Online Bullying Doesn't Stop At The Schoolhouse Gates:

Schools, Cyberbullying, and Restorative Justice

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Phoebe Prince, Megan Meier, Rebecca Sedwick, Seth Walsh, Jamie Rordermeyer, Amanda Cummings[1]- each of these names is that of a young teen who in recent years has committed suicide after being bullied and cyberbullied by classmates and peers. With the rapidly increasing use of technology among young people, cyberbullying has quickly become one of the major social issues impacting youth in America today. Approximately one in every four teens has experienced cyberbullying, and about one in every six teens has engaged in it.[2] And when hearing of the devastating and even at times fatal consequences cyberbullying can have on young people, the first questions typically asked are: did the school know about this? What did the school do about it? Why didn't the school do anything about it? Among the various community stakeholders impacted by cyberbullying, schools are often the first ones looked to or held accountable for addressing and responding to it.[3] However, schools are often wary or uncertain of how or if to respond to this issue, concerned about legally overstepping onto students' free speech rights or overreaching into issues that should be handled by parents or law enforcement, if necessary.[4] There is understandable

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[1] Michelle R. Davis, *Schools tackle legal twists and turns of cyberbullying*, EDUCATION WEEK, Feb. 4, 2011, http://www.edweek.org/dd/articles/2011/02/09/02cyberbullying.h04.html (detailing how 15 year old MA student, Phoebe Prince, committed suicide in January 2010 after extensive cyberbullying and 13 year old MO student Megan Meier in 2006 committed suicide after being bullied through a Myspace page); Tracy Connor, *Charges dropped against girls in Florida cyber-bullying suicide case*, CNN, Nov. 21, 2013, http://www.cnn.com/2013/11/20/us/rebecca-sedwick-bullying-death/ (discussing how Rebecca Sedwick jumped to her death after enduring months of verbal, physical, and online bullying); Bryan Alexander, *The Bullying of Seth Walsh: Requiem for a Small Town Boy*, TIME, Oct. 2, 2010, http://content.time.com/time/nation/article/0,8599,2023083,00.html; Susan James Donaldson, *Jamey Rodemeyer Suicide: Police consider criminal bullying charges*, ABC NEWS, Sept. 2011, http://abcnews.go.com/Health/jamey-rodemeyer-suicide-ny-police-open-criminal-investigation/story?id=14580832; Ben Chapman & Christina Boyle, *Staten Island teen Amanda Cummings kills self by jumping in front of bus after being bullied*, NEW YORK DAILY NEWS, Jan. 4, 2012, http://www.nydailynews.com/new-york/staten-island-teen-kills-jumping-front-bus-family-cites-bullies-article-1.1000243
[2] *Cyberbullying Facts*, CYBERBULLYING RESEARCH CENTER, (last visited on 5.02.14), http://cyberbullying.us/research/facts/
[3] Davis, *supra* note 1 ("Parents, politicians, and civic leaders are putting increasing pressure on school leaders to "do something" about the wave of cyberbullying being reported in the media.")
[4] *Id.* ("School leaders say it's unclear just what actions they can take in some cyberbullying cases… School officials "want to step in but their collective hands have been slapped by the courts so many times that they are reluctant."); *See* Jan Hoffman, *Online Bullies Pull Schools Into the Fray*, NY TIMES, June 27, 2010, available at http://www.nytimes.com/2010/06/28/style/28bully.html?pagewanted=all ("I have parents who thank me for getting

trepidation in placing more power in the hands of schools to address cyberbullying given the current regime of zero tolerance school policies used to respond to student misconduct and the negative impact that such exclusionary and punitive policies have on students' short and long term futures.[5] However, there has been a growing recognition of the ineffectiveness of zero tolerance policies; recent national educational guidelines and many state educational systems have called for their removal and recommended the use of more restorative practices as an alternative. [6]

In this paper, I will show that schools should be able to address cyberbullying speech, both that which occurs on and off school grounds, because of the substantial disruption it causes to schools' learning environments. However, I will also show that in addressing cyberbullying speech, schools should not use zero tolerance policies, but rather should use more restorative justice practices as recommended by national educational guidelines and adopted by many state educational systems in responding to conflict in schools. Part I will detail how cyberbullying is disruptive to the learning environment at schools and interferes with students' abilities to learn and develop. Part II will discuss how under both *Tinker* and *Fraser*, schools, as "the middle man" between parents and state, should be allowed to address both on and off-campus cyberbullying speech because of its disruption to the learning environment, interference with the rights of other students' to learn, and because of the school's obligation to model and teach students socially appropriate discourse and interaction. Part III will examine the reasons why schools should not use zero tolerance policies to address cyberbullying, given its adverse impact on students' short and long term futures. Part IV will explore how schools should use recommended restorative

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involved and parents who say "It didn't happen on school property, stay out of my life," said Mike Rafferty, a middle school principal in CT.")

[5] *See* Part III

[6] *See* Part IV

justice practices to address cyberbullying given its recent implementation and effectiveness in addressing other forms of misconduct and conflict at schools.

For the purposes of this paper, cyberbullying is defined as "an aggressive intentional or wilful act or behavior carried out by a group or an individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself."[7] Furthermore, this paper's focus is on secondary and high school, where cyberbullying is more likely to occur and where it has its most devastating impact.[8]

I. Cyberbullying is Disruptive to the School's Learning Environment

Cyberbullying is highly disruptive to the educational environment within schools and substantially interferes with students' abilities to learn. With 93% of teens and young adults actively using the internet and social media and 75% using cell phones with text message and internet applications, there is a great potential for cyberbullying among young students.[9] Starting from as early as fourth grade into high school years, recent studies have indicated that anywhere from 9-40% of young students are victims of cyberbullying.[10] Students who are cyberbullied are

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[7]Peter K. Smith, Jess Madhavi, Manual Carvalho, Sonja Fisher, Shanette Russell, & Neil Tippett, *Cyberbullying: its nature and impact in secondary school pupils*, J. OF CHILD PSYCHOL. AND PSYCHIATRY 49:4, 376-385, 376 (2008); *What is Cyberbullying*, STOPBULLYING.GOV, (last visited on 5.02.14), http://www.stopbullying.gov/cyberbullying/what-is-it/index.html ("Examples include mean text messages or emails, rumors sent by email or posted on social networking sites, and embarrassing pictures, videos, websites, or fake profiles.")

[8]*See Bullying, Cyberbullying, and Suicide Statistics*, MEGAN MEIER FOUNDATION, http://www.meganmeierfoundation.org/statistics.html ("The prevalence of having been bullied was higher among 10th grade (18.1%), than 9th (15.5%) and 12th grade (15%) students."); Nicole Crawford, *New Ways to Stop Bullying*, AM. PSYCHOL. ASS'N, 33(9), 64 (Oct. 2002), http://www.apa.org/monitor/oct02/bullying.aspx ("Bullying occurs most frequently from sixth to eighth grade with little variation between urban, suburban, town, and rural areas.")

[9]Shari Kessel Schneider, Lydia O'Donnell, Ann Stueve & Robert Coulter, *Cyberbullying, School Bullying, and Psychological Distress: A Regional Census of High School Students*, AM. J. OF PUBLIC HEALTH, 102(1), Jan. 2012, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490574/pdf/AJPH.2011.300308.pdf

[10] *Id*.; *Effects of Bullying*, STOMP OUT BULLYING (last visited 5.02.14), http://www.stompoutbullying.org/index.php/information-and-resources/about-bullying-and-cyberbullying/effects-bullying/ ("Depending on the age group, up to 43% of students say they have been digitally harassed."); Hoffman, *supra* note 4.

often bullied in person at school as well; nearly two thirds of students' cyberbullied reported being bullied at school, while more than one third of students bullied at school also reported being harassed and bullied online.[11] With these kind of numbers, any negative impact of cyberbullying is bound to substantially impact on the social climate and educational environment of schools as well the ability of students to learn and develop, especially as these statistics indicate that cyberbullying does not stop at the schoolhouse gates. Students who are cyberbullied are at significant risk of experiencing emotional and mental health concerns such as anxiety, depression, anger, frustration, low self-esteem, insecurity and hyper-vigilance.[12] This distracts students from being able to focus and concentrate in class - it's difficult to focus on the teacher's instruction, an in-class assignment, or a test when one is fearful and cautious of being bullied in or after class or anxious about other students being aware of or even participating in some form of cyberbullying against them. Furthermore, these emotional and psychological effects of cyberbullying can also negatively impact on the students' ability and willingness to socialize within school or participate in school activities and contribute to the school's social and academic climate.[13]

Cyberbullying also negatively impacts on school attendance rates- another disruption and interference to the educational environment of schools and to students' rights to education. A 2003 report from the National Education Association indicated that approximately 160,000 students stay home from school each day because of bullying and other reports indicate that about 8% of students miss at least one day of class per month due to the fear of being bullied.[14]

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[11] Schneider et al, *supra* note 99
[12] CYBERBULLYING RESEARCH CENTER, *supra* note 2
[13] *Effects of Bullying*, STOPBULLYING.GOV, (last visited on 5.02.14), http://www.stopbullying.gov/at-risk/effects/index.html
[14] MEGAN MEIER FOUNDATION, *supra* note 8; STOPBULLYING.GOV, in *Effects of Bullying, supra* note 13

This is particularly a concern for students who are cyberbullied who may skip school because of real concerns that the bullying with continue on the school bus, in the school hallways, bathrooms, and classrooms.[15] Even bystanders, who are not directly bullied but witness it, as well as bullies themselves also are more likely to skip or miss school, have increased mental health issues, exhibit anti-social and even deviant behavior because of the negative and fearful environment that bullying engenders.[16] Cyberbullying also impacts school attendance rates given it's strongly connection to suicidal ideation and suicide attempts, for both victims of bullying as well as perpetrators of bullying.[17] The recent reports of suicide of students who experienced bullying and cyberbullying highlight the most dramatic manner in which this form of online harassment disrupts school learning environments. Students who are dead no longer have the chance to learn, progress, and grow academically, or contribute to the richness of a school or society. Even suicide attempts cause disruption not only in the individual students' lives, but also within the life of the school; these students miss school to seek necessary services to address the suicidal ideation, friends discuss these events and their reactions at school, teachers may even take class time to discuss the death or suicide attempt, and schools may need to make counselors available for students to process the experience. Furthermore, students, those who are cyberbullied, those who cyberbully, and those who witness it, missing and not contributing to class and not participating in school activities adversely impacts the school as a "marketplace of

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[15] STOPBULLYING.GOV, in *What is Cyberbullying, supra* note 7; STOPBULLYING.GOV, in *Effects of Bullying, supra* note 13

[16] STOPBULLYING.GOV, in *Effects of Bullying, supra* note 13; STOMP OUT BULLYING, *supra* note 10 ("Bullies are more likely to skip school as well, drop out of school, smoke, drink alcohol, get into fights and be arrested at some point in their life. 60% of boys who were bullies in middle school had at least one criminal conviction by the age of 24.")

[17] MEGAN MEIER FOUNDATION, *supra* note 8; *Bullying and Suicide*, BULLYING STATISTICS.ORG, (last visited 05.02.14), http://www.bullyingstatistics.org/content/bullying-and-suicide.html ("Bully victims are between 2-9 times more likely to consider suicide than non-victims, according to studies by Yale University."); Sheri Bauman, Russell B. Toomey, and Jenny L. Walker, *Associations among bullying, cyberbullying, and suicide in high school students*, J. OF ADOLESCENCE 36, 314-350, 347 (2013)

ideas," one of the major reasons that courts have reasoned that students' free speech rights should be protected within schools.[18]

Ultimately, all these disruptions can and do have impact upon students' and ultimately schools' academic performance. Cyberbullying can lead to poor academic performance- students who are cyberbullied are more likely to receive poorer grades and schools where students report a high rate of bullying have had significantly lower scores on standardized tests than schools with lower incidences of bullying.[19] This is yet another testament to the substantial disruption and interference that the effects of cyberbullying can and do have on schools' social climates, academic environments, and on individual students' abilities to learn and progress.

II.   Schools Should Be Able to Address On- and Off- Campus Cyberbullying Speech

Given its demonstrated potential to substantially disrupt the educational learning environment of schools as well as interfere with individual students' abilities to learn, schools should be able to address and regulate students' cyberbullying speech, whether it takes place on or off campus. The Supreme Court held in *Tinker* that public schools may regulate student's First Amendment speech rights when they can evidence facts that school authorities had reason to anticipate that the student's on-campus speech would or potentially could substantially disrupt the work of the school or impinge or interfere upon the rights of other students to learn.[20] The

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[18] J.S. ex rel. H.S. v. Bethlehem Area Sch. Dist., 807 A.2d 847, 854 (2002) ("Schools offer a laboratory-like setting that encourages diverse thoughts. The classroom is an integral part of the marketplace of ideas."); Ari Ezra Waldman, *Identity Based Aggression and the First Amendment,* U. OF MISSOURI, SCHOOL OF LAW, SYMPOSIUM: CYBERBULLYING: EMERGING REALITIES AND LEGAL CHALLENGES (Video Lecture), available at https://www.youtube.com/watch?v=R9w4WpV__mA&list=FLe-zRV9tOAQHKvvcxGknfjQ ("If students feel intimidated to participate in class because of bullying, this affects the notion of the "marketplace of ideas" to which the courts have emphasized as reasoning behind protecting first amendment speech in schools.")

[19] STOPBULLYING.GOV, in *What is Cyberbullying, supra* note 15; L. Bowen, *Bullying may contribute to lower test scores*, AM. PSYCHOL. ASS'N, 42(9), 19 (Oct. 2011), available at http://www.apa.org/monitor/2011/10/bullying.aspx ("High schools in Virginia where students reported a high rate of bullying had significantly lower scores on standardized tests that students must pass to graduate.")

[20] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 509 (1969).

prevalence of cyberbullying in schools and its adverse effects on students as well as the social

and academic climate at schools already clearly evidence that schools' concerns about

cyberbullying speech are more than mere "undifferentiated fear or apprehension of

disturbance"[21] insufficient to overcome students' rights to freedom of expression. Rather, such

evidence indicates that cyberbullying speech does have a significant potential to substantially

disrupt a school's ability to maintain a safe, learning environment and interfere with students'

(the bullied, bullies, and witnesses) abilities to learn both directly and indirectly. Directly in that

students miss class given fears of bullying[22], conflicts and even physical altercations erupt at

school following online or electronic attacks, and teachers, administrators, and school staff have

to take time to inquire and investigate cyberbullying when contacted by concerned parents, or

facing distraught students, or breaking up fights, or trying to find out about a student's absence.

And cyberbullying indirectly disrupts the work of schools in that it adversely affects students'

academic performances and contributes to lower tests scores; in this era of No Child Left Behind

where standardized test scores are used to assess a school's success in its mission, low test scores

could mean significant losses in funding for school budgets, or firing or overhauling school staff,

or even school closure.

The Supreme Court also recognized in *Fraser* that a school's work was not just limited to

academics, but also included instilling young students with "the habits and manners of civility,"

"consideration [for] the sensibilities of fellow students," and the "fundamental values necessary

to the maintenance of a democratic political system" by teaching them socially appropriate

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[21] <u>Tinker</u>, 393 U.S. at 508.

[22] Hoffman, *supra* note 4 ("A Facebook page had sprung up about the man's son, who was new in town. The comments included ethnic slurs, snickers about his sexuality, and an excruciating nickname. In short order, nearly 50 children piled on, many of them identifiable. The boy could not escape the nickname. At sports games around town, opposing players he'd never met would hoot- oh you're that kid. The boy began missing school. He became ill. After weeks, he reluctantly told his parents."

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behavior to prepare them to become responsible and knowledgeable citizens.[23] Because of this monumental obligation, the Court held that public schools could prohibit the use of lewd, vulgar, and offensive speech on school grounds.[24] Under this lewd speech test, public schools should again be able to address cyberbullying speech because doing such is a manner in which the schools teach its students about what is considered appropriate student interaction and discourse. Schools must not just teach their students how to understand literature, mathematics, and science to prepare them to succeed as adult citizens in the workforce and in society, but must also model and promote an environment that teaches students socially appropriate and positive ways to respond to differences, diversity, and conflict. Teaching young students expectations for how to appropriately communicate and interact with one another prepares them to function with others successfully as adults in work environments where there are also policies and procedures against harassment. These lessons in civility and appreciation of difference become even more paramount in what is quickly becoming a global society and community. Cyberbullying speech is harmful and offensive in its denigration and humiliation of others; such speech, whether mean-spirited text messages, embarrassing posted pictures, or websites dedicated to spreading rumors and posting hateful messages, does not take into account the feelings and "sensibilities of others" and in no way promotes a democratic society as it does celebrate nor even appreciate the difference of others. As many public schools become more relaxed and reliant upon the use of technology in classrooms (e.g. cell phones allowed in school, laptops used in classrooms), there is increased opportunity for cyberbullying to take place at school or at school- sponsored activities. Given its adverse impact on the social climate of schools and the interactions of its

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[23] Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 681, (1986); *See* Tinker, 393 U.S. at 512 ("The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students.")
[24] Fraser, 478 U.S. at 683.

students, public schools need to and should be able to address cyberbullying speech to promote

appropriate forms of interaction that will help students to succeed at school and in the future.[25]

While it's clearly recognized by the courts that public schools should be able to address

and regulate cyberbullying that takes place on school grounds, there still remains a lack of legal

clarity over whether schools can address and respond to cyberbullying that takes place off school

grounds.[26] While the Supreme Court has not as yet directly addressed schools' regulation of

cyberbullying speech that originates at students' home or non-school sponsored activities, the

Court has suggested that schools' responsibilities in maintaining a proper school environment

does extend beyond just the classroom and even beyond school grounds.[27] In general, lower

courts have held that a school must establish a "demonstrative nexus" to regulate cyberbullying

speech that takes place off-campus and not during school sponsored activities.[28] However, many

courts have recognized that a demonstrative nexus is still determined by the *Tinker* test of

substantial disruption, regardless of where the speech originated.[29] Even justices in the Third

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[25] Jacob Kang-Brown, Jennifer Trone, Jennifer Fratello, and Tarika Daftary-Kapur, *A Generation Later: What we've learned about zero tolerance in schools,* VERA INST. OF JUSTICE: CENTER ON YOUTH JUSTICE ISSUE BRIEF, Dec. 2013, http://www.vera.org/sites/default/files/resources/downloads/zero-tolerance-in-schools-policy-brief.pdf ("There is some evidence that a positive school climate not only lowers overall levels of violence in school, but may also have some beneficial effect on the behavior of young people.")

[26] Michael Kaufman, EDUCATION LAW, POLICY AND PRACTICE: CASES AND MATERIALS (3d ed), 653 (Aspen 2013).

[27] Fraser, 478 U.S. at 683 ("The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class... Consciously or otherwise, teachers—and indeed the older students— demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class."); Tinker, 393 U.S. at 512-13 ("The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom… A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours…").

[28] Kaufman, *supra* note 26

[29] J.C. ex rel. R.C. v. Beverly Hills Unified Sch. Dist., 711 F. Supp. 2d 1094, 1107-08 (C.D. Cal. 2010)("[U]nder the majority rule, and the rule established by the Ninth Circuit in *LaVine*, the geographic origin of the speech is not material; Tinker applies to both on-campus and off-campus speech."); Justin W. Patchin, *Minnesota's New Bullying Law and the Ability of Educators to Respond to Off-Campus Bullying*, CYBERBULLYING.US, (April 18, 2014), http://cyberbullying.us/minnesotas-new-bullying-law/("Courts have also upheld the ability of schools to discipline students for their off-campus expressions (e.g., Fenton v. Stear [1976], J.S. v. Bethlehem Area SD [2000], Wisniewski v. Board of Education of the Weedsport Central School District, [2007], Doninger v. Niehoff [2011], and Kowalski v. Berkeley County Schools [2011]). The key issue in these types of cases is whether the off-campus

Circuit, which has often held that schools cannot regulate off-campus speech, noted and endorsed the "majority's apparent adoption of the rule that off-campus student speech can rise to the level of substantial disruption" in their dissenting opinion in *Blue Mountain*.[30] If public schools can demonstrate that off-campus speech would reasonably reach and disturb the school, it can be regulated.[31]

Given this, public schools should be able to address and regulate cyberbullying speech that originates off campus; the very nature of cyberbullying demonstrates a reasonable foreseeability that its impact and adverse effects will reach the school, regardless of where it originates, thereby bringing it under the school's jurisdiction. Cyberbullying typically involves students that attend the same school, at an age where students typically spend most of their day at school.[32] Because of this, it's highly likely that any online bullying that started outside of the school will continue once students enter the school gates. Not only likely, it's happening- 25% of teens have had an online experience that resulted in a face to face argument or confrontation with someone; 22% have had an online experience that ended their friendship with someone, 8% have gotten into a physical fight with someone because of something that happened on a social network site, and 6% have gotten in trouble at school because of an online experience[33]- and

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speech resulted in, or has a foreseeable likelihood of resulting in, a substantial disruption of the learning environment at school.")

[30] J.S. ex rel. Snyder v. Blue Mountain Sch. Dist., 650 F.3d 915, 941, 950 (3d Cir. 2011) (FISHER Dissenting and SCIRICA, RENDELL, BARRY, JORDAN, and VANASKIE joining).

[31] Barry P. McDonald, *Regulating Student Cyberspeech*, 77 MO. L. REV. 727, 729 (2012) ([M]ost federal district courts tak[e] the position that the [Tinker] govern all of them without regard to whether the speech occurred on or off campus, while most courts of appeals that have weighed in to date have decided student speech rules apply only if the speaker could have foreseen her speech would have reached school grounds.")

[32] *See* STOPBULLYING.GOV, in *What is Cyberbullying, supra* note 15

[33] MEGAN MEIER FOUNDATION, *supra* note 8; *See also*, Hoffman, *supra* note 4 ("By Tuesday night, the uninvited guest had insulted the birthday girl's dress on Facebook, calling it and the girl's mother cheap…By next day, the teachers said, "There were rumblings about it in the cafeteria. When kids start posturing and switching lunch tables, you can tell." Two days later, during the four minutes between 7th grade and the next period, 20 girls showed up in the hallway and began shrieking. At least four adults pulled the girls apart and talked them down.").

schools are having to devote time and resources to responding to it. Given the permanence and

pervasiveness of the internet and the fact that teens can connect to such technology 24/7,[34] its

very likely that the negative reactions and emotions that are spurred by off-campus cyberbullying

will spill over and bleed into on-campus school class-time and activities, especially as schools

are the place where the bullied encounter the bullies and negative posts and messages can be

checked multiple times by victims and bystanders alike. Even if contained in the home,

cyberbullying and its adverse effects on concentration and motivation is bound to affect students'

abilities to complete homework assignments and projects which is a disruption to a huge

component of the educational process.[35]

There are just no easy or definitive demarcations when it comes to determining on and

off campus cyberbullying speech.[36] Both are just as disruptive to school functioning and it may

be placing too high of a burden on schools[37] to have to make that determination when faced with

situations arising from cyberbullying that they have to respond to quickly- the school's

deliberation alone over whether the cyberbullying was done on or off campus could be

substantially disruptive to the work of the school. Now arguably, allowing schools to address off-

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[34]STOPBULLYING.GOV, in *What is Cyberbullying, supra* note 15; Ari Ezra Waldman, *supra* note 10; Sameer Hinduja and Justin W. Patchin, *Cyberbullying: Identification, Prevention, and Response*, CYBERBULLYING RESEARCH CENTER, (last visited 5.02.14), http://www.cyberbullying.us/Cyberbullying_Identification_Prevention_Response_Fact_Sheet.pdf.

[35]Barry P. Mcdonald, *Free Speech and Student Cyberbullying: A Search for Jurisdictional and Policing Standards,* U. OF MISSOURI, SCHOOL OF LAW, SYMPOSIUM: CYBERBULLYING: EMERGING REALITIES AND LEGAL CHALLENGES, (Video Lecture), available at https://www.youtube.com/watch?v=R9w4WpV__mA&list=FLe-zRV9tOAQHKvvcxGknfjQ

[36]Blue Mountain Sch. Dist., 650 F.3d at 951-52 (FISHER, Circuit Judge Dissenting and SCIRICA, RENDELL, BARRY, JORDAN, and VANASKIE joining) ("The line between "on-campus" and "off-campus" speech is not clear as it once was. Today, students commonly carry cell phones with internet capabilities onto school grounds… With near constant student access to social networking on and off campus, when offensive and malicious speech is …disseminated online to the student body, it is reasonable to anticipate an impact on the classroom environment.")

[37] Patchin, *supra* note 29 ("I do fear that we may be asking too much of school administrators in requiring that they are able to clearly distinguish those off-campus behaviors that result in a substantial disruption at school from those that don't. Some of the brightest legal minds debate these issues so how on earth can we expect Mr. and Mrs. Principal to get it right?")

campus cyberbullying speech could create a slippery slope as to what and how much off-campus

student speech the school could address and could thus infringe on students' protected First

Amendment rights. However, this concern can be mostly evaded through properly prescribed

anti-cyberbullying school policies or state statutes. While defining cyberbullying that the school

can reach can be challenging, some states and schools have achieved success by making sure to

include language in their policies that specifies and defines the repetitive nature of the

cyberbullying, the negative impact it has on student's learning and socialization, and of course,

that the speech has shown itself to be substantially disruptive to the school's functioning or

materially interfering with others' abilities to learn.[38]

Lastly, while opponents to schools addressing off-campus cyberbullying speech have

argued that this is overreaching into issues that should be addressed by parents or, if necessary,

law enforcement and the courts, schools are in a unique position as quasi-parent[39] and quasi-

state[40] actor to address this issue.[41] More neutral than the parents of those involved,[42] and less

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[38] *See* Fraser, 478 U.S. 675, 676 (1986)("Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions."); Patchin, *supra* note 29(There are at least a dozen other states [Minnesota, New Hampshire, etc] that have updated their anti-bullying statutes to explicitly allow schools to discipline for their off-campus behaviors when said behaviors infringe on the rights of other students or substantially and materially disrupt the learning environment at schools.")

[39] *See* Fraser, 478 U.S. at 684 ("These cases recognize the obvious concern on the part of parents, and school authorities acting *in loco parentis*, to protect children from exposure to sexually explicit, indecent, or lewd speech."); State v. J.A., 697 So. 2d 316 (Fla. App. 1996) ("Because of state's custodial authority over students, public school students are subject to a greater degree of control and supervision that is permitted over non-students.")

[40] New Jersey v. T.L.O., 469 U.S. 325, 336 (1985)("In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents.")

[41] *See* Dianne L. Hoff & Sidney N. Mitchell, *Cyberbullies: cause, effects, and remedies,* J. OF EDUC. ADMIN., 47(5) 652-665 (2009) ("It is clear that schools must be at the center of the solution to affect change in the social climate of today's young people. Schools are in a unique position to both educate and when necessary take corrective action.")

[42] *See* Davis, *supra* note 1 ("Some parents of cyberbullies support schools in their disciplinary stances against those students… but more often, school leaders say parents of cyberbullies either say they want to discipline their children themselves or they dismiss the cyberbullying as harmless… one of the biggest challenges [] face[d] is parents who try to downplay the bullying as if it's not occurring and try to talk their way around it.")

punitive than law enforcement and court systems,[43] schools are in a more optimal position to address cyberbullying. School-age youth spend most of their day at school and will most acutely feel the effects of cyberbullying there surrounded by their peers and possible perpetrators. Parents may be more apt to contact the school to address the issue anyway, feeling reluctant or uncertain about getting law enforcement or courts involved.[44] Taking the ability to address cyberbullying out of the school's hands and asking parents alone to address the issue may lead to inaction which could worsen the impact on students and the school's social climate. Even worse, simply advocating for parents or schools to contact law enforcement to handle all off campus cyberbullying issues, could lead to an increase in youth criminalization, and further negative and punitive outcomes for both the bully and the bullied[45] In any case, it would not rectify the issue because reducing cyberbullying necessitates changing a culture of interaction, what is tolerated in how people treat one another and respond to difference; this is what makes schools ideal for addressing the issue. As a microcosm of the larger society and often the hub of a community, "schools have the developmental potential to both stigmatize and exclude, as well as nurture and integrate individuals within society."[46]

III.　　Zero Tolerance Policies Should Not Be Used To Address Cyberbullying

The trepidation that many who oppose the idea of placing more disciplinary power in the hands of schools to address cyberbullying is understandable when considering how educational

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[43] *See* Connor, *supra* note 1 (Sheriffs in Florida charged a 12 and 14 year old with felony stalking charges for cyberbullying a young teenager who committed suicide as a result of it. …Charges were dropped and the teens' cases were diverted to counseling and other services in juveniles justice system… Sheriff said he had no regrets about charging the girls and would do it again.")

[44] *See* Hoffman, *supra* note 4 ("When school asked parents of students who had been sent sexually explicit threats via text message if they had contacted the police, the parents said "a criminal investigation would be protracted, the parents had decided, its outcome uncertain. They wanted immediate action.")

[45] *See* Part III.

[46] Brenda Morrison, *Restorative Justice and School Violence: Building Theory and Practice*, RESTORATIVE JUSTICE E-FORUM, Oct. 22, 2002, http://www.iirp.edu/iirpWebsites/web/uploads/article_pdfs/morrison_bullying.pdf

systems and schools have mishandled and misused such power in addressing concerns around school violence and other forms of student misconduct. Starting in the late 1980s with the war and drugs in schools, and firmly taking root in the 1990s in response to rising concerns of gun violence in schools following mass shootings at Columbine High School and the like, Congress passed the Guns Free Schools Act in 1994; this mandated that schools receiving federal funds under the Elementary and Secondary Education Act establish laws requiring expulsion for no less than one academic year for students bringing firearms and other weapons into school.[47] Now known as zero tolerance policies, these school policies mandate out of school suspensions and/or expulsions, typically on the first offense, with minimal discretion on the parts of schools in determining how to manage specific incidences.[48]These policies were originally intended to help schools maintain a safe learning environment and respond to acts of serious violence or to students who posed a serious safety threat to the school. However, over time, and in response to growing unsupported public fears[49] about juvenile violence in school, school districts have broadened these zero tolerance penalties to cover less serious misconduct, like fighting, disrupting class, talking back to teachers, or other minor infractions of the school code of

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[47]Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, THE CHAMPION NEWSLETTER, July/Aug. 2011, 22, http://sentencingproject.org/doc/publications/Collateral%20Consequences%20NACDL%202011.pdf; Kang-Brown, *supra* note 25; Rebecca Klein, *Zero-Tolerance Policies May Make Schools More Unsafe, Report Finds*, THE HUFFINGTON POST, Jan. 23, 2014, http://www.huffingtonpost.com/2014/01/03/school-zero-tolerance-policies_n_4538420.html; Jessica Ashley and Kimberly Burke, *Implementing Restorative Justice: A guide for schools*, ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, STATE OF ILLINOIS, (last visited 5.01.14) http://www.icjia.state.il.us/public/pdf/BARJ/SCHOOL%20BARJ%20GUIDEBOOOK.pdf

[48] Kang-Brown, *supra* note 25

[49] *See* Nellis, *supra* note 47 ("However, less emphasis was placed on how infrequently school violence of this magnitude occurs. In fact, school related violence is rare and has been dropping for more than a decade. Distinct incidences frightened parents about the safety of their children at school, and this fear led to many of today's school exclusion laws.")

conduct.[50] Zero tolerance policies are now more frequently used to punish students for less serious, minor infractions.

The use of zero tolerance policies in schools have led to a host of negative outcomes for students in secondary school and high school. They have led to a dramatic increase in student suspensions and expulsions.[51] In recent years, approximately two million students have been suspended annually from secondary school;[52] in Illinois, specifically, public school suspension rates increased 56 percent and expulsion rates have more than doubled.[53] Most of these suspensions and expulsions disproportionately impact students of color and students with disabilities.[54] This dramatic increase in suspensions and expulsions severely disrupt students' academic progress in ways that have lasting negative consequences. Zero tolerance exclusionary policies reduce classroom instruction, make it difficult for students to complete missed coursework, and increase the risk of students having to repeat a grade, a strong predictor for dropping out of school;[55] In fact, a single suspension or expulsion, for even a minor misconduct, doubles the risk that a student will repeat a grade and makes it 68 percent more likely that the

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[50] Tuli Farley, *OP-ED: Why Zero Tolerance Means more kids in jail*, JUVENILE JUSTICE INFORMATION EXCHANGE, September 17, 2013, http://jjie.org/op-ed-why-zero-tolerance-means-more-kids-in-jail/105361/; Charles Fox, *When Zero Tolerance Goes too Far,"* DIGNITY IN SCHOOLS: SPECIAL EDUCATION BLOG, 2011, http://www.dignityinschools.org/news/when-zero-tolerance-goes-too-far; *See* Kang-Brown, *supra* note 25 ("Nationally, 43 percent of expulsions and out-of-school suspensions lasting a week or longer were for insubordination.")

[51] Kang-Brown, *supra* note 25 ("Nationally, the number of secondary school students suspended or expelled over the course of a school year increased roughly 40 percent from one in 13 in 1972-73 to one in nine in 2009-2010.")

[52] *Id*.

[53] Ashley, Jessica *supra* note 47.

[54] Farley, *supra* note 50; Kang-Brown, *supra* note 25; Jacob,; *See* Congressman Danny K. Davis, *Stopping the school-to-prison pipeline*, OAKPARK.COM, April 1, 2014, http://www.oakpark.com/News/Articles/4-1-2014/Stopping-the-school_to_prison-pipeline/ ("Illinois has higher gaps in suspension rates between African American and white students than other states. Students with disabilities are more than twice as likely to be suspended and more than three times as likely to be physically restrained as students without disabilities.")

[55]Patrick S. Wynne, *Zero-Tolerance Policies in the US Schools are Ineffective and Unaffordable*, JUVENILE JUSTICE INFORMATION EXCHANGE, Jan. 14, 2013, http://jjie.org/zerotolerance-policies-schools-ineffective-unaffordable-2/102255/; Congressman Davis, *supra* note 54; Kang-Brown, *supra* note 25

student will drop out of school.[56] Dropping out from school makes it that much harder for a young person to get employment or earn a decent wage.[57]

Furthermore, the use of zero tolerance policies has also dramatically increased the likelihood of students becoming involved in the juvenile justice or criminal system.[58] Referred to as the "school to prison pipeline," more youth are coming into contact with law enforcement and the juvenile justice system either because suspensions and expulsions have made them more susceptible to becoming involved in deviant and criminal behavior on the streets[59] or because schools are now increasingly relying on police presence and intervention to deal with student misconduct at schools[60] Zero tolerance policies have resulted in rising school arrest rates; in Chicago public schools alone, police made 4,597 school-based arrests in 2009 of students aged 16 and under, most of which were for offenses such as disorderly conduct, fighting, or vandalism.[61] Once involved or even exposed to the juvenile and criminal systems, it becomes that much difficult for youth to complete their education, gain employment, or have other positive life prospects.[62]

It is understandable, under this regimen of zero tolerance policies, that many would fear allowing schools to regulate and address cyberbullying, particularly that which takes place off

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[56] *Id.* Congressman Davis, *supra* note 54
[57] Kang-Brown, *supra* note 25
[58] Fox, *supra* note 50
[59] Farley, *supra* note 50 ("Research found almost half of the students who were disciplined by suspension or expulsion 11 or more times were in contact with the juvenile justice system… Falling behind in school leaves youth more susceptible to becoming involved in real crime.")
[60] *Id.* ("Students with far less severe behavioral problems are increasingly being referred to the juvenile justice system rather than receiving help within the school.")
[61] *Id.*; VOICES OF YOUTH IN CHICAGO EDUCATION, *Failed Policies, Broken Futures: The True Cost of Zero Tolerance in Chicago*, THE PUBLIC INTEREST PROJECT, July 2011, http://www.publicinterestprojects.org/wp-content/uploads/downloads/2011/08/VOYCE-report-2011.pdf
[62] Fox, *supra* note 50; *See* Kaukab Jhumra Smith, *US Senate Subcommittee hears testimony on school to prison pipeline*, JUVENILE JUSTICE INFORMATION EXCHANGE, Dec. 13, 2012, http://jjie.org/senate-subcommittee-hears-testimony-on-schooltoprison-pipeline/100517/ ("The minute a child sets foot in the juvenile justice system, their chances of becoming an adult offender go up 50 percent.")

campus. Many are concerned that allowing schools that use zero tolerance policies to discipline students for cyberbullying could lead to even more student suspensions and expulsions, and further criminalizing student behavior rather than effectively addressing it within the school. And they are right- schools should not use zero tolerance policies to respond to and address cyberbullying. The increased presence and reliance on law enforcement in schools, under zero tolerance policies, have turned many schools into literal police states. The number of full time law enforcement and security guards has dramatically increased in high schools throughout the country,[63] along with the use of metal detectors, physical restraints, and even the use of tear gas and pepper spray on young students.[64] Punishments have become harsher, and many incidences of student misconduct that were previously handled in the principal's office are being referred to law enforcement.[65] This has neither made schools safer environments[66] nor made schools an environment conducive to learning, which is the very reason that the courts endowed schools with the power to regulate student behavior and speech.[67] Rather, zero tolerance policies and reliance on police at schools are substantially disruptive to the learning environment and interfere with student's abilities to learn. Schools with high rates of suspension and expulsions tend to have worse school climates and students are less focused on class instruction and perform worse academically.[68] In police state school environments, students feel like criminals,

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[63] Kang-Brown, *supra* note 25("The federal government and states began to increase funding for security guards and other school based law enforcement officers and later to install metal detectors. Between the 1996-97 and 2007-2008 school years, the number of public high schools with full time law enforcement and security guards tripled.")

[64] Wynne, *supra* note 55 ("Children are now sometimes subjected to arrest, physical restraint, and even the use of tear gas and pepper spray by police officers and security guards in schools.")

[65] Fox, *supra* note 50 ("Students are being arrested on battery charges for shoving classmates, elementary students playing cops and robbers have been charged with making terrorist threats, students engaged in shouting matches have been charged with disorderly conduct.")

[66] Kang-Brown, *supra* note 25

[67] *Id.* ("No studies show that an increase in out of school suspension and expulsion reduced disruption in the classroom and some evidence suggests the opposite effect.")

[68] VOICES OF YOUTH, *supra* note 61

distrustful of the adults, constantly alert and afraid of being interrogated or detained for any form of misconduct, and distracted from being able to focus on class, tests, and interaction with other students.[69]

Schools should be able to address cyberbullying but not with zero tolerance policies, which are just as disruptive to the learning environment as the problem of cyberbullying itself. Constantly using such exclusionary and negative disciplinary policies would be counterproductive to the schools' interest and purpose in addressing cyberbullying, which is to promote a safe learning environment and positive social climate conducive for learning.

IV.   Restorative Justice Practices Should be Used To Address Cyberbullying

Fortunately, there has been a growing recognition of the ineffectiveness of using zero tolerance policies to address student misconduct in schools.[70] In fact, the U.S. Department of Education, earlier this year issued a national guidance for student discipline, criticizing the use of ineffective and discriminatory zero tolerance policies, calling for a reduction and explicit limits in the use of such policies in state educational disciplinary policies, and recommending schools to incorporate the use of a wide range of strategies, namely restorative justice models and practices, to promote a safe, inclusive, educational environment.[71] Many state education

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[69] *Id.* ("Harsh discipline policies create institutions where we are expected to fail, because they are based on fear that young people of color are future criminals, not the hope that will be future leaders…); *See* Smith, Kaukab Jhumra, *supra* note 62 (including subcommittee testimony from Edward Ward on experiences going to school on west side of Chicago: "My school environment was very tense. The halls were full of security officers whose sole purpose seemed to serve detention. I felt constantly on alert- afraid to make the small mistake. I felt I couldn't go to them for general security issues because first I would be interrogated.")

[70] *See* Kang-Brown, *supra* note 25 ("Both the American Academy of Pediatrics and the American Psychological Association have issued statements effectively condemning zero tolerance policies, given their harmful effects…In August 2013, US Attorney General Eric Holder talked about the need to confront zero tolerance policies that "do not promote safety" and … remember that educational institutions should be "doorways to opportunity."")

[71] U.S. DEPARTMENT OF EDUCATION, *Dear Colleague Letter on the Non-discriminatory Administration of School Discipline*, U.S. DEPARTMENT OF JUSTICE: CIVIL RIGHTS DIVISION, Jan. 8, 2014, available at http://www.justice.gov/crt/about/edu/documents/dcl.pdf; *See To Curb Conflict, a Colorado high school replaces punishment with conversation*, PBS, Feb. 20, 2014, http://www.pbs.org/newshour/bb/new-approach-discipline-

departments and municipal school districts, have followed suit, in moving away from using zero tolerance policies; Chicago Public Schools removed zero tolerance language from its 2007-2008 Code of Student Conduct, adopting instead language advocating for the use of restorative justice programs to address student misconduct and violations.[72]

Restorative justice programs offer schools alternative strategies for addressing student misbehavior and complex issues, offer a supportive learning environment conducive to learning, improve student safety, and strengthen connections between students and staff.[73] Based on the belief that the people best placed to resolve conflict or problems are the people directly involved and affected by the matter, restorative justice programs in school tend to involve bringing together those students who are involved in and affected by the misconduct to discuss what happened, its impact on all those involved, and then come to an agreement about how the harm will be repaired.[74] This is typically done through peace circles or peer juries where students or faculty trained in restorative justice principles sit in a circle with those involved in the conflict (e.g. students, staff) and their support network (e.g. parents, guardians, etc) and facilitate a respectful discussion about repairing the harm caused and healing the relationships broken.[75]

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school/; Noreen S. Ahmed, *CPS wants to ease discipline at charters*, CHI TRIB., Feb. 07, 2014, http://articles.chicagotribune.com/2014-02-07/news/ct-suspension-chicago-schools-met-20140206_1_discipline-policy-student-suspensions-charter-schools

[72] Kang-Brown, *supra* note 25; Fox, Charles, *supra* note 50

[73] Ashley, Jessica *supra* note 47

[74] *Id.*; ILLINOIS BALANCED AND RESTORATIVE JUSTICE, *Restorative Practices in Schools*, http://www.ibarj.org/schools.asp (last visited 4.16.14)

[75] *See* COMMUNITY ORGANIZING AND FAMILY ISSUES, *Parent to Parent Guide: Restorative Justice in Chicago Public Schools, Stopping the School to Prison Pipeline*, 2012, http://www.cofionline.org/sites/default/files/COFI%20Parent%20RJ%20Guide%20english%202012%20update_0.pdf (discussing how a young male student got into a verbal altercation with a security guard at school and rather than suspend or arrest the student, the school conducted a peace circle with the student and the guard. "By the end of the Peace Circle, the two agreed to speak more respectfully to one another and spend time together. [The student] found someone to listen to him and to be there for him, and both parties involved had learned a lesson about themselves and about each other."); PBS, *supra* note 71 ("Though it may be viewed as a soft approach to conflict, for the students and families to come together and express truly what happened, how it affected myself and others, what am I responsible for and how do I solve it… It's much deeper than just writing paperwork.")

Restorative practices are a more inclusive and less punitive alternative than zero tolerance

exclusionary measures and increased law enforcement involvement at schools- rather than taking

students out of the school community for misconduct, restorative practices promote keeping

students in the community to address the issue and students' underlying needs. Restorative

practices emphasize values of empathy, respect, honesty, acceptance, and accountability among

participants and those in the school community. [76] Restorative practices have been effective in

addressing student misconduct and conflict in schools because of its focus on 1) involving all

those affected by the harm in the discussion and in determining its resolution, 2) listening and

speaking to the needs of the offending student, the student victim, and all others impacted (e.g.

bystanders), 3) healing and repairing harm, broken communication, and broken relationships and

4) promoting shared community values and positive and productive forms of interaction ways as

encouraging individual and community accountability.[77] Such programs have reduced detention

and suspension rates, improved students' academic performance and attendance, and improved

the social environment at schools.[78]

Restorative justice practices, recommended by national educational guidelines and used

with preliminary success in addressing other forms of misconduct and conflict in schools, is what

should be utilized by schools to address cyberbullying.[79] Restorative practices are ideal for

dealing with cyberbullying and its adverse impact on the learning environment of schools: while

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[76] Ashley, Jessica, *supra* note 47; Bauman, *supra* note 17 ("It is not helpful to remove students who engage in bullying behaviors from the context in which the problem occurred, thus depriving them of the opportunity to learn new, positive behaviors.")

[77] *Id.*; COMMUNITY JUSTICE YOUTH INSTITUTE, *What is Restorative Justice*, (last visited 4.20.14), http://cjyi.org/cjyi-services

[78] Congressman Davis, *supra* note 54; *See* Ashley, Jessica, *supra* note 47 (noting how schools in Peoria, Ill that have implemented circles and peer juries have experienced a 35 percent drop in detention referrals, and avoided more than 1,000 days of suspension. Also noted how a school in PA uses peace circles to build community and enhance communication in classrooms.)

[79] Ashley, Jessica, *supra* note 47 ("Restorative justice practices can be used to facilitate dialogue on salient issues in schools such as drugs and bullying…")

cyberbullying promotes negative social interaction, intolerance for difference, and abuse of power, restorative justice principles are all about helping people to learn, understand, and respect difference, transform power imbalances that affect social relationships, and build positive social interaction and empowered community involvement.[80]

Restorative practices still involve components of accountability, without using punitive measures such as suspension, expulsion, and detainment; through circles, accountability conferences, and peer juries, offending students are sent clear messages that their behavior is not condoned by the community while at the same time those students are offered support, forgiveness, and the opportunity for reparation by the community. This aspect of restorative justice, accountability with care and support, can be beneficial for schools in dealing with cyberbullying.[81] The physical distance and anonymity of the internet and electronic communication make it easier for cyberbullying to take place and also difficult for students who bully to actually understand the immediate impact and harm of their actions. Because of this, many students who engage in cyberbullying may not fully understand the harmful extent of their behavior and how it has made not only the student targeted, but also other witnesses in the school, feel.[82] Restorative practices, like peace circles, offer the opportunity and space for student to safely dialogue about difficult or uncomfortable topics, such as cyberbullying.[83] Through the process of peace circles, students who cyberbully would listen and hear firsthand

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[80] *Id*; Brenda Morrison, *School Bullying and Restorative Justice: Toward a Theoretical Understanding of the Role of Respect, Pride, and Shame*, J. OF SOCIAL ISSUES, 62(2), 371-92 (2006).

[81] *Id*.

[82] Hinduja & Patchin, *supra* note 34

[83] David Rao, *Peace Circle Movement in Chicago, Podcast Interview with Syda Taylor, Program Director for Elev8 Chicago, Alex Del Toro, a program coordinator for the Chicago YMCA's Street Intervention Program, and CJYI Ora Schub*, COMMUNITY JUSTICE YOUTH INSTITUTE, Fall 2012, http://cjyi.org/ (last visited 4.20.14); Morrison, *supra* note 80 ("Creating safe spaces where stories of harm and hope can be told and listened to is an important social agenda for schools and for civil society.")

from other students on how the bullying has harmed them and affected their lives.[84] They get to

witness firsthand how others have experienced the consequences of their actions. But the

students who bully are not just blamed and shamed within the circle- no restorative practices

include time for those who cyberbully to also speak, be heard and understood about the reasons

and needs behind their behavior.[85] When managed by facilitators trained in restorative practices,

who can appropriately manage the power differentials at play in cyberbullying, this type of

dialogue can be very powerful in its ability to restore and heal broken relationships, maladaptive

communication styles, and school communities.

Furthermore, restorative practices involve bringing the community together to address

and resolve an issue. This is also beneficial to schools in addressing cyberbullying as its adverse

effects do not only affect targeted students, but also students who witness and/or participate in

the bullying, those students who bully themselves, teachers and administrators, parents and

families of the students involved, and the school and broader community at large. Research

shows that bullying prevention is only truly effective when it involves a school-wide approach.[86]

Restorative practices not only involve the offending student and the targeted student, but those in

their support network (e.g. parents, friends, etc) can attend and participate, as well as teachers

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[84] *See* COMMUNITY ORGANIZING AND FAMILY ISSUES, *Parent to Parent Guide: Restorative Justice in Chicago Public Schools, Stopping the School to Prison Pipeline*, 2012, http://www.cofionline.org/sites/default/files/COFI%20Parent%20RJ%20Guide%20english%202012%20update_0.pdf ("Restorative justice in schools teaches children to understand the impact of their behavior and take responsibility.")

[85] *See Restorative Justice in Schools: Restoring Relationships and Building Community*, DISP. RESOL. MAG., Summer 2012, at 10, 11

[86] L. Bowen, *supra* note 19 ("Effective anti-bullying programs must take a school-wide approach that involves students, teachers, and parents.")

and staff- everyone is allowed to give input as to the impact of the harm and how it needs to be repaired, everyone gets an equal voice.[87]

Restorative practices also promote accountability, reparation, and healing through dialogue that identifies shared community values and a positive community culture. This is beneficial for schools to utilize in addressing cyberbullying; through the use of peace circles, accountability conferences, and peer juries, schools can promote a community culture and climate that is based on values of acceptance and appreciation of difference, and appropriate social interaction, especially in dealing with conflict. Through the use of such practices, schools can model and teach students positive, appropriate, and safe ways to respond to conflict and harm- this will help students in their immediate and long term futures. While there still may be occasions, in very severe cases of cyberbullying, where punitive measures will have to be utilized, restorative justice offers schools a more optimal and effective first response to cyberbullying that will promote a healthier school environment and allow schools to focus on teaching and students get to the business of learning.[88]

Conclusion

In *Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. #204*, Posner, writing the majority opinion for the 7th Circuit, stated that schools can regulate students' speech when that "particular type of student speech will lead to a decline in students' test scores, an upsurge in truancy, or other symptoms of a *sick school*- symptoms therefore of substantial disruption."[89] Cyberbullying,

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[87] ILLINOIS BALANCED AND RESTORATIVE JUSTICE, *Restorative Practices in Schools*, (last visited 4.16.14), http://www.ibarj.org/schools.asp

[88] *See* Morrison, *supra* note 80 ("Restorative justice has been found to be an effective intervention in cases of bullying in schools as well as other harmful behavior.").

[89] *Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. # 204*, 523 F.3d 668, 674 (7th Cir. 2008) (emphasis added).

whether it takes place on or off school grounds, is that type of student speech, infecting both the individual lives of students as well as the school's academic and social climate. Schools should be able to treat this sickness, but not with the exclusionary measures of zero tolerance policies that only compound the sickness in its disruption to the school's learning environment. Rather, schools need to be able to treat the illness of cyberbullying, but with restorative justice practices, which actually focus on healing the harm, empowering the community, and promoting positive social values. Through restorative justice practices, schools can hopefully effectively address and reduce the harmful, and sadly at times fatal, effects of cyberbullying.