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CYBERBULLYING IN HIGHER EDUCATION: NOT JUST KID STUFF ANYMORE

BY: KATHLEEN CONN

OF COUNSEL WITH THE EDUCATION LAW GROUP OF KING, SPRY, HERMAN, FREUND & FAUL, LLC IN
BETHLEHEM, PENNSYLVANIA

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Cyberbullying in Higher Education: An introduction

Two persistent myths about peer-peer bullying are misleading and potentially damaging. The first myth is that bullying is a “rite of passage,” and the second is that educators are powerless to control bullying. The “rite of passage” myth implies that once students pass their middle school years, bullying will magically disappear. However, the persistence of bullying into high school, college and university life, and even into the workplace, strongly indicates that no “passage” exists. The second myth, that educators cannot control bullying, is also largely fallacious. Scientifically research-based studies have shown that effective anti-bullying programs can dramatically reduce face-to-face peer bullying behaviors, engaging bystanders and improving overall school climate. With knowledge, planning, and effort, peer bullying can be controlled.

However, bullying’s technological cousin, cyberbullying is proving less tractable at all levels. Cyberbullying in colleges and universities is especially insidious, existing largely under the radar and often deliberately ignored. Cyberbullying in higher education is multidimensional, occurring between and among students, student-on-instructor (especially in online learning situations), instructor-on-student, and even instructor-on-instructor. Little information is available on instructor-on-student cyberbullying, and even less on instructor-on-instructor cyberbullying. These issues are typically closeted within the internal governance of the institution. This commentary will examine the first two dimensions of cyberbullying in colleges and universities: (1) what is known about the incidence and effects of cyberbullying among students, and (2) student cyberbullying of college and university instructors, particularly in the online setting. The commentary will analyze several controversies that reached the courts when students were disciplined for cyberbullying peers or their instructors. Finally, the commentary will offer recommendations for dealing with the problem of cyberbullying in higher education.

Peer-on-Peer Cyberbullying: Incidence and Effects

First of all, what exactly is cyberbullying? Most researchers define cyberbullying in similar terms. Cyberbullying is the use of electronic means, e.g., computers, cell phones, smart phones, text messages, social networking sites, etc., to deliver hurtful communications, with the intent to harm the target. Concomitants of cyberbullying include sexting, the sending of sexually explicit messages or pictures via cell phones or computers, harassment and stalking, and even suicides. Cyberbullying can also lead to school violence as targets retaliate against their aggressors. And while cyberbullying is easy to define, reliably establishing its actual incidence in institutions of higher education is challenging. Many college and university administrators believe that acknowledging cyberbullying on campus may deter potential tuition-paying students, or make the most qualified teaching candidates hesitant to apply for faculty positions. On the other hand, many students who are cyberbullied fail to report the victimization, feeling ashamed to admit they are targets or not knowing where to turn for help. Many instructors who are the targets of cyberbullies do not report cyberbullying for fear of being labelled as ineffective teachers. Many instructors do not even know if their institution has a policy forbidding bullying and harassment.

In addition to these reasons, when surveys are conducted to ascertain the incidence of cyberbullying in colleges and universities, the survey sizes differ in number and in characteristics of participants. Survey questions often use different time span indicators, e.g., participants in the survey

may be asked to report the frequency of cyberbullying experiences in the last year, last six months, or last month. In addition, surveys are usually limited in scope to one institution or to a limited geographic region to which the researcher has easy access. However, despite these shortcomings, examination of the limited number of studies available reveals a marked consistency in the reports of the frequency of cyberbullying on college and university campuses. In a survey of 439 students in a midsize Midwestern university, 22% of students reported they had experienced cyberbullying while in college (MacDonald & Roberts-Pittman, 2010). A survey of 613 students at a large urban Southeastern university found a cyberbullying incidence of 19% during college years (Zalaquett & Chatters, 2014). In the largest survey found in the literature, a survey of 1925 students from four large Canadian universities, 24.1% of students reported that they had been cyberbullied in the last 12 months (Faucher, Jackson, & Cassidy, 2014).

Many of the effects of cyberbullying on students in higher education mirror the effects of bullying on younger students: depression, anxiety, anger, alienation, insecurity. However, cyberbullying in colleges and universities is linked to a marked increase not only in depression, but also to problem alcohol use, especially among female students (Brauser, 2015). Students who experience severe cyberbullying may also suffer academically, with decreased attention spans, increased stress, and overall loss of productivity (Zalaquett & Chatters, 2014). A significant increase in suicidal ideation is also observed (Schenk & Fremouw, 2012). Clearly, these are valid reasons for calling attention to the issue.

Direct and Indirect Student-on-Student Cyberbullying

As its names imply, direct cyberbullying occurs when the target of the cyberbullying is specifically addressed in the communication. However, a cyberbullying message can be communicated in a way that it reaches a broad audience, perhaps even those unintended by the creator of the message. For example, postings can be uploaded to a publicly accessible Facebook account, or a generalized ranting which is actually a cyberbullying communication can be “tweeted,” and thus made available to a limitless, immediate audience. Web postings available to third parties can also be construed as a cyberbullying message by someone mentioned in the content of the posting. Such web postings were the subject of litigation between a sophomore student at the University of Delaware and his university (*Murakowski v. University of Delaware*, 2008).

Murakowski v. University of Delaware

Maciej Murakowski was disciplined by the University of Delaware for posting allegedly threatening messages on a website hosted on the university’s server. Murakowski sued the university, claiming violations of his First Amendment rights to freedom of speech and of his Fourteenth Amendment rights to due process. The court took judicial notice of the violent and misogynous nature of his postings, including instructions on how to skin a live cat, and how to kidnap, rape, and murder young women. Several female classmates reported that they were afraid of Murakowski and one woman was so fearful that she requested to absent herself from a class in which Murakowski was enrolled. Murakowski defended his right to post what he said were “humor pieces” meant to shock. However, the university ordered him to undergo psychological testing and to move out of his campus dormitory.

The court applied the trilogy of student speech cases from the K-12 setting, especially the *Tinker v. Des Moines* (1969) and the *Lovell v. Poway* (1996) rulings to decide that (1) Murakowski's postings did not cause material disruption of school operations nor significantly and adversely impact the greater college community, and (2) his essays were not "true threats." Therefore, the court ruled that the young man's speech was protected by the First Amendment, and awarded nominal damages. The court, however, citing *Goss v. Lopez* (1975), another decision from the K-12 context, ruled that the university had provided due process, and dismissed Murakowski's Fourteenth Amendment claim.

Keefe v. Adams

In a more recent decision, *Keefe v. Adams* (2014) the issue of indirect cyberbullying arose when a student in a Minnesota state college nursing program was removed from the program after students complained about his posting allegedly threatening and insulting comments on his Facebook page. Craig Keefe complained on Facebook about a change in an assignment, stating there was "not enough whiskey to control that anger." He also posted that he would take an electric pencil sharpener and "give someone a hemopneumothorax with it before long." (A hemopneumothorax is a punctured lung, a critical injury.) He also called a classmate a "stupid bitch" and posted other profanities. When confronted by college administrators and removed from the program, he sued, claiming denial of his freedom of speech and right to due process. He contended that college administrators had no right to judge his speech, which was made outside the college setting. Noting the application of the First Amendment in the school setting, the court nevertheless upheld Keefe's removal from the program based on the fact that his behavior was unbecoming of the nursing profession and that his postings transgressed professional boundaries. On August 28, 2014, Keefe filed an appeal in the Eighth Circuit Court of Appeals, which is pending.

Student-on-Instructor Cyberbullying

Limited research is available on the incidence of cyberbullying of college and university instructors by students, but cyberbullying may involve challenges to teaching skills, the level of experience of new faculty, textbook choices, or challenges to the subject matter or to grading policies (Eskey & Roehrich, 2015). Indications are that cyberbullying occurs more frequently towards instructors in online courses. In one survey of 346 online instructors from a large online university, 33.8% of instructors surveyed reported that they had been cyberbullied by students (Minor, Smith, & Brasher, 2013). Over 60% of respondents reported that they did not know what resources, if any, were available to help them, or felt that there were none. In another study of 202 online instructors at a Midwestern university, 15% reported student cyber-attacks involving their personal qualifications, and 31% reported student uses of emails to personally attack them (Eskey, Taylor, & Eskey, 2014). Almost half of those responding did not know if the institution has resources to handle cyberbullying; 20% felt that reporting cyberbullying would be held against them and 44% reported they were not sure.

The Rate My Professor site is often a venue for student cyberbullying of instructors (Martin & Olson, 2011), but YikYak may be overtaking the older "rating" site. YikYak is a social media network without user profiles that claims the dubious distinction of being the most frequently downloaded anonymous social "app" in Apple's App Store (Mahler, 2015). The free site sorts messages by geographic location and, in many cases, by university, making it a virtual message board for the campus.

Many messages are harmless, but the potential exists for ruining the reputations of professors. The app's privacy policy fiercely protects the identity of its posters. In a 2013 commentary this author detailed the tortuous legal process involved in forcing a website to reveal the identity of its anonymous users, when Heide Irvani and Brittan Heller, two Yale Law School students, were cyberbullied on the anonymous website AutoAdmit.com (Conn, 2013). The students were forced to obtain subpoenas and the unmasking of their tormentors took years to accomplish. It is doubtful that college and university instructors would even know how to begin the process of undoing the damage to their reputations on YikYak.

Osei v. Temple University

A student who received a disciplinary suspension for his cyberbullying and threatening emails to his university professor sued his university and university administrators, alleging Fourteenth Amendment violation of his due process (*Osei v. Temple University*, 2011). In an unpublished opinion, the Third Circuit Court of Appeals ruled that the student was afforded all the due process to which he was entitled. The student, Michael Osei, a Ghanaian native, was enrolled in the health management undergraduate program at Temple University. After receiving a grade in organic chemistry which he viewed as unfair, Osei began emailing Dr. Grant Krow, his instructor in the course, with progressively inappropriate emails. Osei's second email promised "a curse against [your] life and family forever," and the student continued with emails stating, "I just want justice on you physically and spiritually. Your game is over. Mine begins. You played with the wrong person this time. Cooperate to prevent things from escalating." Another email followed, warning that, ". . . The year 2010 will not start well for you."

The university characterized Osei's emails as threatening and violative of Temple's Code of Conduct. Since the suspension the student faced was temporary, with the provision that he attend anger management classes before returning to the program, the court applied the standard in *Goss v. Lopez* (1975) as the court did in the *Murakowski* proceedings, that the accused student be provided notice and an opportunity to be heard. The court ruled that Osei had been afforded the appropriate due process.

Policy Implications and Recommendations

Several commentators have noted the low levels of concern and understanding of cyberbullying at the college and university level, and the potential for campus violence posed by cyberbullying (Bar & Lugas, 2011; Duncan, 2010). Cyberbullying can readily translate to cyberstalking, a reality recently acknowledged in the mandated addition of cyberstalking as a reportable "Clery crime" in the new Violence Against Women Reauthorization Act of 2013 (VAWA). Section 485(f) of VAWA amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) to mandate inclusion of cyberstalking incidents on college campuses in the institutions' Annual Security Reports (ASRs). Colleges need to take the new Clery Act mandate seriously, not simply as one more unnecessary burden of paperwork, but as a way to raise awareness of cyberbullying and cyberstalking and to help reduce victimization on campuses.

In a 2006 CEPI Policy Brief, this author noted the reluctance of American courts to recognize controversies involving bullying as justiciable (Conn, 2006). The judicial cognizance has changed in the past several years, with court decisions such as *J.C. v. Beverly Hills Unified School District* (2010), *T.K. v. New York City Department of Education* (2011), and *Kowalski v. Berkeley County Schools* (2011) not only deciding cases of K-12 bullying and cyberbullying, but even including treatises on the negative

effects of bullying and taking judicial notice of the schools' responsibilities to deal with cyberbullying speech originating off campus. At the present time no parallel line of judicial decisions has emerged in the college and university setting. In the few controversies involving cyberbullying in higher education with which the courts have dealt, the courts' decisions have uniformly applied the student speech precedents developed in the K-12 setting, especially the *Tinker* decision. A critical recommendation for controlling cyberbullying in higher education is that the Supreme Court must seriously acknowledge the problem's existence at postsecondary institutions by abandoning the application of the K-12 *Tinker* standard. The High Court must be alert to that petition for *certiorari* that allows them to enunciate a student speech test that acknowledges the maturity of the older students along with their capacity to be negatively impacted by cyberbullying, but still allows the "marketplace of ideas" to exist on campus. Rather than a test which requires material disruption of the whole campus, the new standard should focus on the inherent value of the speech or communication and its effect on the recipient.

Public concern about cyberbullying in higher education will hopefully spur the Court to accept the challenge of creating a new higher education speech standard, and state legislators can then take up the task of including technology-facilitated bullying in postsecondary institutions into their anti-bullying statutes. However, colleges and institutions cannot sit back and wait for the judiciary or lawmakers to craft a magic bullet. The institutions also must take independent action. Seventy-five to 80% of students interviewed about the incidence of cyberbullying on campuses agreed that colleges and universities need to develop, adopt, and enforce anti-cyberbullying policies. The policy drafting should involve all the stakeholders, including students and parents, and should include progressive discipline for offenders, counseling for targets of cyberbullying, and counseling and some kind of sensitivity training for perpetrators of cyberbullying. The process for reporting cyberbullying should be specified, and a contact person identified. Since much of the cyberbullying is sexual in nature, this person might be the institution's Title IX coordinator. An anonymous phone line for reporting cyberbullying incidents could also be set up. The policy must mandate that any reported incidents of cyberbullying be investigated and dealt with immediately upon notification.

Other recommendations include conducting campus climate surveys to ascertain the incidence and nature of cyberbullying on campus. Cyberbullying awareness and prevention training must be scheduled for administrators, instructors (including adjunct instructors and online faculty), and students, and educational resources made available. Since research suggests that bullying and cyberbullying occurs along a continuum, with cyberbullying in high school following students into colleges and universities (Zalaquett & Chatters, 2014), college deans and counselors may even collaborate with high school guidance counselors to alert college-going high school students about the importance of reporting cyberbullying on campus. Faculty induction, including induction for adjunct faculty and online instructors, should include training on how to respond to and report cyberbullying. Since much of the cyberbullying of instructors centers on grading issues, instructors also should receive training in crafting and publishing defensible grading rubrics, especially in online courses.

All student participants in online and hybrid courses should be introduced to the concept of "netiquette," rules for respectful interactions online, where the absence of facial cues and body language can foster misunderstandings in communications. A wealth of resources about netiquette is available online, but instructors may encourage more "buy in" among students by facilitating a discussion among class members about what rules they think should govern their interactions in the course. Once

consensus is reached, the instructor could publish the rules and students could be asked to signal their commitment to abide by the rules in all communications during the course.

Finally, more research on the incidence and nature of cyberbullying must be pursued to monitor trends in cyberbullying. The negative effects of cyberbullying at every level of the institution cannot be ignored or denied. They will not disappear overnight. Like the efforts to control face-to-face bullying, controlling cyberbullying will take knowledge, planning, and concerted, sustained effort. But the goal of a healthy and respectful campus climate is worth that effort.

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-- *Kathleen Conn*

Kathleen Conn, Ph.D., J.D., LL.M. is currently Of Counsel with the Education Law group of King, Spry, Herman, Freund & Faul, LLC in Bethlehem, Pennsylvania. Conn has published numerous commentaries in peer-reviewed law journals and authored three books and numerous book chapters. She is an annual presenter at the national Education Law Association (ELA) Conference, and has served on the Executive Board of ELA. Conn also teaches as an Adjunct Professor at her alma mater, Widener University School Law in Wilmington, Delaware, where she earned her J.D. and LL.M. degrees, and a Lecturer at Muhlenberg College in Allentown.

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