

BANNING ONLINE BULLIES: ANALYZING THE EXPANSION OF ILLINOIS CYBERBULLYING LAWS

Growing up you learn quickly to stay away from the class bully on the playground, in the cafeteria or just whenever possible—out of sight, out of mind. But what happens when the bully goes viral? Technology has advanced the traditional manifestations of bullying; now, the bully can continue to hurt the victim even when the victim is nowhere in sight and well out of physical reach.¹

Cyberbullying presents unique challenges in the sense that the perpetrator can be anonymous and attacks can happen at any time, day or night.² Unfortunately, laws discussing the issues resulting from technological advances often lag the pace of the technology.³ Judges find themselves wrestling with new questions about protections on student speech and school searches.⁴ The law is currently unclear in answering these questions, and has yielded inconsistent results from state to state, and provided us with no U.S. Supreme Court guidance on this issue.⁵ In response to these ambiguities, Illinois has taken action to stop cyberbullying by passing House Bill 4207⁶ and House Bill 5707.⁷

¹ Lauren Rafferty, *Illinois Schools Face up to Facebook: Mandating Internet Safety Instructions in Illinois Public Schools*, 14 Pub. Int. L. Rep. 179, 180 (2009).

² Elizabeth Landau, *When Bullying Goes High-Tech*, CNN.com (April 15, 2013, 2:12 PM), <http://www.cnn.com/2013/02/27/health/cyberbullying-online-bully-victims/>. 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, 104 (2009). See also Naomi Harlin, Goodno, *How Public Schools Can Constitutionally Halt Cyberbullying: A Model Cyberbullying Policy That Considers First Amendment, Due Process and Fourth Amendment Challenges*, 46 Wake Forest L. Rev. 641, 643 (2011); *What is Cyberbullying?* Stopbullying.gov (last visited December 17, 2014, 8:30 PM) [hereinafter *Cyberbullying*], <http://www.stopbullying.gov/what-is-bullying/definition/index.html>.

³ Zande at 105. See Jan Hoffman, *Online Bullies Pull Schools Into the Fray*, N.Y. Times (June 27, 2010), available at <http://www.nytimes.com/2010/06/28/style/28bully.html?pagewanted=al>.

⁴ See Hoffman.

⁵ See *Will the Supreme Court Consider Cyberbullying*, Government Blog (May 7, 2014) [hereinafter *Consider Cyberbullying*], <http://blog.legalsolutions.thomsonreuters.com/government/will-supreme-court-consider-cyberbullying/>.

⁶ H.B. 4207, 98th Gen. Assemb., Reg. Sess. (IL. 2014) [hereinafter H.B. 4207] available at <http://www.hsli.org/newsletter/2014/05/06/legislative-alert-illinois-hb4207-cyberbullying/>.

⁷ H.B. 5707, 98th Gen. Assemb., Reg. Sess. (IL. 2014) [hereinafter H.B. 5707], available at <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=5707&GAID=12&SessionID=85&LegI>

This paper will explore the history of cyberbullying and how it was previously dealt with, including First Amendment concerns in enforcing new cyberbullying policies—jurisdictional and student free speech issues. Additionally, this paper will provide a discussion of Illinois House Bills 4207 and 5707.

Before discussing House Bills 4207 and 5707, it is necessary to review a brief history of student free speech cases and the issues that arise when schools attempt to punish speech that occurs off-campus using non-school owned devices, but nonetheless makes its way to the classroom. First of all, cyberbullying is defined and compared to the traditional bully. Following the definition of cyberbullying, the discussion will focus on difficulties that schools face in punishing cyberbullies. Then, the discussion will focus on four landmark U.S Supreme Court cases often cited in student free speech cases. Lastly, I will discuss the current law on cyberbullying in Illinois and the lack of Supreme Court guidance on the issue.

Traditionally, bullying has been defined as “unwanted, aggressive behavior among school aged children which occurs face-to-face and involves a real or perceived power imbalance.” By extension, cyberbullying is a type of bullying that takes place using electronic technology.⁸ Electronic technology includes electronic devices and equipment such as cell phones, computers, and tablets as well as communication tools including social media sites, text messages, chat rooms and websites.⁹ The purpose behind cyberbullying is usually to humiliate, embarrass or otherwise bully someone through the use of technology.¹⁰

D=80936. John Byrne, *Quinn to sign anti-bullying Bill*. CHI. TRIB., June 26, 2014, available at <http://www.chicagotribune.com/news/local/breaking/chi-quinn-to-sign-antibullying-bill-20140626-story.html>.

⁸ Zande at 106. See also Sherri Gordon, *6 Types of Bullying: Information about the types of bullying kids experience*, About.com (December 16, 2014), <http://bullying.about.com/od/Basics/a/6-Types-Of-Bullying.htm>.

⁹ Zande at 106-107. See, *Cyberbullying*.

¹⁰ Zande at 106. See Goodno at 641.

Similar to traditional bullies, cyberbullies employ different methods to accomplish their means, which can range in severity.¹¹ Flaming is a short online argument between two or more people comprised of insults and offensive language.¹² Harassment, on the other hand is one sided, and involves the offensive messages sent to a targeted individual over a period of time.¹³ Denigration is the circulation of cruel and harmful information about targeted individuals to others.¹⁴ Similarly, impersonation involves the cyberbully gaining access to a victim's passwords, logging in and sending out hurtful messages or posting hurtful comments.¹⁵ Next, outing and trickery is when the cyberbully learns personal and embarrassing information about the victim by pretending to befriend the victim and then spreads that information to others.¹⁶ Finally, exclusion involves the victim being purposely excluded from groups, buddy lists, and/or chat rooms for the purpose of feeling left out.¹⁷

Unlike traditional bullying, cyberbullying victims must deal with bullies beyond school hours.¹⁸ Once the cyberbullying occurs off-campus and after school hours, school officials are hesitant to take action and discipline the cyberbully in fear of overreaching beyond the scope of their authority. Mainly, these concerns are focused on jurisdictional limitations and students' free-speech rights.¹⁹

¹¹ Zande at 107; Anthony J. Piazza & Meredith Ireland, *A Growing Risk Cyberbullying—Covered under liability insurance?* 54 No. 5 DRI For Def. 56, 58.

¹² See Zande at 107.

¹³ *Id.* at 107-108, James H. Burns, *10 Most Common Cyberbullying Tactics*, The Bully Proof Classroom (Jan 17, 2012), <http://bullyproofclassroom.com/10-most-common-cyber-bullying-tactics>.

¹⁴ Zande at 108.

¹⁵ Zande at 108; Piazza & Ireland at 58.

¹⁶ Zande at 108; Piazza & Ireland at 58.

¹⁷ Zande at 108.

¹⁸ Zande at 110; Goodno at 641.

¹⁹ Goodno at 643.

The first line of defense that parents of the disciplined student in a cyberbullying situation take is jurisdictional limitation.²⁰ Often, such parents argue that since the speech took place off school grounds, the school lacks authority to discipline the student.²¹ This creates a burden on the school to address jurisdictional concerns before regulating off-campus speech. In order to regulate off-campus speech, it must be “foreseeable” that the speech would make its way on-campus or that there be a “sufficient nexus” between the speech and the school.²² In the event the foreseeability or sufficient nexus standards are not met, it becomes harder for schools to justify discipline of off-campus speech.

Distinctions of whether student speech originated on-campus or off-campus are not adequate in addressing cyberbullying situations. Internet speech is not limited by geography; it is borderless and can be accessed by any person from any place, unlike traditional face-to-face bullying which could be limited by geography.²³ Thus, the use of the on-campus or off-campus distinction to determine whether or not a school has jurisdiction to discipline student online speech no longer seems reliable but rather outdated.²⁴

Once jurisdiction is addressed, the next issue that parents of disciplined students raise is whether the school can regulate off-campus speech without violating the First Amendment right to free speech.²⁵ According to Supreme Court precedent, schools can regulate off-campus speech without violating the First Amendment if: (1) the speech is prohibited or (2) the speech causes a material disruption on-campus.²⁶

²⁰ Douglas E. Abrams, *Recognizing the public schools’ authority to discipline students’ off-campus cyberbullying of classmates*, 37 New Eng. J. on Crim. & Civ. Confinement 181,190 (2011).

²¹ *Id.*

²² Goodno at 660.

²³ *Id.*

²⁴ Renee L. Servance, Comment, *Cyberbullying, Cyber-Harassment, and the Conflict Between Schools and the First Amendment*, 2003 Wis. L. Rev. 1213, 1225 (2003).

²⁵ Goodno at 661.

²⁶ Servance at 1234.

The U.S. Supreme Court first considered student speech rights under the First Amendment in 1986 in *Tinker v. Des Moines School District*.²⁷ In *Tinker*, several students decided to wear armbands during school hours to make a statement about their disagreement with violence taking place in Vietnam.²⁸ In response to discovering the students' plans, school officials enacted a policy that stated any student wearing armbands would be asked to remove it, and failure to comply would result in suspension until the student returned to school without the armband.²⁹ Some students wore the armbands anyway and were consequently suspended.³⁰ The suspensions triggered suit by the students against the school district.³¹ The district court ruled in favor of the school, the Court of Appeals for the Eighth Circuit affirmed the district court's decision and the U.S. Supreme Court disagreed with both lower courts, ultimately ruling in favor of the students' reasoning that the school district had violated the students' First Amendment rights to free speech.³² The decision resulted in the "*Tinker* standard," which allows schools to constitutionally regulate student speech that causes a substantial disruption in the classroom or interferes with the rights of other students.³³ *Tinker* can be seen as a general rule that would go on to be used in all cases involving student speech. The following three cases can be seen as exceptions to the *Tinker* substantial disruption standard.

Seventeen years after *Tinker*, the Supreme Court created the first exception to *Tinker*'s substantial disruption standard.³⁴ In *Bethel School District v. Fraser*, Matthew Fraser, a high school student made a class nominating speech using sexual references, which resulted in a two-

²⁷ Darryn Cathryn Beckstrom, *State Legislation Mandating School Cyberbullying Policies and the Potential Threat to Students' Free Speech Rights*, 33 Vt. L. Rev. 283, 297 (2008). See *Tinker* at 733.

²⁸ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513-14 (1969).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Servance at 1225; Zande at 115.

³⁴ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986).

day suspension.³⁵ The school found the speech to be inappropriate for school, causing discomfort to some of the students present at the required assembly.³⁶ Fraser sued in violation of his First Amendment rights.³⁷ The district court ruled in favor of Fraser, finding the school's disruptive conduct rule to be unconstitutionally vague and overbroad.³⁸ The Court of Appeals for the Ninth Circuit affirmed the district court's decision³⁹ and the U.S. Supreme Court granted certiorari, ultimately reversing the judgment of the Court of Appeals of the Ninth Circuit and holding in favor of the school, stating "schools may prohibit speech that would undermine the schools basic educational mission."⁴⁰ Furthermore, the Court held that "the Constitution does not require that schools tolerate speech that is inconsistent with school values."⁴¹ The significance of *Fraser* is that it protected the rights of others, where speech causes harm.⁴² Thus, *Fraser* gave schools the authority to restrict student speech when it was lewd and contrary to the school's mission even when not disruptive.⁴³

Revisiting the issue of student speech in 1988, the Court considered school censorship of student speech.⁴⁴ In *Hazelwood v. School District of Kuhlmeier*, the Court carved out another exception to *Tinker* by finding that schools had the authority over school-sponsored speech.⁴⁵ *Hazelwood* involved students challenging a principal's decision to delete portions of the school newspaper concerning student pregnancy and the effect of divorce on students.⁴⁶ The principal's concern was that the topics were not appropriate for the younger students and the possibility of

³⁵ *Id.* at 675.

³⁶ *Id.* See *Servance* at 1227.

³⁷ *Id.* at 1216.

³⁸ *Bethel* at 678.

³⁹ *Id.*

⁴⁰ *Servance* at 1227.

⁴¹ *Id.* at 1228.

⁴² *Id.* at 1229.

⁴³ *Zande*, at 114.

⁴⁴ *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988)

⁴⁵ *Servance* at 1229.

⁴⁶ *Hazelwood* at 562.

identification of the anonymous students discussed in the article.⁴⁷ The district court ruled in favor of the school district reasoning the students' First Amendment rights were not violated,⁴⁸ the court of appeals reversed the decision and the school district sought review.⁴⁹ The U.S. Supreme Court granted certiorari and reversed the judgment of the court of appeals holding no violation of First Amendment rights occurred.⁵⁰ Hazelwood left us with the "school-sponsored speech" exception to *Tinker's* substantial disruption standard.

In 2007, *Morse v. Frederick* further expanded the rights of schools to restrict student speech.⁵¹ The Court held that the school could censor speech that was "reasonably viewed as promoting drug use."⁵² At a school planned event, Frederick, a student, showed up at the event displaying a fourteen foot hand made banner that read "BONG HiTS 4 JESUS," and refused to take down the banner when asked by school officials.⁵³ Frederick sued the school district for violating his First Amendment rights by not allowing him to display the banner, despite the fact he had not attended school that day.⁵⁴ Since the speech could be seen as promoting drug use, the Court found that the principal did not violate Frederick's First Amendment rights and the school could restrict such speech.⁵⁵

All four of the above cases reiterate the substantial disruption standard derived from *Tinker*.⁵⁶ They each carve out an exception to the standard, working towards a more refined bright line or understanding in terms of schools' authority to restrict student speech. What these cases do not do is address whether or not off-campus student speech, that makes its way on-

⁴⁷ Zande, at 114.

⁴⁸ Hazelwood at 566.

⁴⁹ *Id.*

⁵⁰ *Id.* at 572.

⁵¹ See *Consider Cyberbullying*.

⁵² *Morse v. Frederick*, 551 U.S. 393, 405 (2007).

⁵³ *Id.* at 2619.

⁵⁴ Zande at 114-115.

⁵⁵ Morse at 2620.

⁵⁶ Zande at 115.

campus can be limited by school administrators.⁵⁷ With little guidance on limitations concerning off-campus speech, applying Supreme Court precedent to cyberbullying becomes difficult and unpredictable.⁵⁸

Currently, there is no federal law specifically addressing off-campus behavior.⁵⁹ Between 2007 and 2012 five cases of cyberbullying, initiated either by the school or the student, filed a petition for certiorari.⁶⁰ The U.S. Supreme Court denied all without comment, leaving us with the unanswered question of “whether schools may censor students who are off-campus when they create online attacks against school administrators and other students.”⁶¹ Federal appeals courts have a circuit split on whether school responses to speech infringe on a student’s constitutionally protected First Amendment rights.⁶² In *Wisniewski v. Board of Education of Weedsport Central School District*, a student created an icon portraying a gun pointing to a head along with the words “Kill Mr. VanderMolan.”⁶³ The student was subsequently suspended for a semester, which was upheld by the Second Circuit.⁶⁴ In *Doninger v. Niehoff*, a student referred to school officials as “douchebags” in her personal blog.⁶⁵ She was subsequently prohibited from running for class office her senior year of high school as her discipline, and the Second Circuit agreed with the decision.⁶⁶ Next, in *J.S. v. Blue Mountain School District*, a student was

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Jamelle Nelson, *A Need for Clarity: The Murky Field of Off-Campus Student Speech and School regulation*. NYU Journal of Law & Liberty (February 18, 2012), available at <http://lawandlibertyblog.com/nyujll/?offset=1330725720000>.

⁶³ *Wisniewski v. Board of Educ. of Weedsport Cent. School Dist.*, 494 F.3d 34, 35 (C.A.2 (N.Y.) (2007)).

⁶⁴ *Id.*

⁶⁵ *Doninger v. Niehoff*, 642 F.3d 334 (2d. Cir. 2011); *Second Circuit decides school officials entitled to qualified immunity from student blogger’s First Amendment claims*, Legal Clips: National School Boards Association (April 28, 2011) [hereinafter *Qualified immunity*], legalclips.nsba.org/2011/04/28/second-circuit-decides-school-officials-entitled-to-qualified-immunity-from-student-bloggers-first-amendment-claims/#sthash.S80ygZTm.dpuf.

⁶⁶ *See Consider Cyberbullying*.

suspended for ten days for creating a fake profile of her principal displaying sexual comments.⁶⁷ The Third Circuit ruled in favor of the student⁶⁸ and the school district sought review of the decision.⁶⁹ In ruling that the speech involved was protected under the First Amendment, the court reiterated the *Tinker* standard; since the speech did not occur on-campus or at a school supported event, and did not create a substantial disruption at school, it was protected under the First Amendment.⁷⁰ Similarly, the Third Circuit ruled in favor of the student in *Layshock v. Hermitage School District*, where the student was suspended for ten days for creating a parody of his principal.⁷¹ Lastly, in *Kowalski v. Berkeley County Schools*,⁷² the Fourth Circuit upheld the student's five day suspension for creating a website that ridiculed another student and encouraged others to join.⁷³ All of the aforementioned court decisions reiterate the *Tinker* standard, with some cases carving out exceptions to the *Tinker* standard.⁷⁴

The inconsistencies in the above circuit court cases create confusion and hesitation for school administrators who try to tackle issues involving off-campus speech that makes its way to the classroom such as cyberbullying. Since precedent cases all involve speech that occurs on campus or speech that created a sufficient nexus between the school and the speech, such cases are difficult to apply in situations involving off-campus speech. As we move forward in the digital age and technology continues to advance more finite guidance is required to sufficiently handle situations involving cyberbullying. School districts need clarification on what their

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

responsibility and authority is when dealing with cyberbullying situations.⁷⁵ The *Tinker* standard and its progeny seem somewhat outdated when applied to cases involving cyberbullying where the speech is spread like wild fire at the stroke of a key-and often leaving us with little to no solutions.⁷⁶ Cyberbullying creates a situation where “the law is simply lagging behind the times.”⁷⁷

As of January 1, 2015, Cyberbullying laws in Illinois have changed. House Bill 4207 amends Section 5 of the School Code by amending Section 27-23.7 titled Bullying Prevention.⁷⁸ Additionally, House Bill 5707 further amends the bullying prevention section of the School Code.⁷⁹ House Bill 5707 provides guidance to the school districts in Illinois, concerning the bullying prevention policies required by Illinois law.⁸⁰

House Bill 4207 was signed by Governor Pat Quinn on August 1, 2014 and came into effect on January 1, 2015.⁸¹ House Bill 4207 is a part of Public Act 98-0801 sponsored by State Representative Laura Fine (D-Glenview) and State Senator Ira Silverstein (D-Chicago).⁸² This legislation expands on previous legislation signed by Governor Quinn in 2010, which banned cyberbullying of students within schools.⁸³ House Bill 4207 extends the Illinois School Code’s bullying prevention provisions to include cyberbullying that substantially disrupts the educational process or the orderly operation of a school, even if it takes place outside of school

⁷⁵ Associated Press, *Supreme Court declines to take up cases involving online attacks by students on school officials, other students*, Foxnews.com (January 17, 2012) [hereinafter AP], www.foxnews.com/politics/2012/01/17/us-supreme-court-passes-on-rulings-for-cases-involving-online-attacks-by/.

⁷⁶ Goodno at 651.

⁷⁷ See AP.

⁷⁸ See generally, H.B. 4207.

⁷⁹ See generally, H.B. 5707; H.B. 5707 fact sheet, American Civil Liberties of Illinois [hereinafter Fact sheet] <http://www.aclu-il.org/wp-content/uploads/2014/03/HB-5707-anti-bullying.pdf>.

⁸⁰ H.B. 5707.

⁸¹ Press Release, *Governor Quinn Signs Legislation to Outlaw Cyberbullying of Illinois Students, Law Helps Protect Illinois Students from Bullying Outside the Classroom* (August 1, 2014) [hereinafter Press Release]

<http://www3.illinois.gov/pressreleases/ShowPressRelease.cfm?SubjectID=2&RecNum=12475>; H.B. 4207.

⁸² *Id.* H.B. 4207.

⁸³ Press Release; H.B. 4207.

or uses non-school computers.⁸⁴ The legislation’s purpose is to prohibit bullying of students through the use of technology⁸⁵ outside the classroom or school so that every student can feel safe from harassment, whether in school hallways or when using the Internet or a cell phone.⁸⁶ Simply put, it extends the prohibition of cyberbullying in schools to cyberbullying that occurs at home in an effort to put an end to cyberbullying.⁸⁷

Formerly, the bullying prevention section of the Illinois School Code was limited to “electronic communication” that occurred on-campus or through the use of school owned computers.⁸⁸ However, House Bill 4207 has added specific provisions providing school districts with more authority to discipline cyberbullies without violating the First Amendment. First, H.B. 4207 added a provision prohibiting bullying which occurs online, through the use of a computer not owned by the school or occurring while at a non-school related location.⁸⁹ However, this is limited to cases where the school receives a report of the bullying and does not require schools to monitor any non-school related activities.⁹⁰ Next, the actual term “cyber-bullying” is added to the definition of “bullying,”⁹¹ followed by the definition of cyber-bullying.⁹² Furthermore, a provision has been added to provide the characteristics of cyberbullying.⁹³ Lastly, a provision is added expanding the previous law to require each school district to have a policy on bullying; by further requiring each school to include a process to investigate reports of bullying and providing

⁸⁴ Springfield, IL April 10, 2014, American Foundation for Suicide Prevention *available at* <https://www.afsp.org/advocacy-public-policy/state-policy/state-capitol-days/springfield-illinois-april-10-2014>.

⁸⁵ Press Release.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

victims with information on local services to help the victim cope, such as counseling or support groups.⁹⁴

House Bill 5707 was signed on June 26, 2014 by Governor Quinn and sets an anti-bullying standard for Illinois school districts; it requires all public schools to develop and implement an anti-bullying policy.⁹⁵ House Bill 5707 is part of Public Act 98-0669, sponsored by State Representative Kelly Cassidy (D-Chicago) and State Senator Heather Steans, who introduced the bill on February 14, 2014.⁹⁶ The purpose of the bill is to help schools more effectively prevent and address bullying. Formerly, Illinois law required that public school districts have bullying prevention policies but did not provide the guidance necessary to ensure that these policies and their implementation successfully combat bullying; H.B. 5707 provides this guidance.⁹⁷ Specifically, H.B. 5707 integrates recommendations of the 2010 Illinois School Bullying Prevention Task Force which provide a definition of “policy on bullying”; procedures for reporting, investigating and addressing bullying; interventions that can be taken to address bullying, and procedures for posting and distribution of the school policies.⁹⁸

Formerly, Section 27-23.7 of the School Code only applied to a public school district and non-public, non-sectarian elementary or secondary school and required each to create and maintain a policy on bullying, and file the policy with the State Board of Education.⁹⁹ However, House Bill 5707 has added new provisions to ensure the policies are implemented to successfully combat bullying.¹⁰⁰ First, House Bill 5707 expands its application to charter schools.¹⁰¹ Next, the bill adds a provision concerning the right to exercise free expression or the free exercise of

⁹⁴ *Id.*

⁹⁵ Fact Sheet.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ H.B. 5707.

¹⁰⁰ Fact Sheet.

¹⁰¹ H. B. 5707.

religion or religiously based views protected under the United States and Illinois Constitutions.¹⁰² Additionally, the bill defines “Policy on bullying” by providing specific criteria.

The criteria includes: (1) the bullying definition provided in the bullying prevention section of the school code;¹⁰³ (2) an introduction that bullying is contrary to state law and district policy;¹⁰⁴ (3) procedures for reporting bullying;¹⁰⁵ (4) procedures for informing parents of all students involved in the incident of bullying, and discussing availability of services with the victim;¹⁰⁶ (5) procedures for promptly investigating and addressing reports of bullying;¹⁰⁷ (6) interventions that can be taken to address bullying;¹⁰⁸ (7) consequences and remedial actions for anyone engaging in retaliation or reprisal;¹⁰⁹ (8) consequences and remedial actions for anyone who falsely accuses another of bullying for the purposes of retaliation;¹¹⁰ (9) the participation of a range of school stakeholders;¹¹¹ (10) posting the policy on the website of the school district or charter school or non-public, non-sectarian elementary or secondary school and also to be included in the school handbook and posted amongst other policies currently posted in the school;¹¹² (11) providing a policy evaluation process;¹¹³ and (12) defining “restorative measures.”¹¹⁴

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

In addition to creating and maintaining a policy on bullying, both bills require the school to actually implement their established policies.¹¹⁵ Furthermore, each school must now conduct a review and re-evaluation of its policy every two years.¹¹⁶

Both House Bills 4207 and 5707 work together to protect students from the misuse of social networking sites such as Facebook, Twitter, Instagram and even more dangerous software applications such as Yik-Yak.¹¹⁷ Before House Bill 4207 and 5707, a student could get away with cyberbullying without intervention or discipline from the school, as long as the speech occurred off-campus, and was not found to be a substantial disruption in the classroom.¹¹⁸ Since this legislation has taken effect, it does not matter where the student is geographically located or who owns the digital device the student is using, so long as the victim reports the cyberbullying to the school, it will be investigated; and the school is no longer prohibited from disciplining the cyberbully. Since the ban is expanded to cover speech that occurs off-campus, the cyberbully can no longer circumvent the law. This will promote a healthier learning environment and prevent situations such as depression, suicide, skipping school, and poor academic performance, which often result from cyberbullying.¹¹⁹

The refusal of the U.S. Supreme Court to specifically address the issue of cyberbullying will continue to cause confusion and hesitation among school authorities as they struggle with cyberbullies. The Supreme Court's opinion on this issue is long overdue, as technology continues to advance and tech savvy students continue to misuse internet websites and applications. Instead of shifting blame and culpability between students, schools and parents, the

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Dr. Keith Ablow, *Psychiatrist's view: Yik Yak is most dangerous app I've ever seen*. FOXNEWS.COM (May 9, 2014), <http://www.foxnews.com/opinion/2014/05/09/psychiatrist-view-yik-yak-is-most-dangerous-app-ive-ever-seen/>.

¹¹⁸ *See* Hoffman.

¹¹⁹ Press Release.

Illinois legislature has surged forward surpassing many other states in tackling and aggressively combating cyberbullying. Illinois has passed bills into law that exemplifies the zero tolerance that should be applied to cyberbullying nationwide. The passage of House Bills 4207 and 5707 is a significant step towards slowing the expansion of the cyberbullying pandemic.