

Cyberbullying and the Law: Implications for Professional School Counselors

TSherrionda Crawford, Ph.D., LPC, NCC
(Primary Author)
Assistant Professor
Troy University
One University Place
Phenix City, AL 36869
334-448-5164
scrawford@troy.edu

Kanessa Miller Doss, Ph.D., NCSP, NCC
Assistant Professor
Troy University
136 Catoma St.
Montgomery, AL 36104
334-241-5803
kmdoss@troy.edu

Korrinne, H. Babel, Ph.D, LPC, NCC
Assistant Professor
Troy University
One University Place
Phenix City, AL 36869
334-448-5243
khansing@troy.edu

Holly Bush, BS
Student
Troy University
One University Place
Phenix City, AL 36869
hbush117893@troy.edu

Abstract:

Cyberbullying or the use of technology to intimidate, harass, or bully has become increasingly problematic. School Counselors are in a unique position to provide prevention and intervention services concerning acts of cyberbullying, however varying state laws and confusing legal language has created ambiguity regarding the “reach” and legal responsibility of schools. A clear definition of cyberbullying, an explanation of state and federal laws, and implications for school counselors will be discussed.

Keywords: cyberbullying, internet, schools, legislations, school counselors, law

Cyberbullying and the Law: Implications for Professional School Counselors
The Internet and social media have revolutionized the way we maintain and

develop relationships, as well as the way in which we communicate. For children, adolescents and teenagers growing up in what some call the “digital age”, the use of technology such as computers, cell phones and tablets to communicate are the norm. Likewise, it is common for them to be adept at accessing social media networks such as Twitter, Facebook, Snapchat, Wisper, Omegle and Instagram. Unfortunately, the increase in the use of technology and the popularity of social media websites has also revolutionized the act of bullying and researchers have found that the anonymity afforded by these sites has led to what is known as cyberbullying (Barlett, 2015; Barlett, Gentile & Chew, 2016). Unlike traditional bullying, victims of cyberbullying have no refuge from the bully and the attacks are often anonymous. Cyberbullying or the act of bullying via the use of technology

(Ybarra, Korchmaros, Oppenheim, 2012) has become commonplace in nearly all age groups, transcending culture, socioeconomic class, gender, sexual orientation, and age while simultaneously disrupting the educational environment. This is apparent in media coverage, increased suicide rates (Hinduja & Patchin, 2010; Litwiller & Brausch, 2013) and the increase in lawsuits related to cyberbullying (Conn, 2011; Benzmilller, 2017). School counselors are often expected to intervene when acts of cyberbullying are committed, however varying state laws and ambiguous language have the potential to create confusion regarding the “reach” and legal responsibility of schools. This article seeks to provide a clear definition of cyberbullying, identify state and federal laws regarding the act of cyberbullying, and discuss the implications for school counselors.

Definition

Scientific literature defines cyberbullying in several diverse ways, which impacts the overall results of the research (Tokunaga, 2010; Sticca & Perren, 2013; Zych, Ortega-Ruiz, & Del Rey, 2015). Unfortunately, these definitional inconsistencies steer researchers to investigate contrasting phenomena within the same label (Tokunaga, 2010). Tokunaga (2010) and Slonje, Smith, and Frisé (2013) identified instances of problematic cyberbullying definitions. First, the absence of the term “repeatedly” in some definitions limits the capability to formulate conclusions and make cross-study comparisons with other research. Second, the emphasis of power imbalance in the definition is often ambiguous due to the lack of need for physical strength, but authors note that anonymity and the sense of powerlessness from the difficulty

to remove or avoid material in cyberspace contributes to power imbalance. Third, the conceptual and operational definitions influence item response from participants. Fourth, the lack of conceptual agreement limits the ability to develop reliable and valid measures of cyberbullying. Therefore, an integrative definition of cyberbullying is essential for both conceptual and operational lucidity (Tokunaga, 2010).

Tokunaga (2010) purports the following definition of cyberbullying to develop an integrative definition for literature “Cyberbullying is any behavior performed through electronic or digital media by individuals or groups that repeatedly communicates hostile or aggressive messages intended to inflict harm or discomfort on others” (p. 278). In an effort to clarify the meaning of cyberbullying for research participants, Tokunaga (2010) proposed the following addendum to be included with the definition, “In cyberbullying experiences, the identity of the bully may or may not be known. Cyberbullying can occur through electronically mediated communication at school; however, cyberbullying behaviors commonly occur outside of school as well” (p. 278).

Types of Cyberbullying

There is wide diversity in the methods used to determine types of cyberbullying in scientific literature. Although some investigations consider cyberbullying to be a single construct, some may differentiate by types of cyberbullying (Slonje, Smith, and Frisé, 2013). Some studies distinguish between types of cyberbullying based on the media used such as internet, tablets, and mobile phones, others may utilize the type of action/content for example, threats, flaming, or exclusion,

and others may discriminate based on specific ways of using information and communication technologies (ICTs) like text messages, instant messaging, and email (Notar, Padgett, & Roden, 2013; Slonje, Smith, & Frisé, 2013).

The prominence of technology in today's society has greatly escalated the use of cyberbullying. Adolescents and children usually perceive anonymity while using chat rooms, emails, blogs, Facebook, etc. due to the difficulty to trace Internet activity, and there seems to be a false sense of courage derived from not having to face his/her victim (Notar, Padgett, & Roden, 2013; Sticca & Perren, 2013). The specific types of cyberbullying identified in literature pertaining to behavior or content are flaming, cyberharassment, cyberstalking, denigration (put-downs), masquerade/impersonation, outing, exclusion, trickery, sexting, falsifying identify, threats, plishing, and online grooming (Notar, Padgett, & Roden, 2013; Slonje, Smith, & Frisé, 2013). Identified types of cyberbullying in literature according to the utilization of ICTs include mobile phone calls, voicemails, text messages, online games, instant messaging, email, picture/video clip bullying, chatroom, social media, and websites (Notar, Padgett, & Roden, 2013; Slonje, Smith, & Frisé, 2013; Sticca & Perren, 2013).

Outcomes

Recent literature indicates that cyberbullying is at an all time high. The School Crime Supplement (SCS) to the National Crime Victimization Survey (NCVS) states that 21.5% of students ages 12-18, reported being victims of traditional bullying and 6.9% report being cyber-bullied (U.S. Department of Justice Bureau of Justice Statistics, 2011). While the Youth Risk

Behavior Survey (YRBS) found that 19.6% of students were bullied at school and 14.8% were bullied via technology, a 7.9% increase from the previous study (Center for Disease Control and Prevention, 2013).

Additionally, researchers have found that cyberbullying can have severe outcomes for both the victim and the perpetrators. Several studies have linked depression and suicide (Hinduja & Patchin, 2010; Litwiller & Brausch, 2013; Sampasa-Kanyinga, Roumeliotis & Xu, 2014), substance abuse (Goebert, Else, Matsu, Chung-Do & Chang, 2011; Litwiller & Brausch, 2013), anxiety (Campbell, Spears, Slee, Butler & Kift, 2012), and poor academic performance (Eisenberg, Neurnark-Sztainer, & Perry, 2003; Kowalski & Limber, 2013) to individuals who are victims of cyberbullying, while individuals who cyberbully have been linked to delinquency, antisocial behaviors and violent crime (Espelage, Basile, & Hamburger, 2012; Farrington, Loeber, Stallings & Ttofi, 2011; Farrington & Ttofi, 2011). The rise in occurrence of cyberbullying, as well as the potentially devastating effects of cyberbullying has caused great concern amongst educators, parents, and community leaders. School counselors are often responsible for addressing far-reaching outcomes and mental health concerns of both the victim and perpetrator of cyberbullying.

Legislation

Cyberbullying laws are relatively new. Currently, there are no federal statutes against cyberbullying unless a victim's civil rights are violated, and then offenders are usually prosecuted utilizing state laws and regulations (Jordan & Austin, 2011). Although, there are no direct cyberbullying federal laws, schools that receive

federal funds must resolve incidents that involve an overlap between bullying and discriminatory harassment which is safeguarded by the U. S. Department of Education (ED) and the U. S. Department of Justice (DOJ) under federal civil rights laws (U.S. Department of Health & Human Services, n.d.). Georgia bullying laws emphasize behavior that takes place within the academic environment (Ga. Code Ann. § 20-2-751.4.). Legislation defines bullying behavior including via electronic technology, consequences for violation, and preventative programs (Ga. Code Ann. §§ 20-2-751.4, 20-2-751.5.).

Federal Legislation

Many federal legislative proposals have been introduced to the U. S. Congress, but legislation addressing cyberbullying have not passed or are still pending. The Megan Meier Cyberbullying Prevention Act (2009) was a proposed federal law that was not enacted, but the legislation defined cyberbullying and proposed that those in violation of this law would be fined and/or imprisoned for up to two years. The Safe Schools Improvement Act (2015) proposes the prohibition of bullying (including bullying via electronic communications) that is "severe, persistent, or pervasive" and interferes with a student's ability to receive an education as well as provide preventative programs in school systems. However, the act is still pending.

There are no federal laws specifically addressing cyberbullying, however, there are laws that may be violated if certain criteria are met within the incident such as the Civils Rights Act of 1964. The Civil Rights Act of 1964 (P.L. 88-352) prohibits discrimination based on age, race, sexual orientation, disability, gender, ethnicity, religion, and nationality.

Therefore, cyberbullying incidents that involve discriminatory harassment against an individual's civil rights could be prosecuted at the federal level. Title IX of the Education Amendments of 1972 (P.L. 92-318) prohibits discrimination based on sex in school systems that receive federal funding. Hence, it protects students from being bullied based on their gender, gender identification, sexual orientation, etc. Section 504 of the Rehabilitation Act of 1973 (P. L. 93-112) protects individuals from discrimination based on disability by any organization receiving funding from the Department of Education and the Americans with Disabilities Act of 1990 (42 U. S. C. §12101) safeguards individuals from harassment due to a disability.

Cyberbullying Laws in Georgia

According to Georgia law, cyberbullying is a form of cyberstalking. Cyberstalking is committed when a person is harassing and/or intimidating another person by contacting (phone, notes, electronic communications and etc.) a person without the recipients' consent or placing another person under surveillance (including electronic) (Ga. Code Ann. § 16-5-90.). Stalking is a misdemeanor, therefore, a convicted person can face of up to 12 months, a fine of up to \$1,000, or both (Ga. Code Ann. §§ 16-5-90, 17-10-3.).

Georgia law defines bullying as repeated attempts or threats of physical harm, intimidation, or producing fear that is sufficient to disrupt a student's educational environment including written, verbal/physical acts and electronic communication (Ga. Code Ann. § 20-2-751.4). This legislation also requires schools to implement anti-bullying policies and notify parents of these policies and the consequences of bullying. A portion of the

law states that teachers are obligated to report any incidence of bullying. The law also states that consequences for bullying should be developmentally appropriate. For example, after three offenses for students in grades 6th-12th, the offenders are to be removed from the school system using appropriate procedures.

Georgia legislation prohibits physical, verbal, or disrespectful conduct (including language) against teachers and other students during school hours, at school functions, and on buses (Ga. Code Ann. §20-2-751.5). This law also prohibits destruction of school or personal property, possession of a weapon, falsely reporting of inappropriate behavior (of either a student or teacher), or eliciting others to engage in any of these behaviors. Georgia schools are required to implement programs that promote character, such as kindness, respect, and tolerance, as well as anti-bullying programs or curricula (Ga. Code Ann. §20-2-145).

Although cyberbullying laws are a more recent development in our legislative history, federal and state laws have been emerging to respond to this growing concern among youth. While federal laws protect citizens' civil rights, state laws protect students from other forms of bullying. Kiriakidis and Kavoura (2010) suggest that community involvement is crucial in the prevention of bullying behavior. State laws not only prohibit the behavior, but also elicit community involvement by requiring school systems to implement preventative programs into their curriculum (Ga. Code Ann. §20-2-145). Both federal and state laws continue to evolve and develop to meet the needs of students.

Discussion

Although the focus has been cyberbullying

laws in Georgia, the authors recognize that cyberbullying is a nationwide concern for parents, educators, community leaders and law enforcement (Li, 2007). The diversity in the behaviors identified as cyberbullying and the variety of devices used to facilitate these behaviors alongside the inconsistencies found in the definition of cyberbullying have had an impact on both researchers and participants within the cyberbullying cycle. Tokunaga (2010) provided the following comprehensive definition and addendum as an attempt to minimize stakeholders' and researchers' confusion regarding the identification of cyberbullying: "Cyberbullying is any behavior performed through electronic or digital media by individuals or groups that repeatedly communicates hostile or aggressive messages intended to inflict harm or discomfort on others" (p. 278). The following addendum was later added to the definition, "In cyberbullying experiences, the identity of the bully may or may not be known. Cyberbullying can occur through electronically mediated communication at school; however, cyberbullying behaviors commonly occur outside of school as well" (Tokunaga, 2010, p. 278).

In addition to the identification of a universal definition for cyberbullying, the complexity of state laws and the lack of federal legislation add further confusion for educators and researchers alike. In lieu of clear state guidelines, most states have deferred responsibility to the corresponding state departments of education to address within the bounds of the schools' federally mandated anti-harassment policies. While the negative outcomes of cyberbullying have been well documented in literature, the varied definitions of cyberbullying and the

terminology utilized in state laws impedes researchers' ability to develop reliable and valid measures of cyberbullying. This issue prevents accurate documentation of cyberbullying occurrences and potentially the establishment of federal legislation to prevent this increasingly, troublesome issue.

Implications for School Counselors

School counselors play a key role by providing prevention and intervention services concerning cyberbullying. However, due to the complexity of federal and state statutes as well as confusion regarding 1st amendment rights educators have expressed confusion concerning their role in the intervention of cyberbullying behaviors (Stewart & Fritsch, 2011). As a result, many school professionals fear legal repercussions and express concern regarding involvement (Hinduja & Patchin, 2011; Stone, 2013), while others perceive themselves as unequipped to deal with cyberbullying (Slovak & Singer, 2011).

School professionals must address their confusion and perceptions of inadequacies regarding legal barriers and cyberbullying overall. Expanding knowledge of state and federal laws, as well as school district policies will eliminate the confusion regarding educators' authority to intercede during cyberbullying events. School counselors should attend regular continuing education sessions as well as stay abreast of current literature and legislation to increase preparedness for addressing cyberbullying incidents at ones' school site. Mishna, Khoury-Kassabri, Gadalla & Daciuk (2012) recommend raising professionals' knowledge of cyberbullying dynamics, risk factors and harmful consequences by providing additional training regarding dynamics of

cyberbullying within the victim and bully cycle.

Local Education Associations can be proactive in addressing cyberbullying behaviors within the student population. An example of an initial proactive step would be to provide school counselors and other educators with professional development or psycho-education focused on safety strategies from the beginning of the student's formal education years (Li, 2007) and continued throughout their academic years is beneficial. Interventions for various developmental stages should include activities that nurture the development of empathy and interpersonal relationships, which develop into a positive social support system (Olweus & Limber, 1999). Classroom guidance focused on positive and responsible behaviors when using technology can also prove useful. Finally, students' awareness of their false perception of anonymity in cyberspace and the advances in technology that allows tracking of virtual footprints (e.g., IP-address) to identify bullies and their victims (Sticca & Perren, 2013) may result in bullies reconsidering their behavior and lead to a decrease in cyberbullying incidents.

Conclusion and future studies

With the prevalence of cyberbullying on the rise as well as accessibility to technology increasing school counselors will need to continue to stay abreast of the literature. In the future, analysis of school district bullying policies as well as the variance in state laws can increase awareness. This aforementioned research can be used as a platform to lobby for federal bullying laws to include cyberbullying. Other future studies include data collection of online digital resources

available for students, school counselors, other school administrators to use when combating bullying and cyberbullying. Cioppa, O'Neil & Craig (2015) identified limited self-efficacy research done on cyberbullying interventions and programs. The authors specifically declared that "when we can rise up to the challenges in program content and evaluation, we can create a safe school that fosters healthy relationships both online and in face-to-face interactions" (p. 68). Ultimately, awareness of the outcomes for the victim and perpetrator, knowledge of federal legislation, current and proposed state laws along with preventative methods within the school environment is a key component in this ongoing battle to meet the needs of students.

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