely to tell their parents than a school affiliated adult.<sup>65</sup> Parents must encourage their children to feel comfortable coming to them and schools and parents should work together to educate themselves about these new technologies and how to prevent bullying.<sup>66</sup> It is up to parents to be aware of their child's activities online and act in their best interests. While schools should clearly play a role in policing these behaviors, parents and schools must work together to educate children about appropriate online behaviors rather than fight about when each has the "right" to discipline.

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<sup>62</sup> *Id.* at 275-76.

<sup>63</sup> Juvonen and Gross, *supra* note 25, at 497.

<sup>64</sup> Juvonen and Gross, *supra* note 25, at 502.

<sup>65</sup> Patricia W. Agatson PhD, Robin Kowalski PhD, and Susan Limber PhD, *Students' Perspectives on Cyber Bullying*, J. OF ADOLESCENT HEALTH, 2007, 41 at S60.

<sup>66</sup> Andrew V. Beale and Kimberly R. Hall, *Cyberbullying: What School Administrators (and Parents) Can Do*, THE CLEARING HOUSE, Sept./Oct. 2007, at 12.

A number of potential solutions have been discussed, including a *Morse*-like exception for cyberbullying speech that would determine that this is not protected speech at all, as well as a total reexamination of the *Tinker* standard.<sup>67</sup> One article calls for schools to embrace the “teachable moment” since traditional discipline doesn’t seem to work in these cases.<sup>68</sup> In addition, it analogizes that rather than put a fence around the “pool” that is the internet, schools should be teaching kids how to swim.<sup>69</sup> In fact, in places where a more educational approach is being utilized, there have been positive results.<sup>70</sup><sup>71</sup> However, parents need to be involved in this discussion as well. As one middle school student explained, “a lot of kids at school have the mindset that what they do online can’t affect them in the long run.”<sup>72</sup> These children need to be taught that their actions will have an effect on their future as well as the future of others, and parents are best equipped to teach those lessons. Adequate solutions to the problem of cyberbullying may not be clear. However, what is clear is that solutions must be found, and soon. More young lives, like those of Phoebe, Megan, and Jessica, may depend on it.

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<sup>67</sup> See Sarah O. Cronan, *Grounding Cyberspeech: Public Schools’ Authority to Discipline Students for Internet Activity*, 97 KY. L. J. 149, 149 (2008) (calling for a *Morse*-like exception); See Jessica Moy, *Beyond the Schoolhouse Gates’ and into the Virtual Playground: Moderating Student Cyberbullying and Cyberharassment After Morse v. Frederick*, 37 HASTINGS CONST. L. Q. 565 (2010) (calling for a reexamination of the *Tinker* standard).

<sup>68</sup> See Backus, *supra* note 35 (explaining that traditional discipline isn’t solving the problem but educating students about the dangers of cyberbullying may help).

<sup>69</sup> Backus, *supra* note 35, at 191.

<sup>70</sup> *Id.* at 190.

<sup>71</sup> Courts have likewise found that an educational approach to remedies is necessary in cyberbullying cases given the nature of cyberbullying, such as that victim and perpetrator often switch roles interchangeably, as well as the nature of the individuals involved, mainly their age and maturity level. In order to educate and rehabilitate the individuals involved, courts have found that restraining orders, community service, and suspended sentences have been more effective than punishments such as fines, which the parents would end up paying in the long term. See Hon. Brian P. Stern and Thomas Evans, *Cyberbullying-An Age Old Problem, A New Generation*, 59 APR R.I. B.J. 21 (2011).

<sup>72</sup> Interview with Katie Bernard (January 2, 2011).