

Protecting the Learning Environment Against Cyber bullies: The Need for Federal and State Action

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Introduction

This Note argues that schools consistent with their duty to protect the learning environment may permissibly protect a student from bullying behavior, including speech, within and outside of the school building. Student speech should be regulated to protect other students from speech that amounts to bullying. Such regulation by the schools is permissible because bullying behavior, including speech, interferes with a student's right to obtain an education. For this reason, all state governments should pass cyber bullying legislation.

Part I of the Note provides an overview of cyber bullying and the role of schools. Part II analyzes how courts have addressed issues relating to freedom of speech within schools. Part III explores federal statutes that indirectly address cyber bullying and the need for federal legislation directly addressing the issue. Finally, Part IV recommends that all states pass cyber bullying legislation.

I. Overview of Cyber Bullying

A. Personal Stories

On September 9, 2013, 12-year-old Rebecca Sedwick of Winter Haven, Florida jumped to her death from the top of an abandoned concrete plant.¹ She committed suicide after repeated incidents of harassment and stalking by 14-year-old Guadalupe Shaw and 12-year-old Katelyn Roman on Facebook, a social media website. Shaw admitted to

¹ Michael Martinez, *Charges in Rebecca Sedwick's suicide suggest 'tipping point' in bullying cases*, CNN (Oct. 28, 2013, 10:05 AM), <http://www.cnn.com/2013/10/25/us/rebecca-sedwick-bullying-suicide-case/>.

bullying Sedwick and stated that she felt no remorse or responsibility for Sedwick's death. Prosecutors have dropped felony-stalking charges against Shaw and Roman. The case was tried within the juvenile court.² Through the juvenile court system Shaw and Roman received counseling and other services.³

A few months prior to the incident, Florida governor signed House Bill 609, which added cyber bullying to existing bullying legislation.⁴ The bill allows "schools to discipline students for off-campus harassment that substantially interferes with or limits the victim's ability to participate in or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school."⁵ Florida, along with seventeen other states, has explicitly included "cyber bullying" into their bullying laws to punish students who harass others through cyber channels.⁶ Although the amendment to Florida's bullying legislation did not prevent the death of Rebecca Sedwick, it sends a message that cyber bullying is not tolerated in Florida. The legislation allows schools to take a proactive approach in addressing the problem of cyber bullying.⁷ Florida's revised bullying legislation

² *Id.* (discussing the progress of the case).

³ Christina NG and Matt Gutman, *Charges Dropped Against 'Cyberbullies' in Rebecca Sedwick Suicide*, GOOD MORNING AMERICA (Nov. 20, 2013), <http://www.abcnews.go.com/US/charges-dropped-cyberbullies-rebecca-sedwick-suicide/story?id=20954020>.

⁴ Justin W. Patchin, *Not Guilty? Implications for Teens Charged with Bullying Rebecca Sedwick*, CYBER BULLYING RESEARCH CENTER (Nov. 22, 2013), <http://cyberbullying.us/guilty-implications-teens-charged-bullying-rebecca-sedwick/>.

⁵ *Id.* (discussing Florida's new law allows schools to discipline students for off-campus behavior).

Cyber channels- bullying through the Internet. This is done by use of social media sites.

⁶ *Id.* (discussing state cyber bullying legislation).

⁷ Dave Heller, *Why Didn't Florida's New Cyber bullying Law Help Rebecca Sedwick?*, 10 NEWS TAMPA BAY (Oct. 16, 2013, 3:22 PM),

recognizes that cyber bullying, whether on or off campus, creates a substantial disruption in the classroom environment and interferes with the rights of other students.⁸ If a student is being bullied, it interferes with their right to obtain an education because bullying behavior disrupts the learning environment.

In honor of Rebecca Sedwick two Florida politicians have introduced a bill known as “Rebecca’s Law” to the Florida legislature. This law would add bullying to Florida’s criminal code and make bullying a crime within the state. If passed the law would make bullying a misdemeanor and aggravated bullying a third degree felony in the state of Florida.⁹

In another case of cyber bullying, a teenager in Missouri, Megan Meier, hung herself on October 16, 2006 after being tormented by a neighborhood mother, Lori Drew.¹⁰ Drew tormented Meier through a fake profile on Myspace, a social media website. Drew pretended to be a school aged child. She created a fake Myspace profile to gain Meier’s trust and to learn if Meier was saying anything negative about Drew’s own daughter.¹¹ Drew was eventually convicted of misdemeanor charges for violating the

<http://www.wtsp.com/news/topstories/article/340497/250/Why-didnt-new-cyberbullying-law-help-Rebecca>.

⁸ See Fla. Stat. Ann. § 1006.147

⁹ Julia Dahl, “*Rebecca’s Law*” Aims to Punish Bullying in FLA., CBS NEWS (Jan. 17, 2014, 3:56 PM), <http://www.cbsnews.com/news/rebeccas-law-aims-to-punish-bullying-in-florida/>.

¹⁰ *Parents: Cyber Bullying Led to Teen’s Suicide*, ABC NEWS (Nov. 19, 2007), <http://abcnews.go.com/GMA/story?id=3882520&page=1&singlePage=true>

¹¹ *Id.* (discussing the details of the Megan Meier case).

Computer Fraud and Abuse Act¹² because the creation of a fake Myspace profile to harass another member violated the Myspace Terms of Service.¹³

In response to the incident the House of Representatives proposed House Bill 1966 (Megan Meier Bullying Prevention Act) during the 111th Congress in 2009.¹⁴ Unfortunately, the Megan Meier Bullying Prevention Act died on the house floor and was referred back to committee. The bill attempted to amend the federal criminal code to impose criminal sanctions for cyber bullying.¹⁵ Currently, there are no federal laws that specifically address the issue of cyber bullying.¹⁶ There are also no Supreme Court cases that directly address the issue of cyber bullying; bullying that typically occurs off school grounds.¹⁷ Without guidance from the Supreme Court or federal or state statute explicitly addressing cyber bullying, schools are left unable to take steps to proactively protect students.¹⁸

B. Cyber Bullying Defined

There are many related definitions of cyber bullying, but the U.S. Department of Health and Human Services defines cyber bullying as, “bullying that takes place using

¹² The Computer Fraud and Abuse Act is a federal law designed that prohibits gaining access to a computer without authorization. Prosecutors have used the law to protect the public from computer crimes.

¹³ Jessica P. Meredith, *Combating Cyberbullying: Emphasizing Education over Criminalization*, 63 Fed. Comm. L.J. 311, 312 (2010) (discussing the conviction of Lori Drew).

¹⁴ <https://www.govtrack.us/congress/bills/111/hr1966> (last visited Dec. 20, 2013)

¹⁵ *Id.* (discussing the attempt to make cyber bullying a federal law).

¹⁶ Justin W. Patchin, *Not Guilty? Implications for Teens Charged with Bullying Rebecca Sedwick*, CYBER BULLYING RESEARCH CENTER (Nov. 22, 2013), <http://cyberbullying.us/guilty-implications-teens-charged-bullying-rebecca-sedwick/>.

¹⁷ See Ari Ezra Waldman, *Hostile Educational Environments*, 71 Md. L. Rev. 705, 719 (2012) (discussing Supreme Court cases addressing student’s right to freedom of speech).

¹⁸ *Id.* (discussing the lack of Supreme Court cases that directly address cyber bullying).

electronic technology.¹⁹ Electronic technology includes devices and equipment such as cell phones, computers, and tablets as well as communication tools including social media sites, text messages, chat, and websites.”²⁰ Cyber bullying includes but is not limited to mean text messages and emails, the posting of rumors or social media websites, the posting of embarrassing images, and the creation of fake profiles. Cyber bullying is unique because it can occur 24 hours a day and 7 days a week. It can occur anonymously, and it is difficult to delete inappropriate media or text after it has been sent or posted.²¹ Cyber bullying and online activity is also difficult to monitor.²² In 2009, a national school survey indicated that 6% of students in grades 6-12 experienced cyber bullying. In 2011 a similar report found that 16% of high school in grades 9-12 students were bullied in the previous year. Children who are experience cyber bullying are “more likely to use alcohol and drugs, skip school, experience in-person bullying, be unwilling to attend school, and receive poor grades”.²³ Cyber bullying affects the rights of the bullied student to get an education.

Bullying can be exhibited in many parts of our society from the workplace to the playground. In the past, being bullying was accepted as a normal part of childhood.²⁴ At least 40 percent of school-aged children reported being bullied at school at some point during their schooling.²⁵ Researchers have noted that bullying not only affects the victim,

¹⁹ *Id.* (discussing the definition of cyber bullying).

²⁰ <http://www.stopbullying.gov/cyberbullying/what-is-it/index.html> (last visited De. 20, 2013).

²¹ *Id.* (discussing the nature of cyber bullying).

²² Campbell, Marilyn, *A Cyber bullying: An old problem in a new guise?*. 15 Australian Journal of Guidance and Counseling 1, 68-76 (2005) (discussing bullying behavior).

²³ *Id.* (discussing the effects of cyber bullying).

²⁴ *Id.* (discussing the recent attention that bullying behavior is receiving).

²⁵ Campbell, Marilyn, *A Cyber bullying: An old problem in a new guise?*. 15 Australian

it also affects bystanders. In the past few decades, school-related bullying has been a serious problem. Advances in technology have allowed bullying to transcend in-person communication to show its presence on the Internet and social media.²⁶

C. The Role of Schools in American Society and the Need for A Safe Learning Environment

All learners must feel safe to take risks and to be actively engaged in his or her work for learning to be effective.²⁷ School officials have the duty to protect students from cyberbullying because schools “acculturate the young with the values, beliefs, and skills, and understanding that will preserve existing structures”.²⁸ One of the primary purposes of public education is to indoctrinate youth with democratic ideals and the skills necessary to be functioning members of our economic structure.²⁹ In order for schools to serve their purpose the learning environment must be safe and positive. If a learner is distracted for any reason, they become passive and this ultimately leads to negative learning experiences. Negative learning experiences have a negative impact on future learning experiences. Specifically, threatening learning environments affect the learner’s ability to use higher-level thinking. “The learner is more aware of the need for survival and protection of self from embarrassing or humiliating situations than on learning”.³⁰ Educators must create optimal positive learning environments so that learning can

Journal of Guidance and Counseling 1, 68-76 (2005) (discussing bullying behavior).

²⁶ *Id.* (discussing how advances in technology have expanded bullying).

²⁷ *Id.* (discussing bullying in capitalist society).

²⁸ James V. Hoffman, *The De-Democratization of Schools and Literacy in America*. 53 *Voices of the Other: Understanding Emerging from the Controversy* 616, 616 (2000). (discussing the role of schools).

²⁹ Timothy C. Clapper, *Creating the Safe Learning Environment*, PAILAL NEWSLETTER, July 2000, at 1-6.

³⁰ *Id.* (discussing the need for a safe learning environment).

occur.³¹ A learner must feel welcomed by their teacher and classmates so that they are ready to receive information. The learners mind should be distracted for any reason.

Without a school's intervention in incidents of on and off-campus cyber bullying students will have negative learning experience that can threaten the primary role of schools. Teachers and school site administrators must take action to intervene incidents of cyber bullying. Victims will be consumed with their need to survive the threatening harassment and they will miss the focus of lessons. School officials must ensure that students have positive learning experience to ensure students are successful.

II. Freedom of Speech and Schools: An Analysis of the Courts

A. The United States Supreme Court

The Supreme Court cases that address student speech do not address or provide insight to state governments or lower courts on how to address the issue of cyber bullying. Cyber bullying presents issues of a student's First Amendment Rights, the right to freedom of speech. The Supreme Court has addressed student freedom of speech rights and the scope of the school's authority to protect the learning environment. The Supreme Court directly addressing a student's First Amendment rights include *Tinker v. Des Moines Independent Community School District (Tinker)*, *Morse v. Fredrick (Morse)*, and *Hazelwood School District v. Kuhlmeier (Hazelwood)*.

a. *Tinker v. Des Moines Independent Community School District- Children and Adults Both Have Rights to Free Speech*

To begin, in *Tinker* the Supreme Court established that both adults and children have a first amendment right to freedom of speech.³² The court established that neither

³¹ *Id.* (discussing the need for a safe learning environment).

the teacher nor the students “shed their constitutional right to freedom of speech at the school house gate”.³³ In this case, students silently protested the Vietnam War by wearing black armbands to school.³⁴ School officials asked the students to remove their armbands; and when the students refused, the students were suspended.³⁵ The Supreme Court ruled in favor of the students.³⁶ In doing so the Court created a two-prong test to assess whether a student’s speech interfered with the state and school’s authority to prescribe and control conduct in schools.³⁷ The first prong of the test established that if a student’s speech creates a substantial disruption, materially disrupts class work, or interferes with the operation of the school, the speech is not “immunized by the constitutional guaranty of freedom of speech”.³⁸ The second prong of Court’s test was given less weight by the Court.³⁹ It is established that a student’s right to freedom of speech could not interfere with the rights of other students.⁴⁰ In addition, schools do not have to wait for the disruptive speech to occur.⁴¹ *Tinker* allowed schools to intervene when the school reasonably believed that a material and substantial disruption could occur on campus.⁴²

³² *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).

³³ *Id.*

³⁴ *Id.* at 504.

³⁵ *Id.* at 714.

³⁶ *Id.* at 513.

³⁷ *Id.* at 737.

³⁸ *Id.* at 513.

³⁹ See Karly Zande, *When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying*, 13 *Barry L. Rev.* 103, 117-142 (2009) (discussing cyberbullying and *Tinker*).

⁴⁰ *Id.* (discussing cyberbullying and *Tinker*).

⁴¹ *Id.* (discussing cyberbullying and *Tinker*).

⁴² *Id.* (discussing cyber bullying and *Tinker*).

Tinker primarily addressed a student's First Amendment guarantees within the school's premises.⁴³

This case did not directly extend the school's authority to reach behavior that happened off school grounds.⁴⁴ Cyber bullying primarily occurs off school grounds. Although a material and substantial disruption could occur within the school's premises, there may not be a physical display of bullying behavior. The second prong of *Tinker*, interference with the rights of others, is more appropriate to address the psychological disruption that cyber bullying causes its victims. These disruptions can occur at home and within the school setting. Although this would appear to be the best standard to address the issue of cyber bullying, few courts "have addressed the *Tinker* Court's statement that a school can regulate speech that impinges on the rights of other student, leaving the standard regrettably ambiguous."⁴⁵ Courts have not provided a framework or established a nexus between cyber bullying and its affect on the rights of other students. Because cyber bullying can occur on and off campus, there is a need for courts to address how such behavior can affect the learning environment by creating a substantial disruption and interfering with the rights of other students. In the context of cyber bullying, this is difficult for courts to address because most of these cases settle out of court.⁴⁶ *Tinker* opens the door to the analysis on how cyber bullying affects the rights of other students. Lower courts should begin by using *Tinker* when deciding cases that deal with the issue of cyber bullying.

⁴³ *Tinker*, 393 U.S. at 506.

⁴⁴ See Karly Zande, *When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying*, 13 Barry L. Rev. 103, 117-142 (2009) (discussing cyberbullying and *Tinker*).

⁴⁵ *Id.* (discussing cyberbullying and *Tinker*).

⁴⁶ *Id.* (discussing cyberbullying and *Tinker*).

b. Morse v. Fredrick and Off-Campus Speech

In *Morse*, the Supreme Court addressed the issue of off campus speech that occurs under school supervision.⁴⁷ In this case, a student was suspended after displaying a banner that read, “BONG HiTS 4 JESUS” during a school event at the 2002 Olympic Torch Relay. The Supreme Court found that suspending the student at an off-campus, school activity was not a violation of the student’s right to free speech because the principal reasonably believed the banner promoted illegal drug use. The Court emphasized that the government has an interest in protecting and stopping student drug abuse.⁴⁸

Although the event occurred off campus, lower courts have interpreted that “there needs to be a sufficient relationship between the school and the activity to justify school’s punishment.” *Morse* provides that if the speech occurs off-campus at a school-sponsored event, the school has the authority to punish.⁴⁹ Since most cyber bullying occurs off campus at non-school sponsored events and locations, there is no clear standard to apply to cyber speech that affects the rights of students.⁵⁰ The Supreme Court does not address how this negative speech and bullying occurring off-campus can remain in the psyche of students and affect their ability to learn.⁵¹ A student’s poor performance in school

⁴⁷ *Morse v. Fredrick*, 551 U.S. 393, 401 (2007).

⁴⁸ *Id.* (discussing off-campus student speech).

⁴⁹ Jocelyn Ho, *Bullied to Death: Cyber bullying and Student Online Speech Rights*, 64 Fla. L. Rev. 789, 792-798 (2012) (discussing on and off campus speech).

⁵⁰ *Id.* (discussing on and off campus speech).

⁵¹ See Karly Zande, *When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying*, 13 Barry L. Rev. 103, 117-142 (2009) (discussing cyberbullying and Tinker).

because of outside speech should be grounds to show an interference with the victim's ability to learn.⁵²

c. Hazelwood School District v. Kuhlmeier: Student Speech Should Not Interfere with the Rights of Other Students

Kuhlmeier addressed “whether the First Amendment requires schools to affirmatively promote student speech such that it would bear the “imprimatur of the school””.⁵³ In this case, former staff members of a high school newspaper filed suit against the school district and school officials claiming First Amendment violations.⁵⁴ School officials removed articles that described student pregnancy and the impact of divorce on students.⁵⁵ The Supreme Court upheld the school's decision to remove the articles because the piece would have impinged on privacy rights of the students featured in the article.⁵⁶ The Supreme Court limited its decision to address student expression within school-sponsored events.⁵⁷ The court did highlight the right of schools to curtail student speech, especially speech that could occur on school computers or school Internet.⁵⁸ This case also noted that a student's speech should not interfere with the rights of other students.⁵⁹ Cyber bullying is also a form of speech that can occur on school computers

⁵² *Id.* (discussing cyberbullying and *Tinker*).

⁵³ Christine Metteer Lorillard, *When Children's Rights "Collide": Free Speech vs. the Right to Be Let Alone in the Context of Off-Campus "Cyber-Bullying"*, 81 *Miss. L.J.* 189, 193-197 (2011) (discussing the First Amendment and student speech).

⁵⁴ *Id.* (discussing the First Amendment and student speech).

⁵⁵ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 274 (1988).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See Karly Zande, *When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying*, 13 *Barry L. Rev.* 103, 117-142 (2009) (discussing cyberbullying and *Tinker*).

⁵⁹ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 274 (1988).

and school Internet. Schools have a right to curtail student cyber bullying because it interferes with the rights of other students.

B. Lower Courts

There is a need for lower courts to have state statutes dealing with cyber bullying because the Supreme has not provided adequate guidance to address this issue. Lower courts are divided in their approach to addressing off campus cyber bullying cases because the Supreme Court did not provide a direct test for lower courts to use.⁶⁰ For example, the third circuit has vacated two of its opinions on cyber bullying because of contradictory decisions. Both courts used the *Tinker* substantial disruption test and they still meet split decisions.⁶¹

III. The Federal Government's Approach to Cyber Bullying

A. The Proposed Megan Meier Cyber bullying Prevention Act

State governments need to directly address the issue of cyber bullying because there are no federal statutes that address the issue. The United States House of Representatives attempted to address the issue of cyber bullying with House Bill 1966, titled the Megan Meier Cyber Bullying Prevention Act, but the bill was not enacted.⁶² The bill amended the Title 18 of the United States Code with respect to cyber bullying. Title 18 of the United States Code outlines federal crimes and procedures. The bill would have made it a federal crime to engage in cyber bullying. The bill subjected people who

⁶⁰ Christine Metteer Lorillard, When Children's Rights "Collide": Free Speech vs. the Right to Be Let Alone in the Context of Off-Campus "Cyber-Bullying", 81 Miss. L.J. 189, 193 (2011) (discussing student speech and the First Amendment).

⁶¹ *Id.* (discussing student speech and the First Amendment).

⁶² 111th CONGRESS, 1st Session

engaged in cyber bullying to both a fine and imprisonment for no more than two years.⁶³ A person could be found guilty of cyber bullying if they “transmit in interstate or foreign commerce any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress, using electronic means to support severe, repeated, and hostile behavior.”⁶⁴ The federal bill attempted to provide guidance to states but the legislation failed.

B. Some Protection Against Cyber Bullying Under Other Federal Laws

Although there is no federal statute that addresses the issue of cyber bullying, cyber bullying overlaps with other federal laws that address harassment. Discriminatory harassment is covered under federal civil rights laws enforced by the U.S. Department of Education and the U.S. Department of Justice.⁶⁵ Cyber bullying can fall under Title IV and Title VI of the Civil Rights of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Titles II and II of the Americans with Disabilities Act and Individuals with Disabilities Education Act. All these laws protect a student’s access to education. If the incident of cyber bullying falls under one of these laws, legal action can be taken to reprimand the situation.

In order for a victim to receive protection from these federal laws the facts of the cyber bullying case must violate a right the federal laws protect. For example, Title IV and VI of the Civil Rights Act of 1964 protect against bullying or discrimination based on a student’s race, color, national origin, sex, and disability or religion. Title IX and Title IV of the Civil Rights Act can be used to protect students from bullying behavior

⁶³ *Id.* (discussing the definition of cyber bullying).

⁶⁴ *Id.* (discussing the definition of cyber bullying).

⁶⁵ <http://www.stopbullying.gov/cyberbullying/what-is-it/index.html> (last visited De. 20, 2013).

based on their sexual orientation. Similarly, the Individuals with Disabilities Education Act provide protection against bullying based on a victim's disability.⁶⁶

Although there are federal laws that could apply to cyber bullying these laws fail to address the specific context of schools. The federal government does not address what school should do in cases of off campus cyber bullying. The federal government does provide steps that schools should take when addressing bullying that violates the rights of students in a protected class. According to the federal government schools should promptly investigate allegations of bullying, take steps to end harassment, and eliminate a hostile environment. Although the federal government makes an effort to address bullying behavior, students who face off campus cyber bullying that does not fall within a protected class, remain unprotected.⁶⁷ State governments need to step in and bridge the gaps that the federal laws do not address. All students should be protected.

IV. All States Should Pass Cyber bullying Legislation

It is the responsibility of state legislators to develop cyber bullying legislation. The tenth amendment to the United States Constitution gives all powers not delegated to the federal government to state governments.⁶⁸ The operation of public schools is a matter left to state governments to address. Cyber bullying is a problem that falls within the operation of schools and a matter that state governments have the authority to address.

Most state governments have passed bullying legislation. Currently, 49 states and Washington D.C. have state laws specifically addressing bullying behavior and those

⁶⁶ *Id.* (discussing how cyber bullying may be addressed in other federal laws).

⁶⁷ *Id.* (discussing how to schools should address cyber bullying).

⁶⁸ http://www.law.cornell.edu/constitution/tenth_amendment (last visited Dec. 20, 2013).

laws require a school wide policy. Of those states, only 12 have statutes specifically addressing off-campus behavior. The only state that does not have a state statute directly addressing bullying behavior is Montana. Montana's state government does not give specific directives to its school districts on how to address incidents of on campus or off campus bullying. Montana imposes criminal penalties for behavior that can be fall under cyber bullying. These behaviors include but are not limited to stalking, intimidation, and harassment. Forty-four of the 49 states that have bullying statutes impose school sanctions for bullying behavior. 12 of those states also impose criminal sanctions for such behavior.

In the absence of clear directives from the Supreme Court and the federal government, state governments are in the best position to protect students from cyber bullying. Currently only 18 states explicitly address cyber bullying within their state statute. Five states, Georgia, Illinois, Kentucky, Maine, and Nebraska have proposed amendments to change state bullying legislation to include cyber bullying.⁶⁹ The right of the students to obtain an education in the most conducive learning environment is threatened by the potential harassments from cyber bullies. States need to create state statutes addressing cyber bullying to ensure that all students obtain an education.

In conclusion, state governments need to enact state statutes that directly address the issue of cyber bulling. Although bullying behavior is a product of our economic structure, it does not have to negatively affect a child's educational opportunity. Schools have a duty to protect the learning environment and the individual rights of the students within their care. State statutes directly addressing the issue of cyber bullying have the

⁶⁹ *Id.* (discussing state legislation and cyber bullying).

potential to protect future victims of cyber bullying. All states should have laws directly addressing cyber bullying and should consider imposing criminal sanctions on cyber bullying offenders.