

Collin Matthews
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Cyber Bullying and the First Amendment

The increasing prevalence of cyberbullying in today's society makes it an issue that is becoming more and more debated. As the online capabilities of people improve, so does cyberbullying. This becomes a problem when the issue of cyberbullying makes its way into students' lives. The question of whether schools should have the ability to punish students who cyberbully others remains partially unanswered. This brings up the debate about what schools can do about it. Cyberbullying can be a disruption to the classroom, and, as such, should be punished under the decision of **Tinker v. Des Moines**. Cyberbullying also may not occur strictly in school and so the school should be allowed to punish those who do it off-campus because they are still affiliated with the school and in doing it, have the intent of mentally harming another person. This should allow schools to punish students who are cyberbullies, on campus or off.

When someone sends these messages, very rarely do they go unread and when they are read, they generally have a large impact on the victim. In the article, "Cyberbullying on Social Media Linked to Teen Depression," the author, Stephanie Pappas, quotes Michele Hamm, a researcher at the University of Alberta. Hamm states, "There were consistent associations between exposure to cyberbullying and increased likelihood of depression." In another article, "Cyberbullying facts and statistics for 2016-2018," the author, Sam Cook, states, "Cyberbullying often leads to more suicidal thoughts than traditional bullying." Both of these statistics show that cyberbullying may lead to thoughts and actions that can affect a person and their ability to function well. This ties into the debate about whether or not schools should be able to punish cyberbullies for their actions, especially when they're off campus, in the fact that if a student is being cyberbullied, it will likely affect how they perform at school. In the court case **Tinker v. Des Moines**, the Supreme Court decided that, "schools may restrict student speech to the extent necessary to 'avoid material and substantial interference with schoolwork or discipline'" according to the information in the paper, "Cyberbullying and the First Amendment." This comes into play in the fact that a student whose schoolwork and productivity in school is affected because of cyberbullying should be protected under this decision. The decision in **Tinker** would count this as a disruption for that student and the school would have the ability to punish the bully for it.

Another reason that schools should be able to punish cyberbullying is that if cyberbullying in any way violates a student's rights, or is likely to reach the school grounds based on content, then the school has the right to punish the bully. In the article "Cyberbullying" by David L. Hudson Jr., the author states, "Most courts have applied the Tinker's reasonable forecast of substantial disruption standard even to off-campus, online speech so long as there is a reasonable connection or nexus to school activities," and then goes on to later say, "...this part of the Tinker case could provide the legal justification for cyberbullying laws," in relation to the part of the decision that said schools could punish students if their speech invaded the rights of

others. Any form of speech or text that someone may send that could violate the rights of the victim(s), and the school would be able to punish them at that moment. In addition to that, Lota Nott, in her article “Is Your Speech Protected by the First Amendment?”, states that, “The Second, Seventh, and Eighth Circuits have found that schools can punish off-campus speech if it was ‘reasonably foreseeable’ that the speech... would reach the school community. Similarly, the Fourth Circuit has found that a school can sanction your off-campus speech if there is a ‘sufficient nexus’ between the speech and the school.” The first statement adds on to the **Tinker** decision, applying the “disruption to the classroom” part to anything that can reasonably do so. The second statement says that anything made in connection to the school can be reasonably punished. Both go to show that cyberbullying can be punished even if it’s off campus, in the event that it can be connected to the school or has the ability to reach the school.

The opposition may say that that because the first amendment protects your speech, that cyberbullying, regardless of its effects, is not punishable. The only problem with that is that just because the first amendment gives the right to say anything, it does not protect citizens from being punished for what they have said, especially if it is not within certain limitations. If falsely shouting “fire” in a theatre to cause a panic is not protected under the first amendment because it poses a danger to the people inside, why should cyberbullying be protected if it poses a danger through depression, suicide, and a host of other problems, to so many people? According to Pappas, “...researchers found that a median of 23 percent of teens reporting being targeted.” (“Cyberbullying on Social Media Linked to Teen Depression”) In addition to that, the Cook, in his article, shows that 26% of parents report that their child was cyberbullied in 2018. Neither of these statistics include the children that don’t tell anyone about being cyberbullied, making the numbers higher than shown. If almost one quarter of all children are at risk of the aforementioned bad effects of cyberbullying, then why should it be protected under the first amendment. It should not, just as yelling “fire” in a crowded theatre.

In conclusion, schools should have the ability to punish cyberbullies who are affiliated with the school system, whether the bullying happened on or off campus. The effects of cyberbullying reach far and wide. They can affect how a student performs and school and can even violate some of their rights. In addition, the first amendment doesn’t protect all speech and some is still punishable. Cyberbullies should be punished for the harm that they cause.

Bibliography

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