

REGULATION OF STUDENT SPEECH IN THE DIGITAL AGE: A CASE STUDY
OF THE EFFECTS OF FLORIDA'S ANTI-CYBERBULLYING LAW ON PUBLIC
SCHOOL STUDENT EXPRESSION POLICIES

By

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To Prem Paul Murrhee

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TABLE OF CONTENTS

	<u>page</u>
ACKNOWLEDGMENTS.....	4
LIST OF TABLES.....	8
LIST OF FIGURES.....	9
CHAPTER	
1 INTRODUCTION	12
2 CASE LAW AND LITERATURE REVIEW ON STUDENT SPEECH RIGHTS	20
Part I: A Quartet of Supreme Court Opinions.....	21
Tinker v. Des Moines Independent Community School District.....	22
Bethel School District No. 403 v. Fraser.....	25
Hazelwood School District v. Kuhlmeier.....	28
Morse v. Frederick.....	30
Part II: A Double Act of Discriminatory School District Policies.....	34
Saxe v. State College Area School District.....	35
Sypniewski v. Warren Hills Regional Board of Education.....	37
Part III: A Duo of Legal Doctrines	41
Void for Vagueness Doctrine.....	42
Overbreadth Doctrine	44
Part IV: Legal Issues Pertaining to Non Protected Speech.....	47
True Threats Doctrine	47
Fighting Words Doctrine.....	51
3 COMPARING AND CONTRASTING THE SCHOOL DISTRICTS’ CYBERBULLYING POLICY PROVISIONS	55
Part I: Methodology in Selecting the Ten School Districts.....	55
Part II: Florida's Anti-Cyberbullying Law	57
Part III: Comparing the Public School District Anti-Cyberbullying Policies	59
Mission Statement.....	61
Publicizing the Policy.....	61
Notice of Consequences for Committing Act of Bullying or Harassment	62
Time-Place-Manner Restrictions	63
Part IV: Contrasting the Public School District Anti-Cyberbullying Policies.....	63
Use of Terminology: Bullying, Harassment, Cyberbullying and Cyberstalking .	63
Addition of an Anti-Discrimination Clause	64
Cited Authority.....	65
Constitutional Safeguard	65
Severability Clause.....	65

4	FREE SPEECH CONCERNS OF FLORIDA PUBLIC SCHOOL DISTRICT ANTI-CYBERBULLYING POLICIES	68
	Part I: The Tetralogy of Supreme Court Student Speech Opinions As Applied to The School District Policies	68
	Part II: Analysis of School District Anti-Cyberbullying Policies Under Saxe and <i>Sypniewski</i>	75
	Part III: Anti-Cyberbullying Policies Analyzed Under the Void for Vagueness and Overbreadth Doctrines.....	77
	Part IV: Applying the True Threats Doctrines to Florida’s Anti-Cyberbullying Policies	78
	Part V: School District Policies As Applied to Fighting Words.....	79
5	CONCLUSION.....	81
	Part I: Recommendations for Building a Better Model Policy	81
	What the School District Policies Do Well	81
	Some Provisions Should Be Removed.....	82
	Areas in Need of Improvement.....	83
	Part II: Analysis of a School District Policy Based on Recommendations.....	85
	Part III: Resolution of the Research Questions	95
	Part IV: Areas for Future Research.....	96
APPENDIX		
A	MIAMI-DADE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY ..	97
B	BROWARD COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY ...	100
C	HILLSBOROUGH COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY.....	113
D	ORANGE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY	121
E	ESCAMBIA COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY ...	132
F	MONROE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY	143
G	OKEECHOBEE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY.....	153
H	PUTNAM COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY.....	163
I	GLADES COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY	173
J	LAFAYETTE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY .	181
	LIST OF REFERENCES	190

Constitutions	190
Statutes.....	190
Bills	190
Cases.....	190
Books.....	192
Law review and journal articles.....	192
Newspaper articles and other miscellaneous articles	195
Internet Sources	197
BIOGRAPHICAL SKETCH.....	200

LIST OF TABLES

<u>Table</u>		<u>page</u>
3-1	Five largest school districts based on school district population.....	59
3-2	Five smallest school districts based on school district population	59
4-1	Table of provisions adopted by each of the school district policies.....	66

LIST OF FIGURES

<u>Figure</u>		<u>page</u>
3-1	Segmentation of Florida by district courts of appeals	56
5-1	Recommendations for building a better model policy	85

Abstract of Thesis Presented to the Graduate School
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Cyberbullying, or the use of technology such as computers, cell phones or other digital media to bully, harass or intimidate another person, has been a commonly echoed phrase in the today's public school education system. To date, 19 states have enacted cyberbullying laws that attempt protect students from becoming the victim of unnecessary bullying by requiring school districts to enact specific policies. An analysis of ten Florida public school district policies revealed that the school districts have amended their policies to account for the enactment of the Florida's anti-cyberbullying law, the Jeffrey Johnson Stand Up for All Student Act, which was enacted in 2008. Of the ten school district policies surveyed, the large school districts tended to include additional provisions that amplified the restrictions placed on student expression, whereas the small school districts followed the language of model policy adopted written Florida Department of Education more closely.

By applying relevant precedent to the school district policies – such as the quartet of Supreme Court opinions, several appellate court opinions on student speech codes, the true threats and fighting words doctrines – this thesis brings to light several

problems associated with the language adopted by the policies, particularly when the right to a student's freedom of speech is involved. Thus, this thesis provides recommendations on how to improve existing policy provisions by analyzing a school's anti-cyberbullying policy, identifying the troublesome language, and proposing alternative language or suggesting that such language be removed.

CHAPTER 1 INTRODUCTION

In September 2009, the U.S. House of Representatives mulled a bill called the Megan Meier Cyberbullying Prevention Act that would make so-called cyberbullying a federal crime.¹ Named after a 13-year-old girl who took her own life after being the victim of an Internet hoax in 2006,² the bill prohibits the repetitious use of technology such as computers, cell phones or other digital media to bully, harass or intimidate another person.³ The Act shines national attention on an issue simultaneously stirring debate among lawmakers, judicial bodies, legal scholars, school officials and parents,⁴ perhaps because of the overlapping and compelling interests at stake,⁵ including the First Amendment⁶ freedom of speech.⁷

¹ 111th Cong. (1st Sess. 2009) [hereinafter Megan Meier Act] (providing, in relevant part, that “whoever transmits in interstate or foreign commerce any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using electronic means to support severe, repeated, and hostile behavior, shall be fined under this title or imprisoned not more than two years, or both”). See Larry Margasak, *House Members Seek Ways to Stop Internet Bullying*, ASSOC. PRESS ONLINE, Sept. 30, 2009.

² As perhaps the most notorious incident of cyberbullying, Lori Drew, 49, posed as a teenage boy on MySpace to woo and then reject 13-year-old Megan Meier, who later committed suicide. See, e.g., Joel Currier, *Teen’s Turmoil Started Online*, ST. LOUIS POST-DISPATCH (Mo.), Nov. 23, 2007, at C1 (describing the events that took place that led to Megan Meier’s death).

³ See Sean Rose, *Federal Cyber Bully Bill Gets New Life But Opponents to Measure Named for Megan Meier Cite First Amendment Concerns*, ST. LOUIS POST-DISPATCH (Mo.), May 5, 2009, at A1 (tracing the bill’s history through the House of Representatives and describing arguments presented on both sides of the bill).

⁴ *Id.* Anna Scott, *Anti-Bully Bill Would Give Power to Schools; Teachers Could Punish Students Who Criticize Classmates Via Cell Phones and Computers*, SARASOTA HERALD-TRIB. (Fla.), Apr. 28, 2006, at A1

⁵ See *supra* notes 18 – 24 and accompanying text.

⁶ The First Amendment to the United States Constitution provides, in pertinent part, that “Congress shall make no law . . . abridging the freedom of speech, or of the press.” U.S. CONST. amend. I. The Free Speech and Free Press Clauses were incorporated more than eight decades ago through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. See *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

Cyberbullying, or the “willful and repeated use of cell phones, computers, and other electronic communication devices to harass and threaten others,”⁸ is a commonly-echoed catch phrase in today’s public school environment.⁹ Although often compared to schoolyard bullying, a key component that differentiates cyberbullying from traditional schoolyard bullying is the use of technology¹⁰—computers, cell phones or other digital devices that are fixtures of youth culture¹¹—to bully the victim.¹² Even as recent as

⁷ See Megan Meier Act, *supra* note 1. While some argue that such legislation is needed to punish and deter the “online victimization” of children ages two to seventeen, others have criticized the Act, arguing that it significantly undermines free expression. Rose, *supra* note 3 (stating that “some legal analysts say despite its good intentions, Sanchez’s bill is so broad that it violates the First Amendment”).

⁸ Because no specific legal definition of cyberbullying currently exists, a review of the most prominent Web sites on cyberbullying provides the most on-point definitions of cyberbullying. See, e.g., National Conference of State Legislatures, Cyberbullying Legislation, <http://www.ncsl.org/default.aspx?tabid=12903> (defining “cyberbullying” as used in the text) (last visited Apr. 17, 2010); Parry Aftab, Stop Cyberbullying, <http://www.stopcyberbullying.org/index2.html> (defining cyberbullying as “when a child, preteen or teen is tormented, threatened, harassed, humiliated, embarrassed or otherwise targeted by another child, preteen or teen using the Internet, interactive and digital technologies or mobile phones”) (last visited Apr. 17, 2010); Justin W. Patchen & Sameer Hinduja, Cyberbullying Research Center, <http://www.cyberbullying.us/aboutus.php> (defining the term “cyberbullying” as “when someone repeatedly harasses, mistreats, or makes fun of another person online or while using cell phones or other electronic devices”) (last visited Apr. 17, 2010).

⁹ See, e.g., Marc Freeman, *Palm Beach Schools on the Lookout for Cyberbully Attacks*, S. FLA. SUN-SENTINEL, Jan. 23, 2009; Manon L. Miribelli, *School Counselors Alert to Cyberbullying*, REPUBLICAN (Mass.), Feb. 4, 2009, at MWP9; Michaela Saunders, *Schools Face Off With Cyberbullies*, OMAHA WORLD-HERALD (Neb.), Apr. 27, 2008, at 1B. This thesis, however, focuses on public schools because they are considered government entities and thus the students who attend them possess First Amendment rights, in contrast to students who attend private schools.

¹⁰ See, e.g., Linda T. Sanchez, *The New Bullying Technology*, ST. LOUIS POST-DISPATCH (Mo.), Apr. 5, 2009, at A17; Christopher Maag, *When the Bullies Turned Faceless*, N. Y. TIMES, Dec. 16, 2007, at 9 (describing the use of technology that led to the suicide of 13-year-old Megan Meier); Rita Farlow, *Bullies Be Gone*, ST. PETERSBURG TIMES (Fla.), Oct. 31, 2007, at 7 (describing cyberbullying as bullying through the use of technology).

¹¹ Amanda Lenhart, *Teens and Social Media*, PEW INTERNET & AM. LIFE PROJECT 2 (2007) (stating that “some 93% of teens use the Internet, and more of them than ever are treating it as a venue for social interaction”) http://www.pewinternet.org/~media/Files/Reports/2007/PIP_Teens_Social_Media_Final.pdf (last visited Apr. 17, 2010); Amanda Lenhart, *Teens and Mobile Phones Over the Past Five Years: Pew Internet Looks Back*, PEW INTERNET & AM. LIFE PROJECT 1 (2009) (stating that 71% of teenagers surveyed, ages 12-17, own a cell phone in 2008) <http://www.pewinternet.org/~media/Files/Reports/2009/PIP%20Teens%20and%20Mobile%20Phones%20Data%20Memo.pdf> (last visited Apr. 17, 2010)

March 2010, the news of the death of Phoebe Prince, a 15-year-old girl who took her own life after becoming the subject of her peers' endless taunting appeared in newspapers across the nation.¹³ Although news reports indicate that most of the bullying took place at school,¹⁴ the incident put pressure on the Massachusetts state legislature to enact an anti-cyberbullying law¹⁵ that prohibits so called cyberbullying, or the use of e-mails, text messages, Internet postings and other electronic means, to create a hostile school environment.¹⁶

At the heart of the cyberbullying debate is a clash between public school students' free speech rights¹⁷ and the schools' duty to maintain a safe, non-hostile

¹² National Conference of State Legislators, School Bullying: Overview, <http://www.ncsl.org/default.aspx?tabid=12952>. The website states that "cyberbullying differs from more traditional forms of bullying in that it can occur at any time, its messages and images can be distributed instantaneously to a wide audience, and perpetrators can remain anonymous, often making them difficult to trace." *Id.*

¹³ Eric Eckholm, & Katie Zezima, *9 Teenagers Are Charged After Suicide of Classmate*, N. Y. TIMES, March, 30, 2010, at A14; Laura Crimaldi, *DA: School knew of brutal bullying of Phoebe Prince*, B. HERALD, Mar. 30, 2010. Nine teenagers have since been charged in the case with a mix of felonies including harassment, violation of civil rights with bodily injury and disturbing a school assembly. *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Daniel Abel, *Bullying Bill Ok'D in House, 14-0*, B. GLOBE, Mar.19, 2010.

¹⁷ See Mary-Rose Papandrea, *Student Speech Rights in the Digital Age*, 60 FLA. L. REV. 1027, 1089 (2008). According to Papandrea, "allowing schools to invoke their educational missions as a basis for restricting their students' speech wherever it occurs would permit schools to exercise unbridled censorship authority over youth expression. Nothing about the special characteristics of the school environment warrants such broad and unchecked power." Several other legal scholars have agreed with this perspective. See, e.g., Clay Calvert, *Off-Campus Speech, On-Campus Punishment: Censorship of the Emerging Internet Underground*, B.U.J. SCI. & TECH. L. (2001); Brannon P. Denning & Molly C. Taylor, *Morse v. Frederick and the Regulation of Student Cyberspeech*, 35 HAST. CONST. L. Q. 835 (2008); A. Michael Froomkin, *Building the Bottom Up from the Top Down*, J.L. & POL'Y (2009); Douglas A. Laycock, *Speech and the Public Schools After Morse v. Frederick: High-Value Speech and the Basic Educational Mission of a Public School: Some Preliminary Thoughts*, 12 LEWIS & CLARK L. REV. 111, 125 (2008); Robert D. Richards & Clay Calvert, *Columbine Fallout: The Long-term Effects on Free Expression Take Hold on Public School*, 83 B.U.L. REV. 1089, 1109-10 (2003). This is also a popular topic for student authors. See, e.g., Sarah Jameson, Note, *Cyberharassment: Striking a Balance Between Free Speech and Privacy*, 17 COMMLAW CONSPECTUS 231 (2007); Emily K. Kerkhof, Note, *Myspace, Yourspace, Ourspace: Student Cyberspeech, Bullying, and Their Impact on School Discipline*, 2009 U. ILL. L. REV.

learning environment, free from substantial disruption.¹⁸ In a post-Columbine era,¹⁹ school safety is, indeed, a compelling issue of public policy and of great importance to any community.²⁰ While schools are permitted to regulate on-campus student speech that contradicts the school's educational goals,²¹ the seemingly ubiquitous access to technological devices, however, makes it increasingly difficult to determine where on-campus speech ends and off-campus speech begins.²² A conflict occurs when state

947 (2009); Sandy S. Li, Note & Comment, *The Need for a New, Uniform Standard: The Continued Threat to Internet-Related Student Speech*, 26 LOY. L.A. ENT. L. REV. 65 (2005); Christopher E. Roberts, *Is MySpace Their Space?: Protecting Student Cyberspeech in a Post-Morse v. Frederick World*, 76 U. MO. KAN. CITY L. REV. 1177 (2008); Rita J. Verga, *Policing Their Space: The First Amendment Parameters of School Discipline of Student Cyberspeech*, 23 SANTA CLARA COMPUTER & HIGH TECH. L.J. 727 (2007).

¹⁸ This idea has been recognized by legal commentators, including attorney Shannon L. Doering, in a 2009 law review article, who wrote that:

By recognizing the limitless reach of the Internet and allowing school authorities broad discretion in disciplining students for off-campus websites and cyberbullying that disrupts the school environment or has a reasonable probability of doing so, courts would simultaneously be protecting students and teachers from undue harassment and allowing schools to resume their roles as those who must effectuate what is best for the school environment.

Shannon L. Doering, *Tinkering with School Discipline in the Name of the First Amendment: Expelling a Teacher's Ability to Proactively Quell Disruptions Caused by Cyberbullies at the Schoolhouse*, 87 NEB. L. REV. 630, 673 (2009). See also, Darby Dickerson, *Cyberbullies on Campus*, 37 U. TOL. L. REV. 785 (2009). Many student authors have likewise stated similar arguments. See, e.g., Todd D. Erb, Comment, *A Case for Strengthening School District Jurisdiction to Punish Off-Campus Incidents of Cyberbullying*, 40 ARIZ. ST. L.J. 257 (2009); Shira Auerbach, Note, *Screening Out Cyberbullying; Remedies for Victims On the Internet Playground*, 30 CARDOZO L. REV. 1641 (2009); Stacy M. Chaffin, Note & Comment, *The New Playground Bullies of Cyberspace: Online Peer Sexual Harassment*, 51 HOW. L.J. 773 (2008).

¹⁹ James Brooke, *Terror in Littleton: The Overview; 2 Students in Colorado School Said to Gun Down as Many as 23 and Kill Themselves in a Siege*, N.Y. TIMES, Apr. 21, 2009, at A1. See Tom Kenworthy, *Up to 25 Die in Colorado School Shooting; Two Student Gunman Are Found Dead*, WASH. POST, Apr. 21, 2009, at A1 (describing the events that occurred in the Columbine shooting).

²⁰ First Amendment Schools Frequently Asked Questions, <http://www.firstamendmentschool.org/freedoms/faqs.aspx?id=12994> (last visited Apr. 17, 2010) (stating that "school safety is arguably the single most compelling interest of any community – and certainly the foremost issue in the minds of many parents. Therefore, courts have become increasingly deferential to school safety concerns").

²¹ See *infra* Chapter Two (discussing relevant case law and literature on student speech and protecting the school's educational mission).

²² Justin P. Markey, *Enough Tinkering with Student's Rights: The Need For An Enhanced First Amendment Standard to Protect Off-Campus Student Internet Speech*, 36 CAP. U. L. REV. 129, 149

legislatures and school districts adopt anti-cyberbullying policies that pose a threat to free speech.²³

Recent attempts by schools officials to gain a hold on student cyberspeech have resulted in unnecessary restrictions on free speech, especially when minors are off campus and therefore are simply citizens rather than students.²⁴ As noted by University of Florida Professor Clay Calvert and Pennsylvania State University Professor Robert D. Richards in a 2002 law review article, “although school officials may craft such regulations with the laudable intent of creating and maintaining a safe educational environment, they are often replete with amorphous definitions and vague proscriptions that span over protected categories of speech and thus provoke a constitutional showdown.”²⁵ Such over-proscriptions may leave the student without any protection against the bullying or harassing speech whatsoever. The question thus arises: ***What are the First Amendment-based speech concerns raised by anti-cyberbullying statutes adopted by public schools?*** In the void of Supreme Court precedent and federal legislation addressing cyberbullying,²⁶ nineteen states have enacted laws that

(2007) (arguing that “using a realistic view of the term, student Internet speech is never truly “off-campus”).

²³ Steven Kotler, *Cyberbully Bill Could Ensnare Free Speech*, FOXNEWS.COM, Mar. 14, 2009; Sean Rose, *Federal Cyber Bully Bill Gets New Life But Opponents to Measure Named for Megan Meier Cite First Amendment Concerns*, ST. LOUIS POST-DISPATCH, May 5, 2009, at A1.

²⁴ Clay Calvert, *Punishing Public School Students for Bashing Principals, Teachers and Classmates in Cyberspace: The Speech Issue the Supreme Court Must Now Resolve*, 7 FIRST AMEND. L. REV. 210, 224 (2009). See Second-Step Brief of Appellee and Cross-Appellants, *Layshock v. Hermitage Sch. Dist.*, Nos. 07-4465 & 07-4555, 42-54 (3d Cir. May 22, 2008), available at <http://www.aclupa.org/downloads/Layshock2dStepBrief.pdf> (last visited Apr. 17, 2010).

²⁵ Clay Calvert and Robert D. Richards, *Free Speech and the Right to Offend: Old Wars, New Battles, Different Media*, 18 GA. ST. U.L. REV. 671, 708 (2002).

²⁶ Kara Carnley Murrhee, *Cyberbullying: Hot Air or Harmful Speech?* UF LAW MAGAZINE, Winter 2010, available at <http://www.law.ufl.edu/uflaw/10winter/features/hot-air-or-harmful-speech> (stating that the

prohibit cyberbullying behavior within their jurisdictional boundaries.²⁷ Without substantial legal precedent, however, the language used and the restrictions imposed by the anti-cyberbullying laws tend to vary greatly from state to state.²⁸ Significantly, for the purpose of this thesis, these states have made cyberbullying a matter of school district policy by requiring public schools to develop and implement procedures for dealing with cyberbullying when it interferes with the school environment.²⁹

Rather than perform a general survey of the school district policies of all nineteen states that have adopted anti-cyberbullying policies, this thesis focuses on the state of Florida,³⁰ to provide a in-depth analysis on how school districts within the state of adopted Florida's anti-cyberbullying law. Thus, the three timely research questions are:

federal cyberbullying, that "came before the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security on Sept. 30...now appears to be stalled as members struggle with how best to prevent Internet bullying without infringing on free speech"); David L. Hudson, Jr., *Cyberspeech*, First Amendment Center, <http://www.firstamendmentcenter.org/speech/studentexpression/topic.aspx?topic=cyberspeech> (last visited Apr. 17, 2010) (stating that "the Supreme Court has never addressed a student Internet speech case and has not addressed a pure First Amendment student speech/press case since 1988").

²⁷ National Conference of State Legislatures, *Cyberbullying: State Legislation*, <http://www.ncsl.org/default.aspx?tabid=12903> (last visited Apr. 17, 2010) (listing the states with anti-cyberbullying laws as: Arkansas, California, Delaware, Florida, Idaho, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Rhode Island, Oklahoma, Oregon, Pennsylvania, South Carolina and Washington)

²⁸ *Id.*

²⁹ *Bills to Curb Cyberbullying Raise Free Speech Concerns*, Student Press L. Ctr., Feb. 4, 2008, <http://www.splc.org/newsflash.asp?id=1679> (last visited Apr. 17, 2010) [hereinafter SPLC- Bill]; *As bullies go online, schools start cracking down*, CAPITAL (Md.), Dec. 24, 2007, at B5 (reporting that "states from Rhode Island to Arkansas to Oregon have proposed legislation that would make cyberbullying between students subject to expulsion or prosecution - whether committed at school, at home or via cell phone text message"). See, e.g., OR. REV. STAT. ANN. § 339.356 (2007) (providing that "each school district shall adopt a policy prohibiting harassment, intimidation or bullying and prohibiting cyberbullying").

³⁰ The author chose the state of Florida based on her familiarity of state law and the school district system.

1. Under what circumstances may school officials punish students for the content of their online expression based on relevant case law and legal scholarship without violating the First Amendment?³¹
2. How have Florida schools districts implemented anti-cyberbullying policies?³²
3. What are the typical free-speech problems associated with anti-cyberbullying policies adopted by Florida school districts?³³
4. Would the anti-cyberbullying policies adopted by Florida school districts pass constitutional muster if they were challenged in court on First Amendment?³⁴

Chapter 2 of this thesis provides an overview of public school student First Amendment rights to free speech by tracing the history through relevant case law. Although no U.S. Supreme Court decision has specifically addressed the regulation of off-campus student speech,³⁵ the author of this thesis examines scholarly literature on this topic to determine how these cases have been interpreted to potentially apply to cyberbullying. Chapter 3 describes the methodology used to select ten school districts within the state of Florida. It also compares and contrasts the school district policy provisions to determine the ways in which the public school policies have been amended in light of Florida's 2008 anti-cyberbullying law. Chapter 4 then uses the "filters" of: a) U.S. Supreme Court precedent on student speech rights; b) relevant lower appellate court precedent on these rights; c) the rules of both the void for vagueness and overbreadth doctrines that often apply to statutory measures; and d) the doctrines of true threats and fighting words to identify the provisions of the policy that could perhaps be problematic

³¹ See Chapter One.

³² See Chapter Two.

³³ See Chapter Three.

³⁴ See Chapter Four.

³⁵ See *supra* note 26.

for the school district in protecting against cyberbullying behavior. Finally, Chapter 5 proposes a model policy, drafting language that most protects a student's right to freedom of expression while simultaneously preventing unnecessary harm caused by bullying Internet speech. Notably, a literature review is wrapped up into Chapter 2.

CHAPTER 2 CASE LAW AND LITERATURE REVIEW ON STUDENT SPEECH RIGHTS

As one of the nation's most basic principles for more than 215 years, the First Amendment to the U.S. Constitution guarantees freedom of expression.¹ This right was first extended to students, however, only forty-one years ago in *Tinker v. Des Moines School District*,² when the U.S. Supreme Court held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”³ Although the Court initially endorsed broad protection for student speech inside “the schoolhouse gate,”⁴ it has since carved out several exceptions to the free speech privileges students enjoy. Thus, it asks: *Under what circumstances may public school officials punish students for the content of their online expression, based on relevant case law, legal doctrines and legal scholarship, without violating the First Amendment?*

This chapter is divided into five parts. Part I reviews the trilogy of Supreme Court cases, namely *Hazelwood School District v. Hazelwood*,⁵ *Bethel School District v. Fraser*⁶ and *Tinker v. Des Moines Independent Community School District*,⁷ as well as

¹ *Supra* Chapter One, note 6.

² 393 U.S. 503 (1969).

³ *Id.* at 506. Martha McCartney, *Anti-Harassment Provisions Revisited: No Bright-Line Rule* 2008 BYU EDUC. & L. J. 225, 226 (stating that “the seminal decision, *Tinker v. Des Moines Independent Community School District*, marked the Supreme Court’s entry into the arena of constitutional protection of students’ expression rights”).

⁴ 393 U.S. 503 at 506.

⁵ 484 U.S. 260 (1988).

⁶ 478 U.S. 675 (1986).

⁷ 393 U.S. 503 (1968).

the recent *Morse v. Frederick*⁸ decision handed down in 2007. Part II then analyzes relevant federal appellate court opinions, including *Saxe v. State College Area School District*⁹ and *Sypniewski v. Warren Hills Regional Board of Education*,¹⁰ as well as other appellate court opinions that specifically influence the law in Florida regarding student speech. Next, Part III briefly examines two legal standards – the void for vagueness doctrine and the overbreadth doctrine – that often are used by courts to measure the constitutionality and facial validity of any government statute or regulation targeting speech like cyberbullying. Finally, Part IV turns to both the true threats and fighting words doctrines to determine whether the decisions allow for the censorship of some forms of speech that may fall within the parameters of cyberbullying. Significantly, a review of the scholarly literature on each of these cases is encompassed within each of the parts.

Part I: A Quartet of Supreme Court Opinions

In defining the free expression rights of students in public schools, several U.S. Supreme Court cases have developed important precedent for lower courts to apply.¹¹ Although none of these cases contemplates student Internet speech, any analysis of free speech in an educational setting must begin under their precedents. Thus, this part analyzes a trio of landmark Supreme Court cases — *Tinker v. Des Moines Independent*

⁸ 551 U.S. 393 (2007).

⁹ 240 F.3d 200 (3d Cir. 2000).

¹⁰ 307 F.3d 243 (3d Cir. 2002).

¹¹ CHARLES C. HAYNES ET AL., *THE FIRST AMENDMENT IN SCHOOLS* 59 (Association for Supervision & Curriculum Development 2003).

Community School District,¹² *Bethel School District No. 403 v. Fraser*¹³ and *Hazelwood School District v. Hazelwood*¹⁴ — as well as one more recent significant decision, *Morse v. Frederick*,¹⁵ handed down by the Court in 2007. The quartet of Supreme Court cases discussed in this part appears in chronological order.

Tinker v. Des Moines Independent Community School District¹⁶

The U.S. Supreme Court provided strong protection for student-speech rights in *Tinker* when it upheld a student's right to wear black armbands to school in protest of the Vietnam War.¹⁷ In *Tinker*, three students — John Tinker, 15, Mary Beth Tinker, 13, and Christopher Echardt, 16—were suspended from school for wearing black armbands to their Des Moines, Iowa, schools in protest of the Vietnam War.¹⁸ When the three students nonetheless wore their armbands to school, they were asked to remove them, but the students refused and were suspended from school until they would come back without their armbands.¹⁹ They then filed suit, asking for an injunction against the school's punishment.²⁰

The Court ultimately struck the balance in favor of the students when it reasoned,

¹² 393 U.S. 503 (1968).

¹³ 478 U.S. 675 (1986).

¹⁴ 484 U.S. 260 (1988).

¹⁵ 551 U.S. 393 (2007).

¹⁶ 393 U.S. 503 (1969).

¹⁷ DON R. PEMBER & CLAY CALVERT, *MASS MEDIA LAW* 87 (2009–2010 ed., McGraw-Hill 2008).

¹⁸ *Tinker*, 393 U.S. at 504. After hearing of the students' intention and fearing that the armbands would create a disturbance, the principals of Des Moines's public schools decided that all students wearing armbands would be asked to remove them or face suspension. *Id.*

¹⁹ *Id.*

²⁰ *Id.*

as one of its most famous maxims, that “it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”²¹ Reasoning that the wearing of armbands for the purpose of conveying a political message was expressive conduct protected by the First Amendment,²² the Court overturned the school’s disciplinary measures.²³ As the rule, the Court held that schools can censor student expression when facts²⁴ exist that might reasonably lead “school authorities to forecast substantial disruption of or material interference with school activities”²⁵ or when the speech “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.”²⁶ Thus, courts and legal scholars have deemed *Tinker* the so-called material-and-substantial-disruption test.²⁷

Although more than four decades have passed since the *Tinker* decision was handed down by the Supreme Court, *Tinker* remains a “high water mark”²⁸ of student speech cases for its protection of student speech.²⁹ Yet, the precise extent to which

²¹ *Id.* at 506.

²² *Id.* at 505–6.

²³ *Id.* at 514.

²⁴ The high court wrote that an “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” *Id.* at 508.

²⁵ *Tinker*, 393 U.S. at 514.

²⁶ *Id.* at 513.

²⁷ Hudson, *supra* Chapter One, note 26.

²⁸ Nadine Strossen, *Student’s Rights and How They Are Wronged*, 32 U. RICH. L. REV. 437 (1998).

²⁹ See *id.* (explaining that it is “the most protective of constitutional rights that we have ever seen”). Frank LoMonte, *Shrinking Tinker: Students are “Persons” Under Our Constitution- Except When They Aren’t*, 58 AM. U. L. REV. 1323, 1326-27 (2009) (explaining that *Tinker* remains good law because “every Supreme

students enjoy this privilege is the subject of much debate.³⁰ As noted in a recent court opinion, “Courts at all levels have demonstrated confusion as to the scope of *Tinker’s* holding Courts disagree . . . as to the broader question of whether the legal standard in *Tinker* is applicable more generally to all regulation of student speech and not simply speech that expresses a particularized view.”³¹ This lack of resolve has resulted in inconsistent rulings in the many of the lower courts,³² unnecessary punishment of student speech,³³ and perhaps most consequently, as Professor Clay Calvert put it, a “misuse”³⁴ of Supreme Court precedent – in particular, *Tinker* – to “apply to situation[s] and scenario[s] that the Court in 1969 could hardly have imagined.”³⁵ Still, it appears as though the *Tinker* standard, albeit “with some nuances,”³⁶ has been the precedent “most frequently applied to incidents of home-created, web-based expression.”³⁷ It would be seventeen years later before the Court

Court ruling about student speech since 1969 has quoted *Tinker* as authority, and none has purported to overrule it”).

³⁰ See *infra* notes 32–36 and accompanying text.

³¹ *Bar-Navon v. Sch. Bd. of Brevard County*, No. 6:06-cv-1434, 2007 WL 3284322, at 5 (M.D. Fla. Nov. 5, 2007).

³² See Denning, *supra* Chapter One, note 17, at 838 (stating that “despite this small number of cases, lower courts have had difficulty synthesizing and applying [the quartet of Supreme Court cases] to the myriad fact situations they have encountered”).

³³ Nadine Strossen, *Keeping the Constitution Inside the Schoolhouse Gate - Students’ Rights Thirty Years After Tinker v. Des Moines Independent Community School District*, 48 DRAKE L. REV. 445, 457.

³⁴ Clay Calvert, *Tinker’s Midlife Crisis: Tattered and Transgressed But Still Standing*, 58 AM. U.L. REV. 1167, 1175 (2009) (explaining that some lower courts are “are incorrectly applying it to censor off-campus student expression that is posted on the World Wide Web”).

³⁵ *Id.* at 1188.

³⁶ Erb, *supra* Chapter One, note 18, at 263.

³⁷ *Id.* at 261.

would accept its next student speech rights case—this time involving speech that could potentially be offensive to the school environment.

Bethel School District No. 403 v. Fraser³⁸

Nearly two decades later, the U.S. Supreme Court created an exception to the protections afforded student speech in *Tinker* when it upheld the right of a school to punish a student for giving a bawdy speech during a high school assembly.³⁹ Matthew Fraser made a speech nominating a fellow student for elective office in front of an assembly of about 600 high school students.⁴⁰ The speech included what some have called an “elaborate, graphic, and explicit sexual metaphor”⁴¹ to promote the candidacy of his friend.⁴² After school officials suspended Fraser for three days, citing part of its disciplinary code,⁴³ Fraser sued, alleging a violation of his First Amendment rights to free speech.⁴⁴

Upon establishing that Fraser’s speech “was ‘indecent, lewd, and offensive to the modesty and decency of many of the students and faculty in attendance of the

³⁸ 478 U.S. 675 (1986).

³⁹ *Id.* Although it affirmed *Tinker*, the *Fraser* Court took a much more restrictive view of student speech when it ruled that the school could suspend a student for delivering a “sexual double-entendre-laden speech to a captive audience of minors” at a school-sponsored assembly. Calvert, *supra* Chapter One, note 25, at 712; See Papandrea, *supra* Chapter One, note 17, at 1045.

⁴⁰ *Id.* at 677.

⁴¹ *Id.* at 679.

⁴² *Id.* at 677.

⁴³ *Id.* at 678. The Court ruled that the code prohibited conduct which “substantially interferes with the educational process . . . including the use of obscene, profane language or gestures.” Fraser served only two days of the suspension before being allowed to return to school. *Id.* at 679.

⁴⁴ *Fraser*, 478 U.S. at 679.

assembly,'⁴⁵ the Court ruled in favor of the school district, holding that it had “acted within its permissible authority in imposing sanctions upon *Fraser* in response to his offensively lewd and indecent speech.”⁴⁶ The Court thus synthesized a rule, stating that if the “penalties imposed [on the indecent, lewd or obscene speech]...were unrelated to any political viewpoint,’⁴⁷ the school was permitted to punish the student for speech made during a school assembly that it found offensive.”⁴⁸

While some courts have gone beyond the facts of the case to apply *Fraser* to speech only *deemed* offensive, regardless of the context or forum of where the speech occurred,⁴⁹ several scholars,⁵⁰ including Stanford Law professor and former dean of the

⁴⁵ *Id.* at 678–79.

⁴⁶ *Id.* at 686. Significant to the Supreme Court’s decision was the dichotomy it determined existed between the political speech present in *Tinker* and the sexual expression in *Fraser*. For instance, the Court wrote that that “[i]t does not follow, however, that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school.” *Id.* at 682.

⁴⁷ *Id.* at 685.

⁴⁸ *Id.*

⁴⁹ David L. Hudson, Jr. & John E. Ferguson, Jr., *A First Amendment Focus: The Courts’ Inconsistent Treatment of Bethel v. Fraser and the Curtailment of Student Rights*, 36 J. MARSHALL L. REV. 181, 203 (2002) (emphasis added). These courts employ footnote four of *Hazelwood School District v. Hazelwood*, that states, the “decision in *Fraser* rested on the ‘vulgar,’ ‘lewd,’ and ‘plainly offensive’ character of a speech delivered at an official school assembly rather than on any propensity of the speech to ‘materially disrupt class work or involve substantial disorder or invasion of the rights of others, as proof of the Court’s support of a broad reading.” *Id.*

⁵⁰ See Calvert, *supra* Chapter One, note 17, at 271 (arguing that “the Court’s own phrasing of this issue makes it clear that the *Fraser* Court did not address the speech of minors in non-school-sponsored events or activities...[and that] any rules articulated in this case thus do not control the Web-based” expression at issue in this thesis”); See also Erb, *supra* Chapter One, note 18, at 265-6 (stating that may be true even where the “intended audience [is] undoubtedly connected” to the school); Susan H. Kosse, *Student Designed Home Web Pages: Does Title IX or the First Amendment Apply?*, 43 ARIZ. L. REV. 905, 926 (2001) (noting that the *Fraser*’s focus on school-sponsored speech prevents it from applying to student’s websites that were created off-campus and not part of a school or extracurricular activity); Verga, *supra* Chapter One, note 17, at 743 (stating that even if “the communicating student creates a website off campus then privately views at school, *Fraser*’s prohibition on lewd, indecent or offensive on-campus speech is not triggered”). This is dependent on whether the speech could be considered obscene or the ability for the school to “maintain discipline in the school”— not on the student’s expressive activity alone. See *Coy v. Bd. of Educ. of the N. Canton City Sch.*, 205 F. Supp. 2d 791, 795 (N.D. Ohio 2002).

law school, Kathleen Sullivan, have argued that *Fraser* does not apply to off-campus cyberspeech.⁵¹ Indeed, even Justice William J. Brennan’s concurring opinion in *Fraser* indicates that the Court intended *Fraser* to apply *solely to on-campus speech*.⁵² The later *Morse* Court decision provided even more clarification of *Fraser* when it wrote that “*Fraser* should not be read to encompass any speech that could fit under some definition of ‘offensive.’”⁵³

Whether the Justices were in the appropriate position to determine the offensiveness of the student’s speech has also been a point of contention for some scholars.⁵⁴ This issue is of particularly relevance to cyberbullying because, as Calvert and Richards put it, “perhaps the same logic holds true today for judges grappling with the question of whether student expressions of violence conveyed in paintings, letters and poetry constitute true threats or substantial disruptions of the educational atmosphere.”⁵⁵ Although *Fraser* left many questions unanswered, it would only be two

See also Erb, *supra* Chapter One, note 18, at 265–6 (stating that may be true even where the “intended audience [is] undoubtedly connected” to the school).

⁵¹ Kathleen M. Sullivan, *Free Speech*, 35 PEPP. L. REV. 533, 538 (2008) (arguing that Fraser’s sexual remarks were not protected by the First Amendment and were able to be “restricted as pedagogically inappropriate and contrary to the school’s educational mission”).

⁵² *Fraser*, 478 U.S. at 688 (Brennan, J., concurring). As he saw it, “*Fraser* not does suggest that the student’s speech would be grounds for punishment if it was given outside the school setting.” *Id.*

⁵³ *Morse*, 551 U.S. at 409.

⁵⁴ Richards, *supra* Chapter One, note 17, at 1109–10 (citing *Hazelwood*, 478 U.S. at 692 (Stevens, J., dissenting)). According to Richards and Calvert:

For Justice Stevens, the student was probably in a better position to determine whether an audience composed of 600 of his contemporaries would be offended by the use of a four-letter word — or a sexual metaphor — than is a group of judges who are at least two generations and 3,000 miles away from the scene of the crime.

Id.

⁵⁵ *Id.* at 1110.

years before the U.S. Supreme Court would continue debating these issues in the final case of the student speech rights trilogy.

Hazelwood School District v. Kuhlmeier⁵⁶

In 1988, the U.S. Supreme Court carved out a second exception to the *Tinker* standard in *Hazelwood School District v. Hazelwood*⁵⁷ when it ruled in favor of the school district to prohibit several articles from being published in the school-sponsored newspaper.⁵⁸ At issue in *Hazelwood* was whether a public school could “disassociate itself”⁵⁹ from publishing stories in a school-sponsored newspaper that contained ideas purportedly in conflict with the “school’s legitimate pedagogical concerns.”⁶⁰ When the case made it to the Supreme Court, the Justices ruled that public school curricular student newspapers that have not been established as forums for student expression are subject to a lower level of First Amendment protection than independent student expression or newspapers established as forums for student expression.⁶¹ By applying the facts of the case to its rule, the Court ruled in favor of the school, holding that the

⁵⁶ 484 U.S. 260 (1988).

⁵⁷ *Id.*

⁵⁸ *Id.* at 263–64. Three student journalists at Hazelwood East High School had submitted stories to be published in the 1983 spring edition of the school’s newspaper, the *Spectrum*, as part of the school’s journalism curriculum. *Id.* at 262.

⁵⁹ *Id.* at 270–71. As the Court saw it, “[t]he question whether the First Amendment requires a school to tolerate particular student speech — the question we addressed in *Tinker* — is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech.” *Id.*

⁶⁰ *Id.* at 262-65.

⁶¹ *Id.* at 261.

school officials had not violated the student's First Amendment rights in requiring the deletion of the articles.⁶²

Although lower courts have had difficulty interpreting *Hazelwood* consistently in the myriad of contexts it has been applied,⁶³ legal commentators have agreed that *Hazelwood* provides little to no guidance in dealing with cyberbullying speech.⁶⁴ For instance, according to an article published in 2009 by American University law professor Alexander Wohl, *Hazelwood's* focus on school-sponsored speech limits its application to off-campus Internet speech.⁶⁵ SPLC head Frank LoMonte and Professor Denning and Taylor have likewise agreed, arguing that extending the *Hazelwood* decision beyond its initial holding would leave the decision of whether to punish the student up to school authorities.⁶⁶

⁶² *Id.* (stating that school officials had "acted reasonably in this case" in requiring the deletion of the articles).

⁶³ Alan Brownstein, *The Nonforum as a First Amendment Category: Bringing Order Out of the Chaos of Free Speech Cases Involving School-Sponsored Activities*, 42 U.C. DAVIS L. REV. 717, 749 (2009) (explaining that "courts and judges struggle with and debate the applicability of the *Hazelwood* standard in myriad contexts and employ diverse criteria in doing so").

⁶⁴ See *infra* notes 65–66 and accompanying text.

⁶⁵ Alexander Wohl, *Oiling the Schoolhouse Gate: After Forty Years of Tinkering with Teachers' First Amendment Rights, Time for a New Beginning*, 58 AM. U.L. REV. 1285, 1298 (2008) (stating that the bottom line of the *Hazelwood* case was that educators may exercise censorial powers over the style and content of student speech if that control is "reasonably related to legitimate pedagogical concerns" (quoting *Fraser*, 478 U.S. at 273)). See also, Calvert, *supra* Chapter One, note 17, at 270 (stating that *Hazelwood* "has everything to do with in-school and school-sponsored expression generated as part of the curriculum and nothing to do with expression created off campus and independent of the school's sponsorship").

⁶⁶ LoMonte, *supra* Chapter One, note 17, at 1336–37. Denning and Taylor, *supra* Chapter One, note 17 at 852 (arguing that a broad reading offers "no clear criteria offered for distinguishing that expression which schools may regulate under this framework and that which fall outside it").

Morse v. Frederick⁶⁷

In its fourth student speech case in forty years, the Supreme Court ruled in *Morse v. Frederick* (2007) that a school was within its boundaries to censor student speech that promotes illegal drug use if the speech took place at a school-sponsored event.⁶⁸ In *Morse*, a banner reading “BONG HiTS 4 JESUS” became the center of controversy when a group of students attending the Olympic Torch Relay in Juneau, Alaska, hoisted the banner aloft, in hopes that it would be captured by TV cameras.⁶⁹ Deborah Morse, the principal of Juneau-Douglas High School, had permitted the students to attend the relay because of school’s close proximity to the parade route.⁷⁰ Upon seeing the banner, Principal Morse immediately crossed the street to where the group of students was standing and demanded the banner be taken down.⁷¹ Joseph Frederick was the only one to object, and he was later suspended for 10 days from school for his failure to comply with the principal’s demand.⁷² When the case made it to the Supreme Court, the Justices rejected Frederick’s argument that the principal had restricted off-campus speech or that it conveyed a political or religious message.⁷³ Instead, the Justices held that “a principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as

⁶⁷ 551 U.S. 393 (2007).

⁶⁸ *Id.* at 397.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 398.

⁷² 551 U.S. 398.

⁷³ *Id.* at 402.

promoting illegal drug use.”⁷⁴

At issue in *Morse* was “whether Frederick had a First Amendment right to wield his banner, and, if so, whether that right was so clearly established that the principal may be held liable for damages.”⁷⁵ Rejecting Frederick’s argument that the principal had restricted off-campus speech⁷⁶ or that it conveyed a political or religious message,⁷⁷ the Court held that “a principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use.”⁷⁸

Courts have applied *Morse* broadly to encompass student speech that simply undermines the schools’ educational missions or threatens students’ safety.⁷⁹ Yet, several legal commentators have argued that *Morse* dealt only with on-campus student speech construed as promoting illegal drug use – and was not meant to directly address off-campus cyberbullying incidents or *any* student speech that interferes with the school’s ‘educational mission.’”⁸⁰ Even Justice Alito’s concurring opinion in *Morse* is

⁷⁴ *Id.* at 403.

⁷⁵ *Id.* at 400.

⁷⁶ *Id.*

⁷⁷ *Id.* at 402.

⁷⁸ *Morse*, 551 U.S. at 403.

⁷⁹ Clay Calvert, *Misuse and Abuse of Morse v. Frederick by Lower Courts: Stretching the High Court’s Ruling Too Far to Censor Student Expression*, 32 SEATTLE U. L. REV. 1, 9 (2008) (noting that several court cases applying *Morse* have suggested that its holding provides the “legal tool that school administrators need to squelch all manner, modes and varieties of student speech that portend harm, be it physical or psychological”).

⁸⁰ *Id.* See also Markey, *supra* Chapter One, note 22, at 139; Erb, *supra* Chapter One, note 18, at 264 (acknowledging that *Morse*’s affirmation of *Tinker*’s substantial disruption test demonstrates that it was not meant to “directly address the issue of off-campus cyberbullying incidents that affect the campus community”).

noteworthy because he argues that the Court's decision "does not permit public school official to censor any student speech that interferes with the school's 'educational mission.'"⁸¹ Thus, this thesis argues, as Professor Calvert summed it up, that the *Morse* decision "must be confined narrowly to its unique facts lest schools become places where concerns about the harms and dangers of speech silence expression unnecessarily, rendering student speech sterile and dull, especially when it otherwise references violence of has the potential to offend others."⁸²

The quartet of Supreme Court cases analyzed in the previous sections establishes four distinct tests for determining when student speech that takes place on campus may be squelched: (1) speech that is lewd and inappropriate; (3) speech that may be censored for legitimate pedagogical concerns; and (4) speech advocating illegal drug use. Although the Supreme Court has very clearly defined the boundaries of on-campus speech, it has yet to rule definitively on off-campus speech,⁸³ leaving lower courts to determine their own boundaries, sometimes at the expense of student's free speech rights. Since most of the speech that would be labeled "cyberbullying" is produced off of school grounds by students on their home computers or cellphones, the lack of clarity in what constitutes off-campus speech has created ambiguity in how far a school's authority extends.⁸⁴

⁸¹ *Morse*, 551 U.S. at 423 (Alito, J., concurring) (noting that the educational mission standard "can be easily manipulated in dangerous ways" by public officials with authority over schools).

⁸² Calvert, *supra* note 80, at 8–9.

⁸³ Hudson, *supra* Chapter One, note 26.

⁸⁴ Denning, *supra* Chapter One, note 17, at 837.

The U.S. Supreme Court has ruled that off-campus speech is entitled to more First Amendment protection.⁸⁵ Nonetheless, most lower courts have analogized incidents to cases involving “underground newspapers,”⁸⁶ and applied the *Tinker* standard.⁸⁷ According to attorney Bryan Starrett, “schools that have punished off-campus student Internet speech have justified such punishment by attempting to link the off-campus speech to some type of on-campus event or disruption.”⁸⁸ This link, or sufficient nexus, has been established in cases where a student accessed a web site on school during class⁸⁹ and in cases where the web site content was aimed specifically at the school and carried by students onto campus.⁹⁰ In cases where a “sufficient nexus between the web site and the school campus”⁹¹ cannot be established, the court may then examine if the off-campus speech has substantially or materially disrupted the learning environment.⁹²

⁸⁵ *Porter v. Ascension Parish Sch. Bd.*, 393 F.3d 608, 613 (5th Cir. 2004).

⁸⁶ Erb, *supra* Chapter One, note 18, at 264.

⁸⁷ See, e.g., *Beussink v. Woodland R-IV Sch. Dist.*, 30 F. Supp. 2d 1175 (E.D. Mo. 1998) (using the *Tinker* standard for on-campus speech when students and teachers access the web site on school computers, but ruling that the web site did not cause a substantial disturbance).

⁸⁸ Bryan Starrett, *Tinker’s Facebook Profile: A New Test for Protecting Student Cyber Speech*, VA. J. L. & TECH 212, 223 (2009).

⁸⁹ Erb, *supra* Chapter One, note 18, at 264. See, e.g., J.S. 807 A.2d at 852, 865 (involving a case where students and administrators access a web site at school); *Beussink*, 30 F. Supp. 2d at 1177-80 (E.D. Mo. 1998) (involving

⁹⁰ *Id.* (stating that, “in some jurisdictions, when cyber-speech is aimed at a specific school or its personnel and is brought onto campus, the speech will be considered “on-campus”). See, e.g., J.S., 807 A.2d at 865.

⁹¹ J.S., 807 A.2d at 865. See Erb, *supra* Chapter One, note 18, at 264 n.51 (stating that “the determination of whether a sufficient nexus exists between off-campus speech and a school environment is based upon the point of receipt, not necessarily transmission”); see also *Layshock v. Hermitage Sch. Dist.*, 496 F. Supp. 2d 587, 598 (W.D. Pa. 2007) (“It is clear that the test for school authority is not geographical. The reach of school administrators is not strictly limited to the school’s physical property”).

⁹² *Id.* at 266. See *Beussink*, 30 F. Supp. 2d at 1175.

Whether a substantial disruption has occurred has also been a point of contention. According to attorney Todd Erb, “courts have reasoned that there must be more than some mild distraction or curiosity created by the speech,”⁹³ or a sort of “heightened” *Tinker* test,⁹⁴ under which the school would be required to meet a higher burden of proof before the student could be punished for his or her online speech.⁹⁵ Others have focused on the intent of the speech,⁹⁶ the type of technology used,⁹⁷ or a combination of methods⁹⁸ to determine whether the speech should be punished. Next, Part II addresses two federal appellate court opinions on student speech, *Saxe v. State College Area School District*⁹⁹ and *Sypniewski v. Warren Hills Regional School District*.¹⁰⁰

Part II: A Double Act of Discriminatory School District Policies

Twice in two years, the U.S. Court of Appeals for the Third Circuit was asked to weigh in on the constitutionality of student speech policies based on controversial student speech topics such as religion and race. These cases—*Saxe v. State College*

⁹³ *Id.*

⁹⁴ See Denning, *supra* Chapter One, note 17; See also Sandi S. Li, *The Need for a New, Uniform Standard: The Continued Threat to Internet Related Student Speech*, 26 LOY. L.A. ENT. L. REV. 65 (2005).

⁹⁵ *Id.*

⁹⁶ See Markey, *supra* Chapter One, note 22; Roberts, *supra* Chapter One, note 17.

⁹⁷ Kenneth R. Pike, *Locating the Mislaid Gate: Revitalizing Tinker by Repairing Judicial Overgeneralizations of Technologically Enabled Student Speech*, 2008 BYU L. REV. 971, 1002 (2008).

⁹⁸ See Starrett, *supra* note 156, at 231–32 (proposing a two-pronged test for analyzing student speech on the Internet, based on objective intent and foreseeability. See also Alexander G. Tuneski, Note, *Online, Not on Grounds: Protecting Student Internet Speech*, 89 VA. L. REV. 139, 147 (2003) (advocating a geographical and intent-based test).

⁹⁹ 240 F.3d 200 (3d Cir. 2000).

¹⁰⁰ 307 F.3d 243 (3d Cir. 2002).

Area School District (2000) and *Sypniewski v. Warren Hills Regional School District* (2002)—also illustrate how difficult it is for school boards to write and enforce policies that regulate student speech

Saxe v. State College Area School District¹⁰¹

In *Saxe*, the United States Court of Appeals for the Third Circuit ruled that a Pennsylvania public school district’s anti-harassment policy was overbroad because it appeared to cover substantially more speech than could be prohibited under the *Tinker* substantial disruption test.¹⁰² The case arose out of the adoption of the State College Area School District (SCACD) anti-harassment policy to “provid[e] all students with a safe, secure, and nurturing school environment.”¹⁰³ The policy was meant to prohibit behavior with “the purpose or effect of substantially interfering with a student’s educational performance or creating an intimidating, hostile or offensive environment.”¹⁰⁴ It provided several examples of harassment, including: “any unwelcome verbal, written or physical conduct which offends, denigrates or belittles an individual”¹⁰⁵ and included harassment based on any personal characteristic including “race, religion, color, national origin, gender, sexual orientation, disability, or other personal characteristics.”¹⁰⁶

¹⁰¹ 240 F.3d 200 (3d Cir. 2000).

¹⁰² *Id.* at 216.

¹⁰³ *Id.* at 202.

¹⁰⁴ *Id.* at 202-203.

¹⁰⁵ *Id.* at 215.

¹⁰⁶ *Id.*

After the policy was adopted, the guardian of two students, David Warren Saxe, filed suit against the school district, alleging that the policy prohibited protected speech.¹⁰⁷ The students argued that they were “likely to be punished under the Policy for speaking out about their religious beliefs,”¹⁰⁸ namely that homosexuality is a sin.¹⁰⁹

At issue was whether the anti-harassment policy’s language went beyond its boundaries to restrict speech that was protected by the First Amendment.¹¹⁰ Although Judge (now Supreme Court Justice) Samuel Alito acknowledged that “non-expressive, physically harassing conduct is entirely outside the ambit of the free speech clause,”¹¹¹ he expressed concern that the policy did not “require any threshold showing of severity or pervasiveness.”¹¹² As Judge Alito pointed out, “the mere fact that someone might take offense at the content of speech is not sufficient justification for prohibiting it.”¹¹³ Because the policy could essentially be applied to any speech that a person might find offensive,¹¹⁴ including “much ‘core’ political and religious speech,”¹¹⁵ the appellate court ruled in favor of Saxe and held that the policy was overbroad in violation of First

¹⁰⁷ *Id.* The plaintiffs, therefore, “sought to have the Policy declared unconstitutionally vague and overbroad and its operation permanently enjoined”). *Id.* at 204–5.

¹⁰⁸ *Id.* at 203.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ There is of course no question that non-expressive, physically harassing conduct is entirely outside the ambit of the free speech clause. *Id.* at 206.

¹¹² *Id.*

¹¹³ *Id.* at 215.

¹¹⁴ *Saxe*, 240 F.3d at 223.

¹¹⁵ *Id.* at 217.

Amendment guarantees of free speech.¹¹⁶ Thus, the court ruled that although “a public school may adopt regulations more protective than existing law,”¹¹⁷ a policy is likely to be struck down for overbreadth if its “very existence will inhibit free expression.”¹¹⁸

Sypniewski v. Warren Hills Regional Board of Education¹¹⁹

Is the word “redneck” racially divisive? Does wearing a shirt emblazoned with that word create ill-will or hatred? According to the federal appellate court ruling in *Sypniewski v. Warren Hills Board of Education*,¹²⁰ it depends on history of the school district. In *Sypniewski*, the Third Circuit was once again charged with examining a school’s anti-harassment policy. Warren Hills Regional High School adopted a policy to address a pattern of racial problems that had existed at the school.¹²¹ When Thomas Sypniewski and his two brothers wore a Jeff Foxworthy T-shirt featuring humorous phrases about being a redneck, they were suspended from school for wearing clothes the school felt were offensive, disruptive and violated the school dress code.¹²²

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 210.

¹¹⁸ *Id.* at 214. The court reasoned that the First Amendment protects a “wide variety of speech that listeners may consider deeply offensive.” *Id.* at 206.

¹¹⁹ 307 F.3d 243 (3d. Cir. 2002).

¹²⁰ *Id.*

¹²¹ *Id.* at 246–48. The policy included that :

District employees and student(s) shall not racially harass or intimidate other student(s) or employee(s) by name calling, using racial or derogatory slurs, wearing or possession of items depicting or implying racial hatred or prejudice. District employees and students shall not at school, on school property or at school activities wear or have in their possession any written material, either printed or in their own handwriting, that is racially divisive or creates ill will or hatred.

Id.

¹²² *Id.* at 250-51, 255. Prior to the enactment of the policy, the school board found that “there had been significant disruption in the school and that the minority population was at significant risk for not only verbal and intimidating harassment but also, increasingly, physical violence.” *Id.* at 249.

Plaintiffs then filed suit against the school district, claiming that both the racial harassment and dress code policies were unconstitutional.¹²³ Plaintiffs appealed to the Third Circuit solely on the racial harassment policy issue after losing at the district court level.

In writing for the circuit court, Judge Anthony Joseph Scirica observed that the policy “differs from *Saxe* not only in language, but also in the circumstances it addresses.”¹²⁴ Because of the history of racial tension at the school, the court found that the school district had “presented substantial evidence of disruption that constitutes a solid foundation for fear of future disruption.”¹²⁵ Although the *Sypniewski* court found the Warren Hills policy to be sufficiently more narrow than the SCACD policy, it still found one provision to be overbroad—the phrase prohibiting speech that creates “ill-will.”¹²⁶ In contrast to *Saxe*, rather than strike down the entire policy, the court determined that it could still be implemented with this one phrase removed.¹²⁷ Thus, in fashioning a rule, the appellate court held that a “school disciplinary policy will be struck down as overbroad only after consideration of the special needs of school discipline has been brought to bear together with the law’s general hesitation to apply [the overbreadth

¹²³ *Id.* at 252.

¹²⁴ *Id.* at 262.

¹²⁵ *Id.* at 274.

¹²⁶ *Id.* at 265–66. The Third Circuit ruled that speech creating “ill will” could be broadly interpreted as going beyond a link to a disruption required under *Tinker*, and ordered the school to eliminate the phrase. *Id.*

¹²⁷ *Id.*

doctrine].”¹²⁸ Although the anti-harassment policy was upheld in *Sypniewski*, the school authorities’ judgment in enforcing the policy in this particular instance was overruled.¹²⁹

The Third Circuit in both *Saxe* and *Sypniewski* ruled, at least in part, against the school districts. It is not an indication, however, that all speech that might offend is protected in the public school setting.¹³⁰ Indeed, according to attorney David Hudson, if *Sypniewski* teaches us anything, it’s that “school officials – at least within the Third Circuit – must carefully document incidents of racial tension at their schools before adopted a racial harassment policy.”¹³¹ Without those specific racial problems, the *Saxe* court’s decision suggests that the policy would likely be unconstitutional.¹³²

Although most cases involving challenges to religious and racial speech restrictions have involved university or college campus speech codes, the Supreme

¹²⁸ *Id.* at 260.

¹²⁹ Martha McCarthy, *Anti-Harassment Provisions Revisited: No Bright-Line Rule*, 2008 BYU EDUC. & L. J. 225, 235 (2008).

¹³⁰ Calvert, *supra* Chapter Two, note 35, at 711. “This decision is in line with other court precedents protecting the ability of schools to regulate offensive clothing without infringing on students’ First Amendment rights.” *Id.* at 712. See *Boroff v. Van Wert Bd. of Educ.*, 220 F.3d 465, 460 (6th Cir. 2000) (ruling that “where Boroff’s T-shirts contains symbols and words that promote values that are so patently contrary to the school’s education mission, the School has the authority, under the circumstances of this case, to prohibit those T-shirts”).

¹³¹ David L. Hudson, *Court Strikes One Provisions of School Racial Harassment Policy*, The First Amendment and the Media, Media Institute, <http://www.mediainstitute.org/ONLINE/FAM2003/6-g.html> (last visited Apr. 17, 2010). See also Emily Gold Waldman, *A Post-Morse Framework for Students’ Potentially Hurtful Speech (Religious and Otherwise)*, 37 J.L. & EDUC. 463, 475 (2008). According to Walkman:

Had the policy been narrowed to prohibit only ‘verbal or physical conduct based on one’s actual or perceived personal characteristics and which has the effect of substantially interfering with a student’s educational performance or creating a school environment that is severely or pervasively intimidating, hostile, or offensive’ the *Saxe* court might well have upheld it.

Id.

¹³² *Sypniewski*, 307 F.3d at 265. “This reliance on the background of turmoil at a particularly place and a particular time means that the policy would likely be unconstitutional in another school district, or even in Warren Hills at a different time.”

Court and lower courts have generally held that college students possess greater free speech rights than do elementary and high school students.¹³³ Yet, the Court has also held in *Tinker* that “students in school as well as out of school are ‘persons’ under our Constitution... They are possessed of fundamental rights which the State must respect.”¹³⁴ Thus, courts dealing with these issues have faced considerable difficulty in reconciling their opinions.¹³⁵ According to Professor McCarthy, “these cases are particularly sensitive because they highlight the tension between the protection of student’s First Amendment rights to freely express their views, including religious views, and the school authorities’ duty to main a respectful and civil school environment.”¹³⁶ As two scholars noted, “although school officials may craft such regulations with the laudable intent of creating and maintaining a safe educational environment, they are often replete with amorphous definitions and vague proscriptions that span over protected categories of speech and thus provoke a constitutional showdown.”¹³⁷

Schools that prohibit students from distributing “proselytizing materials” during school hours, or decline to authorize students’ religious clubs generally cite their concern that students will perceive some level of school endorsement of the religious speech.¹³⁸ Schools prohibiting harassing speech have been more concerned about

¹³³ See, e.g., *Healy v. James*, 408 U.S. 169 (1972) (affirming public college students’ First Amendment rights of free speech and association).

¹³⁴ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

¹³⁵ McCarthy, *supra* Chapter Two, note 201, at 225.

¹³⁶ *Id.*

¹³⁷ Calvert, *supra* Chapter Two, note 35, at 708.

¹³⁸ Waldman, *supra* note 131, at 463.

complaints by other students who feel harassed, especially since 1999 when the Court ruled that a student could sue school for showing “deliberate indifference to known acts”¹³⁹ of severe and pervasive peer harassment. Yet, according to Ivan Bodensteiner, a professor at Valparaiso University School of Law, “while it does not prevent school officials from addressing peer harassment of students, the First Amendment must be considered carefully when preparing a regulation designed to address harassment.”¹⁴⁰

The discussion of the facial challenges of void for vagueness and overbreadth in *Saxe* and *Sypniewski* bring to the forefront another body of law that is important to mention in drafting and analyzing school district policy, the void for vagueness and overbreadth doctrines, that have specific and potential legal implications for cyberbullying provisions.

Part III: A Duo of Legal Doctrines

The practice of using facial challenges, such as void for vagueness and overbreadth, has long been used in American law “to allow litigants to challenge a law that infringes on a people’s free-expression rights a person’s speech is unconstitutionally silenced.”¹⁴¹ Although these doctrines do not find their basis in student speech rights cases,¹⁴² they can often be applied to instances such as when

¹³⁹ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 632 (1999).

¹⁴⁰ Ivan E. Bodensteiner, *Peer Harassment – Interference With an Equal Education Opportunity in Elementary and Secondary Schools*, 79 NEB. L. REV. 1, 12 (2000).

¹⁴¹ Rachel Seeman Collins, *How a Facial Challenge Could Play Out in Animal-Cruelty Case*, First Amendment Center, July 28, 2009, <http://www.firstamendmentcenter.org/analysis.aspx?id21886> (last visited Mar. 19, 2010).

¹⁴² While free speech claims are rooted in the First Amendment, claims arising under the void-for-vagueness doctrine are rooted “in the due process clauses of the Fifth and Fourteenth Amendments.”

schools develop policies that contain language that is indistinct or imprecise¹⁴³ or that potentially reaches too much protected speech.¹⁴⁴ Thus, this thesis turns now to a discussion of both the void for vagueness and overbreadth doctrines and how they affect school district policies regulating cyberbullying speech.

Void for Vagueness Doctrine

Perhaps the most famous pronouncement of the void for vagueness doctrine was put forth by Justice Clarence A. Southerland when he wrote, in *Connally v. General Construction Company*, that a statute or regulation is void for vagueness when “men of common intelligence must necessarily guess at its meaning and differ as to its application.”¹⁴⁵ This means that the law or regulation must be tailored in such a way that a reasonable person could understand its meaning.¹⁴⁶ The U.S. Supreme Court has added to the precedent in two other ways: For a law not to be vague in a way that it is constitutionally infirm, it must “give adequate warning of what activities it proscribes” and “set out ‘explicit standards’ for those who must apply it.”¹⁴⁷ Additionally, it must prevent “arbitrary and discriminatory enforcement.”¹⁴⁸

¹⁴³ See *supra* note 145–152. See also, *Vague*, BLACK’S LAW DICTIONARY (8th ed. 2004) (defining the term “vague”)

¹⁴⁴ See *infra* notes 156–59 and accompanying text.

¹⁴⁵ 269 U.S. 385, 391 (1926). This pronouncement was also used by the court to *Broadrick v. Oklahoma* to explain the Court’s opinion. See *Broadrick v. Oklahoma*, 413 U.S. 601, 607 (1973). The Court held that vague laws “violated the first essential of due process of law.”

¹⁴⁶ ERWIN CHERMERINSKY, CONSTITUTIONAL LAW PRINCIPLES AND POLITICS 763 (1997) (stating that “a law is unconstitutionally vague if a reasonable person cannot tell what speech is prohibited and what is permitted”).

¹⁴⁷ *Broadrick*, 413 U.S. 608 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

¹⁴⁸ *Smith v. Goguen*, 415 U.S. 566, 573 (1974).

While the void-for-vagueness doctrine “is completely distinguishable from and not dependent upon any free speech considerations,”¹⁴⁹ a website hosted by the University of Kentucky School of Law maintains that “the Court has indicated that a higher degree of clarity is demanded when the law in question threatens fundamental First Amendment Rights.”¹⁵⁰ Indeed, the Supreme Court has held that “a more stringent vagueness test”¹⁵¹ should apply to laws that interfere with the right of free speech. Thus, the law or regulation should be narrowly tailored in such a way that it regulates no more speech than is necessary to accomplish its objective.¹⁵²

Although courts have determined that non-threatening, off-campus cyberspeech merits First Amendment protection, the provisions that govern that expression within the confines of an educational institution might ensnare more speech than intended when the policy language is vague, or undefined. In 2001, the Supreme Court of Arkansas declared unconstitutional a statute that made it “a misdemeanor for any person to abuse or insult a public school teacher who is performing normal and regular or assignment school responsibilities.”¹⁵³ In 1997, a school district’s policy was ruled void for vagueness for “fail[ing] to provide adequate notice to Plaintiffs regarding prohibited conduct”¹⁵⁴ for its ban on gang-related apparel. Although the school official’s intentions

¹⁴⁹ Rios v. Lane, 812 F.2d 1032, 1039 (7th Cir. 1987).

¹⁵⁰ Darren Linder, Doctrines of Substantial Overbreadth and Vagueness, Exploring Constitutional Conflicts, www.law.umkc.edu/faculty/projects/ftrials/conlaw/overbreadth.html (last visited Apr. 17, 2010).

¹⁵¹ Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 499 (1982).

¹⁵² See, e.g., Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105 (1991) (explaining that even where there is a compelling governmental interest, a regulation will be struck down if it not narrowly tailored).

¹⁵³ Shoemaker v. State, 38 S.W.3d 350, 351 (Ark. 2001).

¹⁵⁴ *Chalifoux v. New Caney Independent Sch. Dist.* 976 F. Supp. 659, 671 (S.D. Tex. 1997).

for adopting such a policy might have been to protect the students, they demonstrate the likelihood for a school district to render nugatory¹⁵⁵ a school policy that is void for vagueness.

Overbreadth Doctrine

A facial challenge closely related to void of vagueness is the doctrine of overbreadth. In fact, the void-for-vagueness and overbreadth doctrines work hand-in-hand in such a way that if a law is challenged for its vagueness, it also usually is challenged for being overbroad. If a law is struck down for vagueness, it is usually because the court has recognized the language as being too broad and potentially subject to abuse through selective enforcement, which can lead to content or viewpoint discrimination. But what makes a statute or regulation overly broad?

The doctrine of overbreadth was first explicitly recognized in *Broadrick v. Oklahoma*¹⁵⁶ in 1973 when the U.S. Supreme Court wrote that to invalidate a law, “the overbreadth of the statute must not only be real but substantial as well, judged in relation to the statute’s plainly legitimate sweep.”¹⁵⁷ The Court has also held that a statute is overbroad “if it sweeps within the ambit a substantial amount of protected speech along with that which it may legitimately regulate.”¹⁵⁸ As summed up by Erwin Chemerinsky, dean of University of California Irvine School of Law, “a law is unconstitutionally overbroad if it regulates substantially more speech than the

¹⁵⁵ *Nugatory*, MERRIAM-WEBSTER ONLINE DICTIONARY (2010) (defining “nugatory” as “having no force” or “of little to no consequence”).

¹⁵⁶ 413 U.S. 601, 607 (1973).

¹⁵⁷ *Id.* at 615.

¹⁵⁸ *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 864 (E.D. Mich. 1989).

Constitution allows to be regulated and a person to whom the law constitutionally can be applied can argue that it would be unconstitutional as applied to others.”¹⁵⁹

The doctrine of overbreadth, as applied to student speech, can be analyzed through the recent federal appellate court decision of *Dejohn v. Temple University*.¹⁶⁰ In 2006, the U.S. Court of Appeals for the Third Circuit in *Dejohn* struck down the university’s anti- harassment policy.¹⁶¹ Borrowing language from the Third Circuit’s earlier court opinion in *Saxe*, the court reasoned that the policy’s use of “hostile,” “offensive” and “gender-motivated” barred an overly broad range of activities that “could conceivably be applied to cover any speech” of a gender-motivated nature that offends.¹⁶² Thus, in unanimous decision, a three-judge panel declared the policy overbroad because it “cover[ed] more speech than could be prohibited under *Tinker*’s substantial disruption test as well as speech that d[id] not rise to the level of “fighting words.”¹⁶³

Legal commentators, including attorney Lee Ann Rabe, have recognized that school speech codes are routinely drafted broadly in order to eliminate as much potentially offensive speech from the campus as possible.¹⁶⁴ Azhar Majeed, legal fellow for the Foundation of Individual Rights in Education, argues that because speech codes

¹⁵⁹ CHEMERINSKY, *supra* note 146, at 764-65.

¹⁶⁰ 537 F.3d 301 (3d Cir. 2008).

¹⁶¹ *Id.* at 320.

¹⁶² *Id.* (quoting *Saxe*, 240 F.3d at 217)

¹⁶³ *Id.*

¹⁶⁴ Lee Ann Rabe, *Sticks and Stones: The First Amendment and Campus Speech Codes*, 37 J. MARSHALL L. REV. 205, 225 (2003).

often are overbroad or vague, they are likely to have a detrimental effect on student speech, whether by creating a chilling effect, suppressing disfavored speech or stifling speech so pervasively that it “threaten[s] the very vitality and functioning”¹⁶⁵ of the school.¹⁶⁶ According to Majeer, speech codes also are likely to provide students with inadequate notice “of the categories of speech that are prohibited the forms that remain permissible,”¹⁶⁷ potentially causing speakers to “refrain from speaking out altogether,”¹⁶⁸ and “detracting from the [school’s] function as a true marketplace of ideas.”¹⁶⁹

Yet, courts have ruled, specific to the nature of school district policies, that these “rules need not be as detailed as criminal code which imposes criminal sanctions.”¹⁷⁰ As demonstrated by the *Sypniewski* court’s decision, although “school disciplinary rules will be struck down on this basis only when the vagueness is especially problematic,”¹⁷¹ it also observed that vagueness does not always lead to a ruling of invalidity.¹⁷² It is perhaps for these reasons that the *Sypniewski* court pointed out that it is “inappropriate

¹⁶⁵ Ahzar Majeed, *Defying the Constitution: The Rise, Persistence and Prevalence of Campus Speech Codes*, 7 GEO. L. J. & PUB. POL’Y, 481, 499 (2009).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 500.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *See, e.g., Sypniewski*, 307 F.3d at 266 (quoting *Fraser*, 478 U.S. at 686).

¹⁷¹ *Sypniewski*, 307 F.3d at 279. The Court found the phrase “ill will” to be subject to interpretation, and thus, problematic under the void for vagueness doctrine. The court did acknowledge, however, that minus the racial tension, the entire policy could have been construed as unconstitutional.

¹⁷² To the extent that the school enjoined further enforcement of the policy’s “ill will” provision or the T-shirt, the appellate court did not find the school’s policy overbroad. *Id.*

to expect the same level of precision in drafting school disciplinary policies as is expected of legislative bodies crafting criminal restrictions.”¹⁷³

Whereas the void for vagueness and overbreadth doctrine serve to safeguard speech that may not be protected if constitutionally challenged on an as-applied basis, there are several types of speech that the Supreme Court and lower courts have held are never protected by the First Amendment. These types of speech, as discussed in the next two sections, are fighting words and true threats.

Part IV: Legal Issues Pertaining to Non Protected Speech

The next two sections discuss two legal doctrines that are never protected by the First Amendment. Where cyberbullying crosses the threshold into being a “true threat” of incitement by fighting words, a school district would be within its boundaries to punish the student for his or her speech.

True Threats Doctrine

The Supreme Court has held that “true threats,” or “statements where as speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals,”¹⁷⁴ are not protected by the First Amendment.¹⁷⁵ This precedent was first put forth in *Virginia v. Black* in 2003, a case involving two separate convictions of three individuals for violation of a Virginia

¹⁷³ *Id.* at 263. Compare, *Fraser*, 478 U.S. at 686 (“Given the school’s need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions”).

¹⁷⁴ *Virginia v. Black*, 538 U.S. 343 (2002).

¹⁷⁵ *Id.* Writing for the Court, Justice Sandra Day O’Connor found the statute unconstitutional but held that “a state, consistent with the First Amendment, may ban cross burning carried out with the intent to intimidate.” *Id.* at 347.

statute against cross burning.¹⁷⁶ But what exactly does a “true threat” entail? Although the high court has made clear in 1969 in *Watts v. United States*¹⁷⁷ that true threats are punishable, it has never explicitly defined what constitutes a true threat.¹⁷⁸ According to Professor Ashley Packard, this may be due to the fact that “the meaning of threats is dependent upon the context in which the speech takes place.”¹⁷⁹

Since *Watts*, lower courts have defined a true threat as a statement “where a speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particularly individual or group.”¹⁸⁰ They have developed different tests for analyzing the true threats doctrine¹⁸¹ but often recognize three essential justifications for proscribing threatening speech – “preventing fear, preventing the disruption that follows from that fear, and diminishing the likelihood that the threatened violence will occur.”¹⁸² Yet, none of these has been used as part of the U.S. Supreme Court’s reasoning in deciding a case based on the true threats doctrine.¹⁸³ Although the

¹⁷⁶ *Id.* at 347–48.

¹⁷⁷ 394 U.S. 705, 707 (1969) (observing that “what is a threat must be distinguished from what is constitutionally protected speech”).

¹⁷⁸ Ashley Packard, *Threats or theater: Does Planned Parenthood v. American Coalition of Life Activist Signify that Tests for “True Threats” Need to Change?*, 5 COMM. L. & POL’Y 235, 237 (2000).

¹⁷⁹ *Id.*

¹⁸⁰ See, e.g., *LaTour v. Riverside Beaver Sch. Dist.*, No. 05-1076, 2005 WL 2106562 (W.D. Pa. Aug. 24, 2005) (enjoining school from punishing a student for rap song lyrics).

¹⁸¹ Hudson, *supra* Chapter One, note 26.

¹⁸² Andrew P. Stanner, *Toward an Improved True Threat Doctrine for Student Speakers*, 81 N.Y.U. L. REV. 385, 388 (2006) (citing to *Black*, 538 U.S. at 359–60 (quoting *R.A.V.*, 505 U.S. at 388)).

¹⁸³ Indeed, in both of these cases, the phrases appear in dicta or in a parenthetical aside in dicta, where the Court’s rulings were “decided on grounds wholly unrelated to threatening speech.” Stanner, *supra* note 279, at 393 n.50. See, e.g., *Black*, 538 U.S. 343, 359–60 (2003); *R.A.V.*, 505 U.S. 377, 388 (1992).

¹⁸³ *Id.* at 393 n.50.

quartet of Supreme Court student-speech cases did not address speech that constitutes a “true threat,” the doctrine that began under *Watts v. United States* provides the precedent most often applied to squelch such threats on campus.¹⁸⁴

Events such as the shooting at Columbine seemed to give “school administrators all the reasons – legitimate or illegitimate – they needed to trounce the First Amendments of public school students in the name of preventing violence.”¹⁸⁵ Officials have found plenty of the support they need in the Supreme Court precedent of *Hazelwood* and *Tinker* to implement “zero-tolerance’ policies, that “allow the schools to quickly suspend or expel students found to have violated the law or school policies.”¹⁸⁶ Where cyberbullying crosses the threshold of being a true threat, such speech may be beyond of First Amendment protection.¹⁸⁷ But it could be argued that all not cyberbullying reaches the threshold of being a true threat. According to Professor Norman T. Deutsch, of Albany Law School, although the “Court has recognized that government has a strong interest in protecting its citizens from threats...it has also recognized that the definition of constitutionally proscribable threats must be made in light of the speech values at stake.”¹⁸⁸ Turbert seconded this notion, stating that:

¹⁸⁴ Kevin Turbert, *Faceless Bullies: Legislative and Judicial Responses to Cyberbullying*, 33 SETON HALL LEGIS. J. 651, 670 (2009) (stating that “the doctrine also acts as a separate standard from the tetralogy’s standards and offers school districts another avenue to constitutionally suppress and punish potentially dangerous student expression”).

¹⁸⁵ Richards, *supra* Chapter One, note 17, at 1091.

¹⁸⁶ Hudson, Jr., *supra* note 103, at 181 (stating that the “movement toward increasing censorship by school officials has only escalated after a series of school shooting, culminating in the tragedy at Columbine High School”).

¹⁸⁷ *Id.*

¹⁸⁸ Norman T. Deutsch, *Professor Nimmer Meets Professor Schauer (and Others): An Analysis of “Definitional Balancing” as a Methodology for Determining the “Visible Boundaries of the First*

While many instances of cyberbullying involve extreme derogatory comments directed toward a victimized student, these remarks will usually not be considered true threats. True threats are not protected under the Constitution, so the recognition of one will allow schools and law enforcement to punish pure off-campus speech without fear of violating a student's First Amendment rights.¹⁸⁹

Thus, while it is tempting to restrict speech that poses any level of threat to the school district,¹⁹⁰ school administrators must consider the origin of the speech as required by the Supreme Court in *Porter v. Ascension Parish School Board*.¹⁹¹

In summation, lower courts dealing with student speech are held to certain standards put forth by the Supreme Court and federal appellate court rulings discussed above. How these precedents should be applied to the issue of cyberbullying is, yet, unclear because the Supreme court has never addressed a cyberspeech case. to address a Where the speech occurs off-campus is can be argued that the quartet of Supreme Court applies only to on-campus speech, except perhaps when such speech causes a substantial disruption to the school environment, as defined by *Tinker*. These policies must neither include language that is imprecise nor attempts to regulate too much protected speech. Finally, schools must not be too quick to regulate threatening speech that occurs off-campus unless such speech reaches the threshold of being a true threat or fighting words. Beyond "true threats," there is one other category of

Amendment," 39 AKRON L. REV. 483, 507 (2006) (quoting *R.A.V.*, 505 U.S. at 388 and *Watts v. United States*, 394 U.S. 705, 707 (1969)).

¹⁸⁹ Turbert, *supra* note 184, at 670–71.

¹⁹⁰ Calvert, *supra* note 32, at 284.

¹⁹¹ *Porter v. Ascension Parish Sch. Bd.*, 393 F.3d 608, 613 (5th Cir. 2004) (requiring greater First Amendment protection of off-campus speech).

speech that could apply to cyberbullying – fighting words. Thus, this thesis moves onto a discussion of the fighting words doctrine and its application to student speech.

Fighting Words Doctrine

The Supreme Court has developed several tests in determining what speech is protected and not protected by the First Amendment. One such test is the so-called fighting words doctrine that was first announced in *Chaplinsky v. New Hampshire*.¹⁹² Walter Chaplinsky, a Jehovah's Witness, was convicted of violating a New Hampshire statute prohibiting the use of offensive, insulting language toward persons in a public place for calling city marshal a "God-damned racketeer" and "a damned fascist."¹⁹³ Writing for a unanimous Court, Justice Frank Murphy famously wrote that "there are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include... insulting or 'fighting words' – those that by their very utterance inflict injury or tend to incite an immediate breach of the peace."¹⁹⁴ According to the Court, fighting words "are of such slight social value... that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."¹⁹⁵

Despite the ruling in *Chaplinsky* and its continued reaffirmation of the fighting-words doctrine,¹⁹⁶ several cases have served to narrow the fighting words doctrine to

¹⁹² 315 U.S. 568 (1942).

¹⁹³ *Id.* at 569.

¹⁹⁴ *Id.* at 572.

¹⁹⁵ *Id.*

¹⁹⁶ What is the Fighting Words Doctrine? FreedomForum.org, <http://www.freedomforum.org/templates/document.asp?documentID=13718> (last visited Mar. 19, 2010) [hereinafter Fighting Words Doctrine]

face-to-face confrontations¹⁹⁷ and no Supreme Court case has upheld a fighting words conviction since *Chaplinsky*.¹⁹⁸ On the other hand, several cases, including *Gooding v. Mitchell*¹⁹⁹ and *R.A.V. v. City of St. Paul*²⁰⁰ have demonstrated that statutes can be overturned without reaching the issue of whether the language constituted fighting words.²⁰¹ These cases employ the void for vagueness and overbreadth doctrine to avoid reaching the issue of whether the language constitutes fighting words.²⁰²

Gooding involved a conviction of a man who refused to comply with police orders to cease blocking a building entrance, for violation of a statute prohibiting the use of “opprobrious words or abusive language.”²⁰³ Declining to review the circumstances surrounding the challenged speech, the Court overturned the conviction, holding that the statute restricted speech that was beyond fighting words.²⁰⁴ Twenty years later the

¹⁹⁷ *Cohen v. California*, 403 U.S. 15, 20–21 (1971) (holding that to determine if an utterance should be classified as fighting words all the circumstances must be examined, including the personal nature of the insult, the abusive nature of the insult, and the likelihood of immediate retaliation and that a state could not restrict speech merely because it believed violence would occur); *Gooding v. Wilson*, 405 U.S. 518 (1972) (reading *Chaplinsky* narrowly as only prohibiting words which “have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed”); *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (overturning Robert Viktoria’s conviction and striking down a Minnesota statute prohibiting “bias-motivated crimes” because it was facially unconstitutional); *Wisconsin v. Mitchell*, 508 U.S. 476 (1993) (holding that enhanced sentencing for bias-motivated crimes does not violate a defendant’s First Amendment rights). See *Gooding*, 393 U.S. 518, 525, 528 (1972) (invalidating a conviction of an individual for cursing at a police officer, finding that the ordinance in question was unconstitutionally overbroad).

¹⁹⁸ Fighting Words Doctrine, *supra* note 196.

¹⁹⁹ 393 U.S. 518 (1972).

²⁰⁰ 505 U.S. 377 (1992).

²⁰¹ See *supra* notes 203–217 and accompanying text.

²⁰² Adam Milani, *Harassing Speech in the Public Schools: The Validity of Schools’ Regulation of Fighting Words and the Consequences If They Do Not*, 28 AKRON L. REV. 187, 196 (1995).

²⁰³ 405 U.S. at 525, 528.

²⁰⁴ *Id.*

Court heard another “fighting words” case, in *R.A.V. v. City of St. Paul*,²⁰⁵ where it struck down a Minnesota statute prohibiting bias-motivated “disorderly conduct”²⁰⁶ and overturned a teenager’s conviction.²⁰⁷ The Justices accepted the Minnesota court’s conclusion that the ordinance was facially unconstitutional but fervently disagreed as to their reasoning.²⁰⁸ According to Justice Scalia, who wrote the majority opinion, the problem with the ordinance was that it prohibited expression based solely on its content.²⁰⁹

Perhaps because of the Court’s strong split in *R.A.V.*, the Court heard another case involving a conviction of an individual for hate speech soon after.²¹⁰ The case involved a Wisconsin statute that enhanced sentences for persons who “intentionally selects a person against whom the crime... is committed ...because of their race, religion, color, disability, sexual orientation, national origin or ancestry.”²¹¹ Although the

²⁰⁵ 508 U.S. 476 (1993).

²⁰⁶ *R.A.V.*, 505 U.S. at 380. The ordinance prohibited conduct such as “plac[ing] on public or private property a symbol, object, appellation, characterization or graffiti” with reasonable grounds to know that it would “arouse anger, alarm, or resentment in others on the basis of race, color, creed, religious or gender.” *Id.*

²⁰⁷ *Id.*

²⁰⁸ Justice Byron White also agreed that the statute was unconstitutional, but contended that while the ordinance reached unprotected conduct, it also punished expressive activity that “causes only hurt feelings, offense, or resentment,” and thus “fatally overbroad and invalid.” *Id.* at 414 (White, J., concurring). Justice John Paul Stevens felt the ordinance was overbroad, but disagreed with Justice White that all fighting words “are wholly unprotected by the First Amendment.” *Id.* at 428 (Stevens, J., concurring). He provided a list of factors that should be considered in determining the validity of a content-based regulation, that included “content and context,” “character” and “the scope of the restrictions.” *Id.* at 429 (Stevens, J., concurring). Finally, Justice Harry Blackman concurred but hesitated as to the majority’s motive, stating that it was “distracted from the proper mission.” *Id.* at 415–16 (Blackman, J., concurring).

²⁰⁹ *Id.* at 381.

²¹⁰ Milani, *supra* note 202, at 194.

²¹¹ *Mitchell*, 508 U.S. at 480.

Wisconsin Supreme Court had invalidated the statute as it applied to *Mitchell*,²¹² the U.S. Supreme Court reversed the decision unanimously, holding that the penalty-enhancement statute passed constitutional muster because it was aimed at enhancing sentences for conduct, such as assault, which is unprotected by the First Amendment.²¹³ Whereas in *R.A.V.* was explicitly directed at expressions, the court ruled that the statute in *Mitchell* was aimed only at non-protected speech.²¹⁴

According to attorney Adam Milani, one can conclude from these cases that “states can proscribe both ‘fighting words’ and bigoted conduct so long as the regulation of speech is content neutral”²¹⁵ and that “any attempt to bar only a certain type of speech will be struck down as overbroad.”²¹⁶ As applied to the issues raised in this thesis, grade schools may regulate student speech as long as the speech codes adopted are directed at fighting words generally and they are not content-based.²¹⁷

Next, Chapter Three selects ten school districts within the state of Florida to analyze how public school student expression policies have been amended to reflect the enactment of Florida’s anti-cyberbullying statute. Part I provides a description of the methodology used in selecting the ten school district policies. Parts II and III compare and contrast the ten school district policies surveyed as part of this thesis to identify the provisions most commonly adopted by the school districts.

²¹² *Id.* at 482.

²¹³ *Id.* at 489-90.

²¹⁴ *Id.* at 487.

²¹⁵ Milani, *supra* note 202, at 196.

²¹⁶ *Id.*

²¹⁷ *Id.*

CHAPTER 3 COMPARING AND CONTRASTING THE SCHOOL DISTRICTS' CYBERBULLYING POLICY PROVISIONS

This chapter compares and contrasts the five large and five small school district policies selected for analysis as described above. Part I describes the methodology used to select the school districts surveyed as part of this thesis. Parts II and II examine the statutes for the elements required by Florida law, as identified earlier, and analyzes the statutes using many of the characteristics that the watchdog group reporting on state anti-bullying laws identified as critical elements of the statute.

Part I: Methodology in Selecting the Ten School Districts

There are sixty-seven public school districts in the state of Florida.¹ The boundaries of the school districts correspond with those of Florida's sixty-seven counties.² Rather than include discussion of all of the school districts that comprise the state of Florida, this paper surveys only ten school districts to provide an in-depth analysis of the anti-cyberbullying policies as adopted by the school districts in light of Florida's anti-cyberbullying law.³ The author selected one "large" and one "small" school district from each of the five regions that make up the state of Florida. These regions conform to the boundaries set forth by Florida's five district courts of appeal⁴ and ensure geographic dispersement of the districts throughout the state. The districts with the largest and smallest population estimates, based on the April 2009 survey from

¹ FLA. CONST. art. IX, § 4.

² *Id.*

³ See *infra* notes 9–18 and accompanying text.

⁴ Florida District Courts. Florida Courts, available at <http://www.flcourts.org/courts/dca/dca.shtml> (last visited Apr. 17, 2010).

the Florida Legislature Office of Economic and Demographic Research (EDR), were included in the analysis.⁵ Thus, the five “large” districts are: Miami-Dade, Orange, Hillsborough, Broward and Escambia.⁶ The five “small” districts are: Monroe, Okeechobee, Putnam, Glades and Lafayette.⁷ The next section details Florida's anti-cyberbullying law, the “Jeffrey Johnson Stand Up For All Students Act, that was enacted in June 2008.⁸



Figure 3-1 Segmentation of Florida by district courts of appeals

⁵ Florida Legislature Office of Economic and Demographic Research, Florida Population Estimates for Counties and Municipalities, Apr. 2009, available at http://edr.state.fl.us/population/population_1april09.pdf (last visited Apr. 17, 2010). See also Figure 1.

⁶ See Table 1.

⁷ See Table 2.

⁸ Janet Kornblum, *Cyberbullying grows bigger and meaner with photos, video*, USATODAY.COM, July 15, 2008, available at http://www.usatoday.com/tech/webguide/internetlife/2008-07-14-cyberbullying_N.htm (last visited Apr. 17, 2010) (identifying Florida as one of the states taking action to protect against cyberbullying, with the signing of the Florida law by Gov. Charlie Crist).

Part II: Florida's Anti-Cyberbullying Law

Florida's Jeffrey Johnson Stand up for All Students⁹ Act, also known as "Jeff's Law,"¹⁰ requires schools in Florida to "adopt policies to discourage bullying in person and online or risk losing state funding."¹¹ As part of the requirements, Florida public K-12 public educational institutions must create and adopt very specific policies and procedures for reporting, investigating and responding to acts of bullying and harassment by any student or employee against any student of a particular school district,¹² establish specific consequences for committing such acts and provide training, education and prevention programs to encourage positive reinforcement.¹³ The Act explicitly defines both bullying¹⁴ and harassment,¹⁵ and it includes the use of any

⁹ FLA. STAT. § 1006.147 (2009).

¹⁰ Anna Scott, *Son's suicide sends mom on quest for anti-cyberbullying law*, SARASOTA HERALD-TRIB., Apr. 10, 2007 (referring to the act as "Jeff's Law"). See Melanie Ciarrone, *Broad Talks Cyberbullying on Hill*, WASH. EXAMINER, Oct. 13, 2009, available at <http://www.washingtonexaminer.com/local/Broad-colation-talks-cyberbullying-on-Hill-8381360-64160742.html> (describing the events that led to the enactment of the Florida's anti-cyberbullying statute).

¹¹ JuJu Chang, *Mom's Campaign for Florida Anti-bullying Law Finally Pays Off*, ABCNEWS.COM, May 2, 2008, available at <http://abcnews.go.com/GMA/story?id=4774894&page=1>.

¹² FLA. STAT. § 1006.147 (4) (f) – (n) (2009).

¹³ § 1006.147 (4).

¹⁴ § 1006.147 (3) (a) (2009) (defining bullying as the "systematically and chronically inflicting physical hurt or psychological distress on one or more students"). It also provides examples of this type of behavior. *Id.* As a deviation from Florida law, however, all ten of the school district policies added to their language that bullying also includes "*unwanted purposeful written, verbal, nonverbal, or physical behavior, including but not limited to any threatening, insulting or dehumanizing gesture, by an adult or student, that has the potential to create an intimidating, hostile or intimidating environment or cause long term damage...*") (emphasis added). See *infra* note 22.

¹⁵ The bill defines harassment as:

any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal, or physical conduct directed against a student or school employee that 1) places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property; 2) has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or 3) has the effect of substantially disrupting the orderly operation of a school.

§ 1006.147 (3) (b) (1)–(3).

electronic or computer equipment under the control of the district from being used to embarrass or tease any student.¹⁶ The Act required each school district to adopt a policy prohibiting bullying or harassment of any student or employee of a public K-12 educational institution by Dec. 1, 2008,¹⁷ and also mandated that “each school district’s policy shall be in substantial conformity with the Department of Education’s model policy.”¹⁸

The school district policies were accessed online during October to December 2009, more than eight months after the deadline for the adoption of school district bullying policies had passed.¹⁹ All of the policies except for Lafayette were available online throughout the duration of this time.²⁰ In response to these mandates, the Bully Policy, a watchdog organization that advocates for bullies children and reports on state

¹⁶ § 1006.147 (3) (d) (2).

¹⁷ FLA. STAT. § 1006.147 (4)

¹⁸ FLA. STAT. § 1006.147 (4). The act also specifies that each policy adopted by the school district shall contain specific provisions related to, among others:

a description of the type of behavior expected from each student or employee of a public K-12 educational institution; specific consequences for such behavior; a process to investigate whether a reported act of bullying or harassment is within the scope of the district school system; a procedure for providing instruction to students, parents, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment institution who commits an act of bullying or harassment; and a procedure for publicizing the policy.

§ 1006.147 (4)

¹⁹ See *supra* note 17 and accompanying text.

²⁰ The author of this paper was able to retrieve the policy by having the Webmaster of the school district’s Web site send a PDF of the policy through e-mail directly. E-mail from Walter J. Bell, Webmaster, Lafayette Public School District, to Kara C. Murrhee, master’s student, University of Florida College of Journalism and Communications, (Feb. 20, 2010, 6:43 p.m. EST) (on file with author).

anti-bullying laws, gave Florida an overall rating of A++, the highest rating any state can achieve, for Jeff’s Law.²¹

Table 3-1. Five largest school districts based on school district population

School District	Largest City/Town	Population	District Court	Total Student Pop. of School Dist.
Miami-Dade	Miami	2,472,344	Third	345,766
Broward	Ft. Lauderdale	1,744,922	Fourth	256,175
Hillsborough	Tampa	1,196,892	Second	193,239
Orange	Orlando	1,108,882	Fifth	173,021
Escambia	Pensacola	312,928	First	40,610

Table 3-2. Five smallest school districts based on school district population

School District	Largest City/Town	Population*	District Court	Total Student Pop. of School Dist.**
Monroe	Key West	77,925	Third	8,278
Okeechobee	Okeechobee	39,703	Fourth	6,963
Putnam	Palatka	74,608	Fifth	11,418
Glades	More Haven	11,311	Fifth	1,429
Lafayette	Mayo	8,182	First	1,163

*Statistics based on April 2009 population estimates for the state of Florida. Information retrieved from the Florida Legislature Office of Economic and Demographic Research (EDR).

**Numbers reflect total student population, P-12 grades, in each of the corresponding districts. Statistics retrieved from Florida Education Information and Accountability Services, Data Publications and Reports, Membership in Florida Schools at <http://www.fldoe.org/eias/eiaspubs/default.asp>.

Part III: Comparing the Public School District Anti-Cyberbullying Policies

There are certain provisions that all school district anti-cyberbullying policies adopt.²² While most of these provisions emulate Florida’s anti-cyberbullying law, the

²¹ The organization basis its ratings on thirteen separate points including 1) the word “bullying” in the title of the bill/law/statute; 2) that the law must clearly be an anti-bullying law and not just a school safety law; 3) definitions of bullying and harassment; 4) that the law mandates anti-bullying program, not just suggests them. Florida, Bullying Police, <http://www.bullypolice.org/grade.html> (last visited Apr. 17, 2010). A state will only get an A++ when the law provides for an emphasis on victims or a bullying victim’s rights clause and a cyberbullying clause. *Id.*

²² See Miami-Dade County Public Schools Policy Against Bullying and Harassment, *available at* http://mhcms.dadeschools.net/pdfs/MDCPS_bullying-harass_policy.pdf (last visited Apr. 17, 2010)

implementation of the provisions may vary slightly from district to district.²³ These provisions include the:

- adoption of a mission statement;
- prohibition of bullying and harassment behavior;²⁴
- restriction of bullying and harassment through the use of computer software or electronic devices;
- inclusion of location-centric restrictions on speech;²⁵
- requirement that certain parties be involved in the development of the policy; and the
- description of the type of behavior expected from each student;
- adoption of procedures reporting, investigation and responding to acts of bullying and harassment;
- referral of victims and perpetrators of bullying for counseling;
- notification of the consequences for such behavior;
- integration of the policy with curriculum, discipline policies and violence prevention efforts.

[hereinafter Miami-Dade]; Broward County Public Schools Anti-Bullying Policy, *available at* <http://www.browardschools.com/schools/bullying.htm> (last visited Apr. 17, 2010) [hereinafter Broward]; Hillsborough County Schools Policy Against Bullying and Harassment, *available at* <http://www.sdhc.k12.fl.us/notices/Anti-Bully.pdf> (last visited Apr. 17, 2010) [hereinafter Hillsborough]; Orange County Public Schools Anti Bullying Policy, *available at* https://www.ocps.net/sb/Superintendent%20Documents/ADD%20Anti%20Bullying%20Policy%2011_17_08.pdf (last visited Apr. 17, 2010) [hereinafter Orange]; Escambia County Public Schools Policy Against Bullying and Harassment, *available at* http://www.escambia.k12.fl.us/board/board_rules/Chapter_7.htm#718 (last visited Apr. 17, 2010) [hereinafter Escambia]; Monroe County Public School Anti-Bullying Policy, *available at* <http://www.neola.com/monroe-fl/> (last visited Apr. 17, 2010) [hereinafter Monroe]; Okeechobee County Schools Bullying and Harassment Policy, *available at* <http://ocsb.okee.k12.fl.us/board.nsf/be38f07bbe5d617385256a04004a98b6/3c482c07fca94cd78525750c0071a4d8?OpenDocument> (last visited Apr. 17, 2010) [hereinafter Okeechobee]; Putnam County School District Bullying and Harassment Policy, *available at* http://www.putnamschools.org/board/board_policy/Policy%20Chapter%205.00/Policy%205.101.pdf (last visited Apr. 10, 2010) [hereinafter Putnam]; Glades County School District Policy Against Bullying and Harassment, *available at* <http://www.glades-schools.org/files/BullyingPolicy.pdf> (last visited Apr. 17, 2010) [hereinafter Glades]; Lafayette County Schools Bullying and Harassment Policy [hereinafter Lafayette]. See Table 3.

²³ See *supra* Chapter Three, Part IV (contrasting the school district policies).

²⁴ See *supra* notes 14–15 (defining the terms "bullying" and "harassment" per Florida law).

²⁵ All school districts includes that bullying is prohibited: (a) During any education program or activity conducted by a public K-12 educational institution; (b) During any school-related or school-sponsored program or activity or on a school bus of a public K-12 educational institution; or (c) through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 educational institution. These prongs are sometimes separated into four prongs, as opposed to the three prongs established by the FDLOE's model policy.

Mission Statement

All of the school district anti-cyberbullying policies except for Escambia include a statement clarifying the school district’s mission in adopting the policy. For example, Miami-Dade’s policy states that the district is “committed to providing a safe learning environment for all students” and that it is also the policy of the district to provide “an educational setting that is safe, secure and free from harassment and bullying or any kind.”²⁶ Similarly, Orange County public school district’s policy states that “The school board of Orange County, Florida, is committed to protecting its students, employees, and applicants for admission from bullying, harassment, or discrimination for any reason and of any type. The school board believes that all students and employees are entitled to a safe, equitable, and harassment-free school experience.”²⁷

Publicizing the Policy

All school districts include provisions relating to the requirements for publicizing the anti-cyberbullying policy, yet the requirements as specified by the policies differ from district to district. For instance, while Monroe’s policy states that “reminders of the policy and bullying prevention messages will be displayed, as appropriate, at each school and at District facilities,”²⁸ the Glades school district policy specifies that these reminders should include, specifically, posters and signs.²⁹ On the other hand,

²⁶ Miami-Dade, *supra* note 22.

²⁷ Orange, *supra* note 22.

²⁸ Monroe, *supra* note 22.

²⁹ Glades, *supra* note 22.

Hillsborough’s policy does not include any such requirement, stating only that notice shall be provided at the beginning of each school year through “reasonable means.”³⁰

Notice of Consequences for Committing Act of Bullying or Harassment

Notice is an important element to creating a policy that will withstand constitutional challenges. As a criteria, the doctrine of void for vagueness states that for a law not to be vague in a way that it is constitutionally infirm, it must “give adequate warning of what activities it proscribes” and “set out ‘explicit standards’ for those who must apply it.”³¹ While all of the school districts require that notice be given to students, staff and faculty members of the consequences of committing an act of bullying or harassment, Broward school district’s policy excels by providing a Discipline Matrix that very clearly spells out the resulting punishment for a student’s inappropriate behavior.³² This matrix also distinguishes between elementary and secondary school students in the establishment of appropriate punishments.³³

³⁰ Hillsborough, *supra* note 22. This includes appropriate references in the code of student conduct and employee handbooks. *Id.*

³¹ *Broadrick v. Oklahoma*, 413 U.S. 608 (establishing the overbreadth doctrine). Additionally, it must prevent “arbitrary and discriminatory enforcement.” *Smith v. Goguen*, 415 U.S. 566, 573 (1974).

³² Broward County Public Schools Administrative Discipline Matrix, *available at* http://www.browardschools.com/schools/discipline_matrix.htm (last visited Apr. 17, 2010) (stating that the matrix is a

tool for administrators to respond appropriately when students have committed serious violations, per the Code of Student Conduct. This tool is designed to offer consistency at all levels across the District so that students are disciplined fairly from school to school when their behavior requires punishment beyond the classroom. There are two different versions of the Matrix: One to assign consequences to elementary studentsw (pdf) (grades K-5) and one to assign consequences to secondary students (pdf) (grades 6-12). *Id.* See *supra* note 30–31.

³³ See Broward County Public Schools Administrative Discipline Matrix Secondary , *available at* http://www.browardschools.com/schools/pdf/secondary_matrix.pdf (last visited Apr. 17, 2010); Broward County Public Schools Administrative Discipline Matrix, Elementary Schools, *available at* http://www.browardschools.com/schools/pdf/elem_matrix.pdf (last visited Apr. 17, 2010).

Time-Place-Manner Restrictions

All ten of the policies prohibit bullying or harassment of any student or school employee:

1. During any education program or activity conducted by a public K- 12 educational institution;
2. During any school-related or school-sponsored program or activity;
3. On a school bus of a public K-12 educational institution; or
4. Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K- 12 education institution.³⁴

All ten of the anti-cyberbullying policies also include that “the physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action.”³⁵

Part IV: Contrasting the Public School District Anti-Cyberbullying Policies

Use of Terminology: Bullying, Harassment, Cyberbullying and Cyberstalking

All ten of the policies surveyed: a) include the word “bullying” in their titles; and b) define and prohibit bullying and harassment.³⁶ While all ten of the policies likewise include cyberstalking in policy language, only five of the districts’ policies specific reference “cyberbullying.”³⁷ Four of the districts – Miami-Dade, Broward, Hillsborough and Monroe – specifically define cyberbullying and prohibit such behavior.³⁸ Broward, Hillsborough and Monroe list certain devices from being used for cyberbullying and thus define cyberbullying as: “electronically transmitted acts (i.e., internet, e-mail, cellular

³⁴ *Supra* note 22.

³⁵ See Table 3.

³⁶ *Supra* notes 34–39.

³⁷ *Supra* note 22.

³⁸ *Supra* note 22.

telephone, personal digital assistance (PDA), or wireless hand-held device) directed toward a student(s) or staff member(s) that causes mental or physical harm or is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment.”³⁹ Miami-Dade is the only policy that varies slightly in naming the specific devices and thus defines cyberbullying as: “the willful and repeated harassment and intimidation of an individual through the use of electronic mail or electronic communication with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person.”⁴⁰ Orange is the only policy to include the term “cyberbullying” within policy language, but it does not provide a specific definition separate from the other terms defined.⁴¹ Only two of the districts, Broward and Miami-Dade, include “cyberbullying” as an example of restricted behavior, in addition to the other provisions addressing cyberbullying.⁴²

Addition of an Anti-Discrimination Clause

Beyond listing “sexual, religious or racial harassment” as types of prohibited bullying behavior, several school districts, including Orange, Broward and Monroe, have adopted separate and additional anti-harassment clauses that prohibit:

unwanted harm towards a student or employee in regard to their real or perceived: sex, race, color, religion, national origin, age, disability (physical, mental, or educational), marital status, socio-economic background, ancestry, ethnicity, gender, gender identity or expression, linguistic preference, political beliefs, sexual orientation, or social/family background.⁴³

³⁹ *Supra* note 22.

⁴⁰ Miami-Dade, *supra* note 22.

⁴¹ Orange, *supra* note 22.

⁴² *Supra* note 22.

⁴³ Orange, *supra* note 22.

Miami-Dade's policy varies slightly in that it specifies that the policy "does not replace the District's current policy prohibiting harassment on the basis of race, sex, national origin, and disability."⁴⁴

Cited Authority

Seven of the ten policies cite Florida Statute Section 1006.147 as authority.⁴⁵ Half of the districts– Miami-Dade, Broward and Monroe – specify that the policy has been adopted in substantial conformity with FLDOE's model policy.⁴⁶

Constitutional Safeguard

Broward and Monroe public school district policies include a constitutional safeguard, specifying that "this policy does not imply to prohibit expressive activity protected by the First Amendment of the United State Constitution or Article I, Section 4 of the Florida Constitution."⁴⁷

Severability Clause

Only Broward County's anti-cyberbullying policy includes that "if a provision of this policy is or becomes illegal, invalid or unenforceable in any jurisdiction that shall not affect the validity or enforceability in that jurisdiction of any other provision of this policy."⁴⁸

⁴⁴ *Supra* note 22.

⁴⁵ These include Miami-Dade, Broward, Orange, Monroe, Putnam, Glades and Okeechobee. *Supra* note 22.

⁴⁶ *Supra* note 22.

⁴⁷ See Monroe and Broward, *supra* note 22.

⁴⁸ See Broward, *supra* note 22.

Although the policies have all been adopted in fulfillment of the Florida “Jeffrey Johnson Stand Up For All Students Act” and were guided by the model policy as drafted by the Florida Department of Education, there are still many ways in which they are different, such as the amount of protection afforded student free speech rights in light of digital technology and electronic devices, that could have have potential implications for whether the policy would hold muster if challenged in court. Next, Chapter Four will discuss the typical free-speech problems associated with anti-cyberbullying policies adopted by Florida school districts.

Table 4-1. Table of provisions adopted by each of the school district policies

School District Policy Provisions	Miami-Dade	Broward	Hillsborough	Orange	Escambia	Monroe	Putnam	Glades	Okeechobee	Lafayette
Defines harassment and bullying	X	X	X	X	X	X	X	X	X	X
Includes electronic bullying clause	X	X	X	X	X	X	X	X	X	X
Provides examples of behaviors		X	X	X	X	X	X	X	X	X
Includes location-centric restrictions on speech*	X	X	X	X	X	X	X	X	X	X
Includes “cyberbullying” in policy language		X**	X**	X		X**				
Includes and defines “cyberstalking”		X	X	X	X	X	X	X	X	X
Includes “location-is-not-a-defense” clause		X	X	X	X	X	X	X	X	X
Includes provisions on reporting, investigating and responding to acts of bullying	X	X	X	X	X	X	X	X	X	X
Includes provision on consequences expected for violating	X	X	X	X	X	X	X	X	X	X

policy requirements						
Cites Fla. Stat. 1006.147 as authority	X***	X***	X	X***	X	X
Includes anti-discrimination clause	X	X		X		

* Includes prohibitions against speech a) during any educational program or activity conducted by the school; b) during any school-related or school-sponsored program or activity; c) on a school-bus of a K-12 institution; d) through the use of data or computer system that is accessed through a computer, computer system, or computer network of a public system

** Names electronic devices

*** Notes substantial conformity to model policy.

CHAPTER 4 FREE SPEECH CONCERNS OF FLORIDA PUBLIC SCHOOL DISTRICT ANTI- CYBERBULLYING POLICIES

This chapter addresses the free speech concerns raised by anti-cyberbullying policies adopted by Florida school districts. Specifically, it sifts the policy provisions of ten selected school districts through the sieve of: Supreme Court precedent on student speech rights; relevant lower appellate court rulings on these rights; the rules of both the void for vagueness and overbreadth doctrines that often apply to statutory measures; and the doctrines of true threats and fighting words discussed in Chapter I.

Part I: The Tetralogy of Supreme Court Student Speech Opinions As Applied to The School District Policies

The *Tinker-Fraser-Hazelwood-Morse* quartet provides a wealth of authority for addressing when a school district may censor speech taking place inside “the schoolhouse gate.”¹ In each of the four Supreme Court decisions on student speech, the Court “established individual ground rules that courts and school districts may use to inhibit students’ First Amendment rights...conducted *on school grounds or during school-sponsored events*.”² Viewed collectively, however, they address four very different factual scenarios that cannot all or should not all be applied to online speech.³ This part analyzes the quartet of Supreme Court opinions as applied to Florida’s school district policies.

¹ See *supra* Chapter Two, Part I (discussing those cases that govern student speech).

² Turbert, *supra* Chapter Two, note 184, at 671 (emphasis added).

³ See *supra* Chapter Two, Part I. See also Denning, *supra* Chapter One, note 17, at 838 (stating that “despite this small number of cases, lower courts have had difficulty synthesizing and applying [the quartet of Supreme Court cases] to the myriad fact situations they have encountered”).

It is perhaps important to first mention that, in analyzing the anti-cyberbullying policies, there are only certain Supreme Court student speech precedents that apply. While schools are permitted to regulate on-campus speech that contradicts the school's educational goals,⁴ the more difficult questions arise in the arena of off-campus speech.⁵ Because *Hazelwood* and *Morse* dealt specifically with curricular and drug-referenced speech, respectively, this thesis argues that allowing them to extend beyond their initial holdings and factual scenarios to apply to cyberspeech is analogous to eliminating the essential element that gave rise to the Supreme Court's reasonable restriction on student speech.⁶ Thus, school policies that attempt to regulate speech that does not rise to the level, under *Tinker*, of a substantial and material disruption of the educational atmosphere or interference with the rights of other students⁷ poses significant constitutional problems for the school district. Applying a non-threatening example of student cyberspeech could perhaps help demonstrate this principle.

Suppose that a message is posted by student-athlete "A" about a soccer teammate "B" on an Internet message board. The board serves as an online forum of communication for both the team's players and parents. After a frustrating loss to the team's rivals in a championship finals game, the "A" criticizes "B", the goalie for the team, and blames him for the loss, calling him "a lousy excuse for a goalie" and says he should be kicked off the team. Clearly, this message had nothing to do with the use of

⁴ See *supra* Chapter One, note

⁵ Kerkhof, *supra* Chapter One, note 17, at 1633.

⁶ *Id.* at 1628.

⁷ See *supra* Chapter Two, note 26.

illegal drugs,⁸ nor was it part of the school's curricular goals.⁹ It thus falls beyond the purview of both *Morse* and *Hazelwood*.¹⁰

Courts and scholars alike have held that a student's non-threatening, non-disruptive speech that takes place away from school grounds is entitled to First Amendment protection. As one commentator wrote, "the 'legitimate pedagogical concerns' that constituted an essential element in *Hazelwood* arguably do not extend to activities not directly related to a school's curricular objectives."¹¹ The *Morse* opinion provided powerful clarification of the *Fraser* decision, stating that "*Fraser* should not be read to encompass any speech that could fit under some definition of 'offensive.'"¹² Similarly, where the student's speech was not created at school or during a school-sponsored activity, factual circumstances exist that impede a reasonable restriction, as in *Hazelwood*.¹³ Although *Morse* has been interpreted by the lower courts to restrict other viewpoints or subject areas not protected by a student's right to free speech,¹⁴ Justice Alito's concurring opinion in it provides strong support for not allowing schools to regulate speech "on any grounds...not already recognized in the holdings of this

⁸ See *supra* Chapter Two, note 74 and accompanying text (discussing the *Morse* Court's decision).

⁹ See *supra* Chapter Two, note 60 (discussing *Hazelwood*).

¹⁰ See *supra* notes 8–9.

¹¹ Kerkhof, *supra* Chapter One, note 17, at 1633.

¹² *Morse*, 551 U.S. at 409.

¹³ See *supra* Chapter Two, notes 63–66 and accompanying text. .

¹⁴ See Erwin Chemerinsky, *How Will Morse v. Frederick Be Applied?*, 12 LEWIS & CLARK L. REV. 17, 25–26 (2008) (highlighting that schools have won a majority of the constitutional claims against them involving student rights and hoping that, although *Morse v. Frederick* continues that pattern, Justice Alito's concurring opinion will limit the scope of the majority's opinion).

Court.”¹⁵ Clearly, then, the application of Supreme Court student speech precedent to student cyberspeech is narrow. Attempting to extend *Hazelwood* and *Morse* beyond the factual circumstances that framed them, however, places too much protected speech under the school district’s jurisdiction, a subject for further discussion later.

To adapt to the changing technological environment, many schools are implementing technology or Internet-based policies that prohibit students from using school resources for non-educational purposes.¹⁶ These policies allow school officials to reasonably discipline students for violation of the policies.¹⁷ As with the policies analyzed in this thesis, this includes the use of school computers and networks for the purpose of bullying.¹⁸

The majority of the Florida anti-cyberbullying policies make it part of a school’s mission to provide “an educational setting free from bullying and harassment of any kind.”¹⁹ These schools also make bullying or harassment a violation of policy in the following situations: *during any education program or activity conducted by a public K-12 educational institution; during any school-related or school-sponsored program or activity; on a school bus of a public K-12 educational institution; or through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 education institution.*²⁰

¹⁵ *Morse*, 551 U.S. at 422 (Alito, J., concurring).

¹⁶ Kerfhof, *supra* Chapter One, note 17, at 1633.

¹⁷ *Id.*

¹⁸ See *supra* Chapter Three, note 22 and accompanying text.

¹⁹ See *supra* Chapter Three, note 23 and accompanying text.

²⁰ *Id.*

Courts recognize the ability of schools to punish students for speech posted online while at school, acknowledging that a school's computers and its computer network are school property. As noted by one scholar, "if the school's curriculum sufficiently incorporates Internet service, school officials can constitutionally restrict a student's access to certain areas."²¹ While Supreme Court precedent provides that a school may punish a student for speech made during a school-related or school-sponsored program or activity or on a school bus, allowing a school to restrict a student's expression "during any education program or activity conducted by a public K-12 educational institution"²² that does not rise to the level of a substantial and material disruption²³ of extends beyond Supreme Court opinion and poses significant constitutional problems for the school.

Some schools recognize the potential application of *Tinker* to student cyberspeech. A close examination of Florida's anti-cyberbullying statute reveals that the state legislature adopted language from *Tinker* in drafting its anti-cyberbullying policies, as a way to justify the school district's censorship and punishment of certain on-campus student expression.²⁴ For instance, Florida's anti-cyberbullying policy and, concomitantly, all ten district policies, define "harassment" as:

Any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that...has the effect of substantially interfering

²¹ Kerkhof, *supra* Chapter One, note 17, at 1633.

²² See *supra* note 24.

²³ See *supra* Chapter Two, note 25 (discussing the *Tinker* material-and-substantial-disruption test).

²⁴ See *infra* notes 25–28 and accompanying text.

with a student's educational performance, opportunities, or benefits; or has the effect of substantially disrupting the orderly operation of a school.²⁵

The state law's definition of "bullying" is parallel, defining bullying as "any threatening, insulting, or dehumanizing gesture...that is *severe or pervasive enough to create an intimidating, hostile, or offensive* educational environment."²⁶ Broward's policy, for instance, prohibits bullying behavior that potentially can "cause long term damage."²⁷ Finally, several of the policies also prohibit the electronic transmission of any message that could cause "mental or physical harm or is *sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment* for the other student(s)."²⁸

Although part of harassment's definition is reminiscent of language used by the high court in *Tinker*, all three of these provisions contain terms troublesome for the school district: By including language that attempts to merely target degrading, insulting or offensive speech, they go beyond the precedents established by *Fraser* and *Tinker* and thus run the risk of being void for vagueness and overbroad, issues addressed later in this chapter.

Perhaps the most pervasive – and invasive – part of the anti-cyberbullying laws has to do with the over-extension of Supreme Court precedent to apply to off-campus speech. Florida's anti-cyberbullying statute, and thus by extension several district

²⁵ See *supra* Chapter Three, note 22 (emphasis added).

²⁶ *Id.*

²⁷ *Id.* (emphasis added).

²⁸ *Id.* (emphasis added).

policies,²⁹ incorporate language that allows a school to regulate cyberspeech, regardless of either the physical location where it occurs or the time of access of the computer-related incident.³⁰ This is particularly troubling, as noted by one scholar, “because the Internet encompasses all types of expression and speech, including print, school districts need to be careful not to infringe students’ First Amendment rights when regulating student cyberspeech.”³¹

School officials are permitted to regulate on-campus speech that contradicts the school’s educational goals, but recent attempts made by schools to gain control of electronic student speech through the adoption of anti-bullying policies schools often restrict too much speech. While the overextension of Supreme Court precedent to apply to cyberspeech is mostly commonly associated with policies aimed at restricting off-campus speech, such problems also are found in policy language targeting on-campus Internet speech. In brief, both spatial and temporal boundaries that constrain school authority over student speech are blown away and rendered nugatory by these policies. Policies containing such expansive provisions that stretch the jurisdictional authority far beyond the schoolhouse gates likely are unconstitutional.

This next part analyzes the school district policies under the scope of the *Saxe* and *Sypniewski* decisions.

²⁹ These include Broward, Hillsborough, Orange, Escambia, Monroe, Putnam and Glades. See *supra* Chapter Three, note 22.

³⁰ See Chart 1.

³¹ Tiffany Emrick, Note, *When MySpace Crosses the School Gates: The Implications of Cyberspeech on Students’ Free-Speech Rights*, 40 U. TOL. L. REV. 785, 797 (2009).

Part II: Analysis of School District Anti-Cyberbullying Policies Under *Saxe* and *Sypniewski*

In the same way that the *Saxe* court found a Pennsylvania school district's policy restricting "unwelcome" and "offensive" speech on public school grounds violated the First Amendment,³² so too could a court potentially find the Florida anti-cyberbullying statute's language prohibiting "*unwanted and repeated* written, verbal, or physical behavior...pervasive enough to create an intimidating, hostile, or *offensive* educational environment"³³ overbroad.

The schools in *Saxe* and *Sypniewski* had adopted the policies to prevent against the unnecessary bullying or harassment of their students. Specifically, their anti-harassment policies prohibited "any unwelcome verbal, written or physical conduct which offends, denigrates or belittles an individual" because of "race, religion, color, national origin, gender, sexual orientation, disability or other characteristic."³⁴ Interestingly, several Florida school districts³⁵ have adopted language emulating the policy language adopted by these schools. For example, Broward's policy states that "bullying," "cyberbullying," "harassment," and "discrimination," encompass, but are not limited to:

unwanted harm towards a student or employee in regard to their real or perceived: sex, race, color, religion, national origin, age, disability (physical, mental, or educational), marital status, socio-economic background, ancestry, ethnicity, gender, gender identity or expression, linguistic preference, political beliefs, sexual orientation, or social/family background

³² *Saxe*, 240 F.3d at 214.

³³ See *supra* Chapter Three, note 14 and accompanying text.

³⁴ See Chapter Two, notes 106, 121 and accompanying text (discussing the policies that were adopted by *Saxe* and *Sypniewski*).

³⁵ These include Broward, Miami-Dade and Monroe Counties. See *supra* note 22.

or being viewed as different in its education programs or admissions to education programs.³⁶

As previously stated, the federal appellate court rulings in *Saxe* and *Sypniewski* demonstrate the difficult task school districts face in creating policies with language that is indistinct or reaches too much speech.³⁷ As reflected by the decisions in *Saxe* and *Sypniewski*, there is a likelihood that a court will either strike down a policy³⁸ or at least require the removal of particular terms and language³⁹ – that is vague or overbroad. In the appellate court opinions, these terms included:

- ill-will
- unwelcome, and
- offensive.⁴⁰

In the case of the school district policies, they may also include “unwanted” and “repeated.”

If a court were to find these terms overly broad or void for vagueness, as the Third Circuit did in *Saxe*, then it could enjoin the policy, thus preventing a school district from punishing students for their potentially bullying and harassing speech. Yet, if the policy has been enacted in response to a pattern of racial incidents,⁴¹ as it was in *Sypniewski*, then a court might require the school to sever only the overly broad or vague language

³⁶ *Id.*

³⁷ See *supra* Chapter Two, Part II.

³⁸ *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 217 (3d Cir. 2000).

³⁹ *Sypniewski v. Warren Hills Reg. Sch. Dist.*, 307 F.3d 243, 260 (3d Cir. 2002).

⁴⁰ Courts and scholars have long noted the difficulty of interpreting words such as “offensive” when used in policy and legislation. See *supra* notes - and accompanying text.

⁴¹ McCarthy, *supra* Chapter Two, note 129, at 233.

before permitting implementation of the policy.⁴² Such a discussion requires the more in-depth application of the void for vagueness and overbreadth doctrines, discussed in the next part.

Part III: Anti-Cyberbullying Policies Analyzed Under the Void for Vagueness and Overbreadth Doctrines

Although Part II already emphasized several provisions relating to religious or racial speech that are perhaps vague or overbroad, there are several other provisions adopted as part of the state law and school district policy prohibitions of cyberbullying behavior that could fall prey to the void for vagueness and overbreadth doctrines. The first provision relates to the first prong specifying the ability of the school district to prohibit speech “during any educational program or activity conducted by a public K-12 educational institution.”⁴³ Whereas the Supreme Court many times has addressed the issue of school-related and school-sponsored speech, including a provision that does not limit the type of speech restricted beyond “*any* education program or activity” could be tagged as void for vagueness and overbreadth because it could be difficult to determine what programs this is meant to include.

Although Florida law does not specifically include “cyberbullying” in policy language, several of the school districts do. The problem is that few districts define the term, perhaps because, unlike the term obscenity, no judicially-adopted legal definition of cyberbullying exists. Policies that provide examples of the types of devices linked to cyberbullying behavior offer an improvement over the policies that neglect to do so

⁴² See, e.g., *Sypniewski v. Warren Hills Reg. Sch. Dist.*, 307 F.3d 243, 260 (3d Cir. 2002). This could be of potential significance to the school districts with anti-harassment clauses. These districts are the three most southern districts in the state of Florida.

⁴³ See *supra* note 14 and accompanying text.

because it more specifically enumerates the practices associated with such behavior. Part IV discusses the school district policies under the doctrine of “true threats.”

Part IV: Applying the True Threats Doctrines to Florida’s Anti-Cyberbullying Policies

Studies have found that Internet bullying poses a tremendous threat to teens online.⁴⁴ That is perhaps why the terms “threat” and “threatening” appear so many times in anti-cyberbullying policy language. Indeed, a majority of the school districts policies incorporate the word “threat” into their definitions of bullying⁴⁵ and harassment, and list it as an example of a type of restricted bullying behavior.⁴⁶ Broward’s policy even goes one step further by specifically prohibiting “threats made outside of school hours, which are intended to be carried out during any school-related or school-sponsored program or activity, or on a SBBC school bus.”⁴⁷

While student expression that poses a true threat will never be protected by the First Amendment, it could be declared unconstitutional where the proscription of threats extends beyond speech that a reasonable person would construe as a real and serious communication of an intent to inflict harm. School districts would thus be wise, when using the term “threat,” to incorporate language from *Watts* and other federal opinions that articulate the parameters of the true threats doctrine.

⁴⁴ See, e.g., Enhancing Child Safety & Online Technologies, Executive Summary, Berkman Center for Internet & Society at Harvard University, available at http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ISTTF_Final_Report-Executive_Summary.pdf (last visited Apr. 17, 2010).

⁴⁵ See *supra* Chapter Two, notes 14–15 and accompanying text.

⁴⁶ *Id.*

⁴⁷ See *supra* Chapter Two, note 22.

Part V: School District Policies As Applied to Fighting Words

Several parts of the school district anti-cyberbullying policy provisions examined in this thesis could fall within the reach of the fighting words doctrine. For instance, the policies prohibit the perpetration of bullying and harassment “by an individual or group with intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee, by *incitement or coercion*.”⁴⁸ The state anti-cyberbullying law and thus several school district policies also include “physical violence” as an example of bullying behavior.⁴⁹ While terms like “dehumanize” and “embarrass” likely are void for vagueness, schools would be wise to adapt a narrowing construction that applies such language only in the context of fighting words scenarios. Indeed, where such speech crosses the threshold of being fighting words, “those which by their very utterance inflict injury or tend to incite an immediate breach of the peace,”⁵⁰ there will not be a constitutional challenge. Yet, even when dealing with speech that does not receive constitutional protections, the proscriptions of such speech must be “well-defined”⁵¹ and “narrowly limited”⁵² as to not create constitutional problems for the policy.⁵³ Despite its reaffirmation of the fighting words doctrine, it is perhaps telling that the Supreme Court has not upheld a conviction since *Chaplinsky*. In many of the cases, such as *R.A.V.*,⁵⁴

⁴⁸ See *supra* Chapter Two, note 14.

⁴⁹ *Id.*

⁵⁰ *Chaplinsky*, 315 U.S. at 572.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *supra* Chapter Two, note 194 (discussing the fighting words doctrine).

⁵⁴ 505 U.S. at 377.

*Gooding*⁵⁵ and *Mitchell*,⁵⁶ the statutes prohibiting “fighting words” were overturned because they attempted to restrict speech beyond fighting words. As in *Gooding*, the statute was overturned for prohibiting “opprobrious words or *abusive language*.”⁵⁷ Thus, those policies that prohibit bullying and harassment speech that is abusive in nature would seem to go beyond the protections afforded by the fighting words doctrine.

The other critical problem with the fighting words doctrine is that it traditionally applies to one-on-one, face-to-face encounters. While speech in cyberspace may be directed at a specific person or target, it certainly is not a face-to-face encounter, but more likely a cellphone-to-cellphone encounter. It thus is important for schools that rely, in part, on the fighting words doctrine to support certain provisions of their cyberbullying policies to make it clear to one-on-one targeted messages that could result in imminent violence.

⁵⁵ 405 U.S. 518.

⁵⁶ 508 U.S. 476.

⁵⁷ 405 U.S. at 518.

CONCLUSION

In answering the final research question, this thesis concludes by arguing that all ten of the Florida school district policies would not pass constitutional muster if contested in court on First Amendment grounds because of the significant free speech problems identified in Chapter III. Thus, this thesis uses Chapter IV, the final chapter, to propose model policy language and summarize its findings in resolution of the major research questions. Finally, it identifies areas for future research.

Part I: Recommendations for Building a Better Model Policy

United Kingdom freelance legal and policy writer Allen Green perhaps best sums up a difficulty problem associated with good policy-making: “When the government nonetheless persists in introducing an ineffective policy, they have usually been told just what the problems are.”¹ But what makes a *good* policy? According to Green, these attributes include that the policy:

- uses precision and clarity;
- is evidence based;
- maintains transparency and accountability; and
- provides for practicality and legitimacy.²

Using these attributes as guideposts, this thesis makes recommendations for improving the provisions adopted by the school districts in their anti-bullying policies.

What the School District Policies Do Well

As the title of this subsection indicates, there are several things that the school district policies do well. For instance, policies that include a mission statement are an

¹ Allen Green, *So What is Good Policy-Making?* <http://jackofkent.blogspot.com/2010/01/what-is-good-policy-making.html> (last visited Apr. 27, 2010).

² *Id.*

improvement over the policies that do not because they provide a focus for the school district in implementing the policy. Districts that provide explicit notice to students of the penalties associated with behavior do a better job of avoiding being subject to the void for vagueness or overbreadth doctrines. Also, those school districts that distinguish between ages (i.e., elementary, middle and high school) in the programs, procedures and punishments geared toward those students better accommodates and addresses the maturity levels of the students. In this way, Broward's discipline matrix is going because it divides the age groups to be affected by the policy rules into segments: elementary and middle school.³ On the other hand, Escambia's school district policy says that it will take steps to discipline the student "based on the level of severity of the infraction."⁴ This begs the question: who or what determines the level of severity of the infraction? This should be better spelled out in policy language.

Several policies mention their conformity to Florida Statute 1006.147, the anti-cyberbullying law. This is a move in the right direction, compared with some of the other policy provisions adopted by the school district, because it takes some of the responsibility off of a school in the implementation of the policy. At the very least, school districts should name the statute as a reference.

Some Provisions Should Be Removed

School districts should eliminate provisions requiring that the "physical location or time of access of a computer-related incident cannot be raised as a defense in a disciplinary action initiated under this section." Those districts that have adopted this

³ See *supra* Chapter Three, note 31.

⁴ See Escambia, *supra* note 24.

provision risk unconstitutionality under the *Tinker* standard for attempting to restrict too much speech – especially when away from school – without requiring a substantial on-campus disruption.

Several school district policies prohibit any “intimidating, threatening, or abusive educational environment.” These school districts should strike such terms in order to remain constitutionally viable. For instance, the Supreme Court indicated in *Gooding* that “abusive” was not constitutional because it reached beyond speech prohibited by the fighting words doctrine. Similarly, restricting threatening speech that does not reach the level of being a “true threat,” as in *Watts*, would likely be unconstitutional and should be removed. If such terms remain in the policies, then they should be clearly defined and specific examples that illustrate their meaning and application.

Schools should also remove “unwanted” and “repeated” from their anti-cyberbullying policy language. A court could find these terms overly broad and void for vagueness, as the Third Circuit did in *Saxe*, and thus enjoin the policy and prevent a school district from punishing students for their potentially bullying and harassing speech. Likewise, they should sever from their policies terms such as “dehumanize” and “embarrass” because they are likely unconstitutionally vague or overbroad. Schools would be wise, in this instance, to adapt a narrowing construction that applies such language only in the context of fighting words scenarios.

Areas in Need of Improvement

There are several areas, relating to the location-centric-restriction-on-student-speech prongs adopted by all ten of the Florida school districts analyzed need improvement. First, provisions requiring the proscription of speech “during any school-related program or activity” or “during any educational program or activity” conducted

within the school district need revision. While the Supreme Court has allowed schools to restrict student speech when it is “school-sponsored” and takes place as part of the curriculum, allowing schools to restrict speech that did not meet the requirements set forth in precedent would extend the Court’s holding beyond the initial decision. Thus, school districts could improve these provisions by more closely following the language adopted by the *Tinker* standard.

Second, school districts could improve location-centric-restriction-of-speech provisions by updating language that describes the use of electronic equipment. For instance, several of the school districts, such as Lafayette, prohibit the “use of data or computer software” to commit acts of bullying and harassment. Such a provisions, however, do not seem to accurately reflect the common-day uses of computers and electronic devices by students. In this case, the addition of “electronic devices” to the provision serves as an improvement over some of the other policies that have not updated their policies. On the other hand, several of the policies, including Monroe, provide examples of the types of devices and digital technologies commonly used by today’s youth population (i.e. e-mail, blogs, social website, chat rooms, instant messaging and cellphones). This is beneficial in that it identifies those devices most commonly associated with behaviors the policies are attempting to restrict. It is well known that the law cannot keep up with rapid technological development. Thus, provisions adopted by the school districts referencing the use of electronic devices and technologies must be phrased in such a way that they are not overly vague or broad but that does not run the risk of being obsolete very quickly, before the policy can be updated.

Third, the use of the word “any” runs the risk of being imprecise, perhaps sweeping up too much speech. Courts have ruled that policies aimed only at regulating on-campus Internet speech can be overturned for being vague and over overly broad, if it could be interpreted to reach off-campus speech.

Finally, it is unclear whether a school district policy could be overturned for defining cyberbullying in policy language prior to the existence of a legal definition. Although it could perhaps provide the means for striking down the policy if the definition ensnares too much speech, it could perhaps work that same way as the true threats doctrine.

Part II: Analysis of a School District Policy Based on Recommendations

This section analyzes the Hillsborough County school district anti-cyberbullying policy to analyze the policy provisions within the context of a complete policy and provide recommendations through the addition and subtraction of text within the policy on how the school districts could improve the language of the policy provisions in light of the observations made in three previous sections. Hillsborough County’s school district policy was chosen because it is representative of the policy that covers the “middle ground.” It is also one of the perhaps few school districts that may have adopted the policy in reaction to an incident of cyberbullying that took place within the district. The policy is one of the only policies that includes a definition of the term “cyberbullying,” an element important to the development of policies aimed at restricting speech through the use of electronic devices. It is also one of the earlier policies to be adopted by the ten school districts included in this analysis.

Figure 5-1 Recommendations for building a better model policy

Hillsborough School District Policy Against Bullying and Harassment

It is the policy of Hillsborough County Public Schools⁵ that all of its students and school employees have an educational setting that is safe, secure, and free from harassment and bullying of any kind.⁶ The district will not tolerate bullying or harassment of any type.⁷ Conduct that constitutes bullying or harassment, as defined herein, is prohibited.⁸

Definitions

“Bullying” means systematically⁹ and chronically¹⁰ inflicting physical hurt or psychological distress on one or more students, employees, or visitors. It is further defined as ~~unwanted and repeated written,¹¹ verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or that~~ unreasonably interferes with the individual’s school performance or participation; and may involve but is not limited to:

- A. Teasing
- B. Social Exclusion
- C. Threat
- D. Intimidation
- E. Stalking
- F. Cyberbullying¹²

⁵ See *supra* Chapter Three, note 22.

⁶ Providing a mission statement is important feature of the school district anti-bullying policies because it provides a focus for the school district in tailoring its anti-cyberbullying provisions. School districts must be careful not to develop anti-cyberbullying provisions that go beyond the scope of the mission set forth within the school district policy.

⁷ All ten of the school districts analyzed in this thesis specifically prohibited bullying and harassment behavior within the school district. This would be an important element to include upfront so that the persons to whom the policy could affect are made clearly aware of the purpose of the policy.

⁸ Providing definitions of the terms, "bullying" and "harassment" can help to strengthen the policy language and prevent the policies from being vague. School districts must consider careful the language chosen for these definitions as the policy could quickly be overturned for attempting to restrict too much speech. See *supra* notes - and accompanying text.

⁹ or steadily.

¹⁰ or persistently, constantly.

¹¹ How these policies adapt this language to reflect what we know about cyberbullying is only something that time will tell. See *supra* note (Bullying Police). Until an established definition of cyberbullying is provided, school districts could improve their anti-bullying policies by removing this language.

¹² Listing cyberbullying as an example of the types of restricted bullying and behavior, especially where policies provide a definition of the term "cyberbullying," provides for greater cohesiveness within the policy, especially in establishing the purpose of the policy.

- G. Cyberstalking
- H. Physical violence
- I. Theft
- J. Sexual, religious, or racial harassment
- K. Public humiliation
- L. Destruction of property¹³

“Harassment” means ~~any threatening, insulting, or dehumanizing gesture,~~¹⁴ ~~use of data or computer software,~~¹⁵ or written, verbal or physical conduct directed against a student or school employee that:

- A. places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property; or
- B. has the effect of substantially interfering with a student’s educational performance, opportunities, or benefits;¹⁶ or
- C. has the effect of substantially disrupting the orderly operation of a school.¹⁷

Bullying and harassment also encompasses:

- A. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.
- B. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee by:
 - 1. Incitement or coercion;¹⁸

¹³ It would be interesting to see how the school districts would separate out these examples, as causing "physical harm," "psychological distress" or both.

¹⁴ Based on relevant precedent, the author of this thesis has determined that the use of words such as "threatening," "insulting" or "dehumanizing" could subject to the policy to a determination of void for vagueness or overbreadth if challenge in court. Thus, the author of this thesis vies that such language be removed from the school district policy provisions defining harassing behavior.

¹⁵ Since harassment does not require the use of the "data or computer software" it would be in the school district's interest to separate the definition of harassment from the restrictions placed on the use of electronic devices for taking part in harassing behavior.

¹⁶ This language appears to follow the Supreme Court's language in *Tinker*, and thus could pass constitutional muster if not unreasonably extended beyond the scope of the Court's holding. See *supra* notes _ (explaining the policy's likeness to the *Tinker* Court decision).

¹⁷ *Id.*

2. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system; or
3. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

"Harassment" or "bullying" also includes electronically transmitted acts (i.e., internet, e-mail, cellular telephone, personal digital assistance (PDA), or wireless hand-held device) directed toward a student(s) or staff member(s) that causes mental or physical harm or is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student(s),

Cyberstalking as defined in s. 784.048(1)(d), F.S., means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

Expected Behavior

Hillsborough County Public Schools expects students and school employees to conduct themselves appropriately for their levels of development, maturity, and demonstrated capabilities, with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.

The school district believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline.¹⁹ The development of this atmosphere requires respect for self and others, as well as for district and community property on the part of students, staff, and community members. Since students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate behavior; treat others with civility and respect, and refuse to tolerate bullying or harassment.

The school district upholds that school-related bullying or harassment of any student or school employee is prohibited:

¹⁸ If the school district attempted to use such language to restrict speech that does not rise to the level of being a true threat, than the school district's restriction of student speech may not be upheld if challenged in court.

¹⁹ This language ("the school district believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline") is preferable to other school district policies that only requires.

- A. During any education program or activity conducted by a school sites educational institution;
- B. During any school-related or school-sponsored program or activity;
- C. On a school bus or bus stop of a school sites educational institution; or
- D. Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a school sites education institution.

Consequences

Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances.²⁰ ~~The physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action.~~²⁴ Consequences and appropriate remedial action for students who commit acts of bullying or harassment may range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the Code of Student Conduct. A district employee found to have committed an act of bullying or harassment may be disciplined in accordance with district policies, procedures, and agreements. Additionally, egregious acts of harassment by certified educators may result in a sanction against that educator's state issued certificate. (See State Board of Education Rule 6B-1.006, FAC., The Principles of Professional Conduct of the Education Profession in Florida.) Consequences and appropriate remedial action for a visitor or volunteer, found to have committed an act of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

Consequences and appropriate remedial action for a student found to have wrongfully and intentionally accused another as a means of bullying or harassment range from positive behavioral (page 3) interventions up to and including suspension or expulsion, as outlined in the Code of Student Conduct. A district employee found to have wrongfully and intentionally accused another as a means of bullying or harassment may be disciplined in accordance with district policies, procedures, and agreements. Consequences and appropriate remedial action for a visitor or volunteer, found to have wrongfully and intentionally accused another as a means of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

²⁰ This seems contradictory to the following sentence, based on Supreme Court precedent.

²¹ Although such language might have been formed with the honorable intentions of providing the most protection to students within the school district, including policies language such as this would automatically subject the policy to the facial challenge of overbreadth, as established by Supreme Court precedent, negating the very reason for which the policy was adopted. Thus, it should be struck from the school district policy.

Procedure for Reporting

At each school, the principal or the principal's designee is responsible for receiving complaints alleging violations of this policy. All school employees are required to report alleged violations of this policy to the principal or the principal's designee. All other member of the school community, including students, parents/legal guardians, volunteers, and visitors are encouraged to report any act that may be a violation of this policy anonymously or in-person to the principal or principal's designee. The principal/site administrator of each school or site²² in the district shall establish, publicize, and prominently post (e.g., posters, student handbook, district website, school website)²³ to students, staff, volunteers, and parents/legal guardians, how a report of bullying or harassment may be filed either in-person or anonymously and how this report will be acted upon. The victim of bullying or harassment, anyone who witnessed the bullying or harassment, and anyone who has credible information that an act of bullying or harassment has taken place may file a report of bullying or harassment. A district employee, school volunteer, student, parent/legal guardian or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official and who makes this report in compliance with the procedures set forth in the district policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident. Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning, working environment, or work assignments. Any written or oral reporting of an act of bullying or harassment shall be considered an official means of reporting such act(s). Reports may be made anonymously, but formal disciplinary action may not be based solely on the basis of an anonymous report.

Procedure for Investigation

The investigation of a reported act of bullying or harassment is deemed to be a school related activity and begins with a report of such an act. All complaints about bullying and/or harassment that may violate this policy shall be promptly investigated by a school official. Documented interviews of the victim, alleged perpetrator, and witnesses are conducted privately, separately, and are confidential. Each individual (victim, alleged perpetrator, and witnesses) will be interviewed separately and at no time will the alleged perpetrator and victim be interviewed together. The investigator shall collect and evaluate the facts including, but not limited to:

²² It is important for a school district to set forth a person or persons who will be responsible for publicizing procedures relating to reporting, investigation and responding to acts of bullying or harassment within the school district. Hillsborough County provides one of the best examples of a policy that goes beyond requiring the establishment and publicizing of the policy to actually gives examples of ways in which this should be done. A school district could improve this provisions by setting forth specific time elements and more examples of ways in which the policy will be promoted throughout the school year.

²³ It is beneficial for the school to have a set plan for publicizing the policy, including the means in which the district will go about promoting the campaign.

- A. Description of incident(s) including nature of the behavior; context in which the alleged incident(s) occurred, etc:
- B. How often the conduct occurred;
- C. Whether there were past incidents or past continuing patterns of behavior;
- D. The relationship between the parties involved;
- E. The characteristics of parties involved (i.e., grade, age, etc.);
- F. The identity and number of individuals who participated in bullying or harassing behavior;
- G. Where the alleged incident(s) occurred;
- H. Whether the conduct adversely affected the student's education or educational environment;
- I. Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and
- J. The date, time, and method in which the parents/legal guardians of all parties involved were contacted.

Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances and includes:

- A. Recommended remedial steps necessary to stop the bullying and/or harassing behavior;
- B. A written final report to the principal.

The maximum of 10 school days shall be the limit for the initial filing of incidents and completion of the investigative procedural steps.²⁴ The highest level of confidentiality possible will be upheld regarding the submission of a complaint or a report of bullying and/or harassment, and the investigative procedures that follow.

Scope

The individual investigating the incident shall provide a report on results of the investigation with recommendations to determine if an act of bullying or harassment falls within the authority of the district.

- If it is within authority of district, move to Procedures for Investigating Bullying and/or Harassment.

²⁴ A sort of "scope of limitations" is good to include for ensuring that the details of any events are as accurately reported as possible. Inclusions of a specific length of time in which incidents must initially be reported must be followed if the policy includes such requirements. Specific procedural steps should also be written out and followed to avoid confusion on what an "initial filing of incidents" is meant to include.

- If it is outside authority of district, and determined a criminal act, refer to appropriate law enforcement.
- If it is outside authority of district, and determined not a criminal act, inform parents/legal guardians of all students involved.

Parent Notification

The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). If the bullying incident results in the perpetrator being charged with a crime, the principal, or designee, shall by telephone or in writing by first class mail, inform parents/legal guardian of the victim(s) involved in the bullying incident about the Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532) that states "...a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school." Once the investigation has been completed and it has been determined that criminal charges may be pursued against the perpetrator, all appropriate local law enforcement agencies will be notified by telephone and/or in writing.

Counseling Referral

A district referral procedure will establish a protocol for intervening when bullying or harassment is suspected or when a bullying incident is reported. The procedure shall include:

- A. A process by which the teacher or parent/legal guardian may request informal consultation with school staff (specialty staff, e.g., school counselor, school psychologist, etc.) to determine the severity of concern and appropriate steps to address the concern (the involved students' parents or legal guardian may be included).
- B. A referral process to provide professional assistance or services that includes:
 - A process by which school personnel or parent/legal guardian may refer a student to the school intervention team (or equivalent school-based team with a problem-solving focus) for consideration of appropriate services.
 - (Parent or legal guardian involvement is required at this point.)

- If a formal discipline report or formal complaint is made, the principal or designee must refer the student(s) to the school intervention team for determination of counseling support and interventions. (Parent or legal guardian involvement is required at this point.)

C. A school-based component to address intervention and assistance as determined appropriate by the intervention team that includes:

- Counseling and support to address the needs of the victims of bullying or harassment
- Research-based counseling/interventions to address the behavior of the students who bully and harass others (e.g., empathy training, anger management)
- Research-based counseling/interventions which includes assistance and support provided to parents/legal guardians, if deemed necessary or appropriate

Data Report

The school district will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data, which includes bullying/harassment as an incident code as well as bullying-related as a related element code. The SESIR definition of bullying/harassment is unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting or dehumanizing gesture, by an adult or student that is severe or pervasive enough to create an intimidating, hostile or offensive educational environment, cause discomfort or humiliation, or unreasonably interfere with the individual's school performance or participation. If a bullying and/or harassment incident occurs then it will be reported in SESIR with the bullying/harassment code. If the bullying/harassment results in any of the following SESIR incidents the incident will be coded appropriately using the relevant incident code AND the related element code entitled bullying-related code. Those incidents are:

- Arson
- Battery
- Breaking and Entering
- Disruption on Campus
- Major Fighting
- Homicide
- Kidnapping
- Larceny/Theft
- Robbery
- Sexual Battery
- Sexual Harassment
- Sexual Offenses
- Threat/Intimidation

- Vandalism
- Weapons Possession
- Other Major (Other major incidents that do not fit within the other definitions)

Discipline and referral data will be recorded in Student Discipline/Referral Action Report and Automated Student Information System.

The district will provide bullying incident, discipline, and referral data to the Florida Department of Education in the format requested, through Survey 5 from Education Information and Accountability Services, and at designated dates provided by the Department. Training and Instruction

The district expects that schools sustain healthy, positive, and safe learning environments for all students and affirms the importance of the social climate and norms about respect and civility. This requires the efforts of all stakeholders.
(page 7)

Annually, the district and school shall provide resources and information to all stakeholders regarding identifying, preventing and responding to bullying and harassment.²⁵

Victim's Parent Reporting

The principal or designee shall report any incident to the parent or legal guardian of all students involved on the same day an investigation of the incident has been initiated. Parents/legal guardians will be notified by telephone and/or writing of actions being taken to protect the child. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

Policy Publication

At the beginning of each school year, the Superintendent or designee shall, in writing, inform school staff, parents/legal guardians, or other persons responsible for the welfare of a student of the district's student safety and violence prevention policy.

Each district school shall provide notice to students and staff of this policy through appropriate references in the code of student conduct and employee handbooks, and/or through other reasonable means.²⁶ The Superintendent shall also make all contractors contracting with the district aware of this policy.

²⁵ What exactly are these resources and information? It might be beneficial for the school district to spell this out.

²⁶ Notice is important in being able to punish the student for his or her inappropriate behavior. Adequate notice must be given to the student . What is adequate notice? The Hillsborough County School District provides better requirements for such notice being given in requiring annual notice. at least once a year.

Part III: Resolution of the Research Questions

Part II provides a resolution of the research questions put forth in the

Introduction.²⁷

1. There are several circumstances under which school officials may punish students for the content of their bullying expression without violating the First Amendment: 1) where the speech rises to the level, under *Tinker*, of a substantial and material disruption of the educational atmosphere or interference with the rights of other students; 2) where the school can present sufficient evidence to prove that the policy has been enacted in response to a pattern of incidents based on racial or religiously-intolerant speech; and 3) when such speech rises to the level of either true threats or fighting words.
2. A survey of ten school districts revealed that the majority of the school districts have enacted anti-cyberbullying policies to address the occurrence of bullying and harassment when it comes onto school grounds. These policies tend to emulate the Florida's anti-cyberbullying law in the adoption of policy provisions. Of the ten school district policies surveyed as part of this thesis, the large school districts tended to include additional provisions that amplified the restrictions placed on student expression, whereas the small school districts appeared to stick more closely to the language adopted by the Florida Department of Education.
3. There are several free-speech concerns associated with the Florida school districts' adoption of the anti-cyberbullying policies based on Florida statutory law. The student speech precedents of *Hazelwood* and *Morse* are largely irrelevant here, as cyberbullying is neither school-sponsored expression, nor does it typically advocate the use of illegal drugs. Allowing the school district to regulate off-campus speech regardless of physical location or time poses a significant problem for the constitutionality of these policies. Adopting language that previously has been determined to be unconstitutionally vague and overbroad stands in direct conflict with the relevant precedent protecting the tenets of free speech.
4. Bearing all this in mind, although the Florida school districts efforts are admirable, it is doubtful that they would pass constitutional muster if challenged in court on First Amendment grounds.

²⁷ See Chapter One.

Part IV: Areas for Future Research

The author of this thesis has identified several areas for future research that surround the issue of the development of public school district anti-cyberbullying policies. Such topics include:

- Whether the school district determines the vagueness versus the specificity of the policy based on the legal counsel available
- The context or influences surrounding the development of the policy that contributed to the specificity of stringency of the policy's provisions
- Whether there are any incidents of cyberbullying that occurred within the school district that contributed to the level of stringency of the school district's policy provisions.

APPENDIX A
MIAMI-DADE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Title of Policy	District Policy Against Bullying and Harassment
Location within code	Chapter 5, Welfare
Size of District	Large
Region	Third District
Date cyberbullying policy was adopted	September 10, 2009 (date of issue)
Updated	June 17, 2009
Policy website	http://www.dadeschools.net/schoolboard/rules/Chapt5/5d-1.101.pdf
Electronic bullying clause	Yes
Includes "cyberbullying" provision	Yes

DISTRICT POLICY AGAINST BULLYING AND HARASSMENT

Miami Dade County Public Schools (M-DCPS) is committed to providing a safe learning environment for all students. To this end, M-DCPS is dedicated to eradicating bullying and harassment in its schools by providing awareness, prevention, and education in promoting a school atmosphere in which bullying, harassment, and intimidation will not be tolerated by students, school board employees, visitors, or volunteers. In April 2008, the Florida Legislature passed the "Jeffrey Johnston Stand Up for All Students Act" (House Bill 669). This Act created the Florida Statute (1006.147) that requires all school districts to adopt a policy prohibiting bullying and harassment of students and staff on school grounds or school transportation, at school-sponsored events, and through the use of data or computer software accessed through school computer systems or networks by December 1, 2008. The School Board of Miami-Dade County, Florida, has affirmed its support for this Act and the protection of all students and staff by establishing a District Policy Against Bullying and Harassment. Compliance with the requirements of Section 1006.147, Florida Statute, will be accomplished as follows:

Inclusion and involvement of students, parents, teachers, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of adopting the policy.

Provision of a plan for the school district to implement the policy in a consistent and on-going manner. Integration of the policy with curriculum, discipline policies, and violence prevention efforts.

Development of a District-wide policy prohibiting bullying and harassment that is in substantial conformity with the FLDOE model policy.

Submission of a district policy prohibiting bullying and harassment to the Office of Safe Schools.

Receipt of approval and certification of the District's policy from the Office of Safe Schools.

Implementation and monitoring of the District's required policy.

County Public Schools, through the Division of Student Services' Safe Schools Programs, has developed the Policy Against Bullying and Harassment for Miami-Dade County Public Schools, attached hereto and incorporated herein by 6Gx13- 5D-1.101 reference. Included in this state mandated policy is a comprehensive Bullying Prevention curriculum for all students in grades Pre-K through 12.

This policy shall also be incorporated by reference into the *Code of Student Conduct* and the *Procedures for Promoting and Maintaining a Safe Learning Environment*. This Policy will supersede any existing policy, guideline, or Board Rule regarding bullying

and harassment that may be determined to be inconsistent with this policy. School Board rules are applicable to all students under the jurisdiction of Miami-Dade County Public Schools. Copies of this document are on file in the Office of Board Recording Secretary, and the Citizen Information Center and will be available in each school and Regional Center. This policy does not replace the District's current policy prohibiting harassment on the basis of race, sex, national origin, and disability. Specific federal policy guidelines on harassment have been established by the U.S. Department of Education's Office of Civil Rights (OCR) for Title IX, Florida Equity Act, Section 504 of the Rehabilitation Act, Americans with Disabilities Act (ADA) and the Age Discrimination Act. The Florida Department of Education's Office of Equity and Access (OEA) reviews and monitors the implementation of such harassment policies. Specific Authority: 1001.41 (1), (2); 1001.42 (25); 1001.43 (10), F.S. Law Implemented, Interpreted, or made specific: 1006.147, F.S. **History: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA** New: 6-17-09

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APPENDIX B
BROWARD COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Title of Policy	Antibullying
Location with code	
Size of District	Large
Region	
Date cyberbullying policy was adopted	July 22, 2008
Updated	
Policy website	http://www.browardschools.com/pdf/conduct_en.pdf
Electronic bullying clause	Yes
Includes "cyberbullying" provision	Yes

POLICY 5.9: ANTI BULLYING

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, IS COMMITTED TO PROTECTING ITS STUDENTS, EMPLOYEES, AND APPLICANTS FOR ADMISSION FROM BULLYING, HARASSMENT, OR DISCRIMINATION FOR ANY REASON AND OF ANY TYPE. THE SCHOOL BOARD BELIEVES THAT ALL STUDENTS AND EMPLOYEES ARE ENTITLED TO A SAFE, EQUITABLE, AND HARASSMENT-FREE SCHOOL EXPERIENCE. BULLYING, HARASSMENT, OR DISCRIMINATION WILL NOT BE TOLERATED AND SHALL BE JUST CAUSE FOR DISCIPLINARY ACTION. THIS POLICY SHALL BE INTERPRETED AND APPLIED CONSISTENTLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS AND THE BOARD'S COLLECTIVE BARGAINING AGREEMENTS. CONDUCT THAT CONSTITUTES BULLYING, HARASSMENT OR DISCRIMINATION, AS DEFINED HEREIN, IS PROHIBITED. POLICY 4001.1, *NONDISCRIMINATION STATEMENT POLICY*, ADDRESSES REQUIREMENTS FOR DISCRIMINATION AGAINST DEFINED FEDERAL, STATE, AND LOCAL PROTECTED CATEGORIES OF PERSONS. IT IS ESSENTIAL THAT A BASIC UNIVERSAL PREVENTION CURRICULUM BE IN PLACE SO THAT EVERY SCHOOL WILL RECEIVE A FOUNDATION OF PREVENTION UPON WHICH TO BUILD A CULTURE OF HEALTH, WELLNESS, SAFETY, RESPECT AND EXCELLENCE.

The standards of this policy constitute a specific, focused, coordinated, integrated, culturally sensitive system of supports for all students, staff, families, and community agencies that will improve relations within each school. It is designed to ensure that every school has staff that have been trained and are supported in their school's efforts to provide awareness, intervention training, and instructional strategies on prevention, including violence prevention, to each staff, parent, and student in the District and to direct follow up when incidents are reported and/or occur.

I. Definitions

A. "**Bullying**" means systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees. It is further defined as: unwanted purposeful written, verbal, nonverbal, or physical behavior, including but not limited to any threatening, insulting, or dehumanizing gesture, by an adult or student, that has the potential to create an intimidating, hostile, or offensive educational environment or cause long term damage; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation, is carried out repeatedly and is often characterized by an imbalance of power.

Bullying may involve, but is not limited to:

1. unwanted teasing
2. threatening
3. intimidating
4. stalking

5. cyberstalking
6. cyberbullying
7. physical violence
8. theft
9. sexual, religious, or racial harassment
10. public humiliation (page 2)
11. destruction of school or personal property
12. social exclusion, including incitement and/or coercion
13. rumor or spreading of falsehoods

B. “**Harassment**” means any threatening, insulting, or dehumanizing gesture, use of technology, computer software, or written, verbal or physical conduct directed against a student or school employee that:

1. places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property;
2. has the effect of substantially interfering with a student’s educational performance, or employee’s work performance, or either’s opportunities, or benefits;
3. has the effect of substantially negatively impacting a student’s or employee’s emotional or mental well-being; or
4. has the effect of substantially disrupting the orderly operation of a school.

C. “**Cyberstalking**”, as defined in Florida State Statute 784.048(d), means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at or about a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

D. “**Cyberbullying**” is defined as the willful and repeated harassment and intimidation of a person through the use of digital technologies, including, but not limited to, email, blogs, social websites (e.g., MySpace, Facebook), chat rooms, and instant messaging.

E. “**Bullying**”, “**Cyberbullying**”, and/or “**Harassment**” also encompass:

1. retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying, harassment, or discrimination.
2. retaliation also includes reporting a baseless act of bullying, harassment, or discrimination that is not made in good faith.
3. perpetuation of conduct listed in the definition of bullying, harassment, and/or discrimination by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee by:
 - a. incitement or coercion;
 - b. accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the District school system; or

c. acting in a manner that has an effect substantially similar to the effect of bullying, harassment, or discrimination.

F. **“Bullying,” “Cyberbullying,” “Harassment,” and “Discrimination”** (hereinafter referred to as bullying, as defined in Section A, for the purpose of this Policy) also encompass, but are not limited to, unwanted harm towards a student or employee in regard to their real or perceived: sex, race, color, religion, national origin, age, disability (physical, mental, or educational), marital status, socio-economic background, ancestry, ethnicity, gender, gender identity or expression, linguistic preference, political beliefs, sexual orientation, or social/family background or being viewed as different in its education programs or admissions to education programs and therefore prohibits bullying of any student or employee by any Board member, District employee, consultant, contractor, agent, visitor, volunteer, student, or other (page 3) person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the District. For Federal requirements when these acts are against Federally identified protected categories, refer to Policy 4001.1.

G. **“Accused”** is defined as any District employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school sponsored events, on school buses, and at training facilities or training programs sponsored by the District who is reported to have committed an act of bullying, whether formally or informally, verbally or in writing, of bullying.

H. **“Complainant”** is defined as any District employee, consultant, contractor, agent, visitor, volunteer, student, or other person who formally or informally makes a report of bullying, orally or in writing.

II. Expectations: The Broward County School District expects students and employees to conduct themselves in keeping with their levels of development, maturity, and demonstrated and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.

A. The School District prohibits the bullying of any student or school employee:

1. during any educational program or activity conducted by SBBC;
2. during any school-related or school-sponsored program or activity or on a SBBC school bus;
3. through the use of any electronic device or data while on school grounds or on a SBBC school bus, computer software that is accessed through a computer, computer system, or computer network of the SBBC. The physical location or time of access of a computer-related incident cannot be raised as a defense in an disciplinary action initiated under this section.
4. through threats using the above to be carried out on school grounds. This includes threats made outside of school hours, which are intended to be carried out during any school-related or school-sponsored program or activity, or on a SBBC school bus.

5. while the District does not assume any liability for incidences that occur at a bus stop or en route to and from school, a student or witness may file a complaint following the same procedures for bullying against a student and the school will investigate and/or provide assistance and intervention as the principal/designee deems appropriate, which may include the use of the School Resource Officer. The principal/designee shall use all District Reporting Systems to log all reports and interventions.

B. All administrators, faculty, and staff, in collaboration with parents, students, and community members, will incorporate systemic methods for student and staff recognition through positive reinforcement for good conduct, self discipline, good citizenship, and academic success, as seen in the required school plan to address positive school culture and behavior (aka Discipline Plan).

C. Student rights shall be explained as outlined in this policy and in the Student Code of Conduct: Respect for Persons and Property.

D. Proper prevention and intervention steps shall be taken based on the level of severity of infraction as outlined in the Student Code of Conduct, the Discipline Matrix, and this Policy.
(page 4)

III. Stakeholder Responsibilities

A. Student Support Services' Office of Prevention: Student Support Services professionals, in collaboration with other District departments, will collaborate with school based staff members, families, and community stakeholders to utilize this Policy and associated procedures to promote academic success, enhance resiliency, build developmental assets, and promote protective factors within each school by ensuring that each and every staff member and student is trained on violence prevention. These trainings will work to create a climate within each school and within the District that fosters the safety and respect of children and the belief that adults are there to protect and help them. Additionally, students and staff (including but not limited to school based employees, administrators, area/district personnel, counseling staff, bus drivers) will be given the skills, training, and tools needed to create the foundation for preventing, identifying, investigating, and intervening when issues of bullying arise.

B. Schools: By August 2011, each school principal shall designate a Prevention Liaison who shall serve on existing teams that address acts of violence and school safety, e.g., threat assessment teams, SAFE Teams, and act as the Student Support Service's Office of Prevention contact. At minimum, this team should include staff members from administration, guidance, and instruction. These designees are the key school based personnel who will receive prevention training and assist in the dissemination of prevention methods, intervention, and curriculum, for bullying and other issues that impact the school culture and welfare of students and staff.

C. Community Resources: Student Support Services professionals, in collaboration with other District departments, will train a wide range of community stakeholders, profit, non-profit, School Resource Officers, and faith based agencies to provide the dissemination and support of violence prevention curriculums to students, their families and school staff. This collaboration will make effective use of available school district and community resources while ensuring seamless service delivery in which each and every school and student receives an equitable foundation of violence prevention.

D. Evidence-Based Interventions and Curriculum: Student Support Services' Office of Prevention staff members will serve as the coordinators and trainers of prevention for all designated school staff and outside agencies/community partners. Those trained in Prevention (e.g., Prevention Liaisons, Office of Prevention staff and Community Partners) will then collaborate as "violence prevention partners" to implement the evidence-based interventions and proven programs within each of their schools. Training will focus on prevention and evidence-based programs.

E. Parent Participation and Partnership: Student Support Services professionals, in collaboration with other District departments, will provide opportunities and encourage parents to participate in prevention efforts with their children in meaningful and relevant ways that address the academic, social, and health needs of their children. The District will offer parents and parent associations' trainings on violence prevention as well as knowledge of and/or opportunity to participate in any violence prevention initiatives currently taking place in their school via the District school website, Broward Education Communication Network (BECON), open houses, and parent/school newsletters. Training will provide resources and support for parents by linking them with internal supports as well as referral to community-based resources as needed. (page 5)

F. Evaluation of Service Effectiveness: Evaluations to determine the effectiveness and efficiency of the services being provided will be conducted at least every three years and shall include data-based outcomes.

G. Accountability: The Superintendent, other district administrators, the Area Superintendents and their staffs, as well as school principals, share accountability for implementation of these student support services consistent with the standards of this policy. These administrators will take steps to assure that student support services are fully integrated with their instructional components at each school and are pursued with equal effort in policy and practice.

IV. Training for students, parents, teachers, area/district staff, school administrators, student support staff, counseling staff, bus drivers, School Resource Officers/Deputies, contractors and school volunteers on identifying, preventing, and responding to bullying will be conducted.

- At the beginning of each school year, the school principal/designee and or appropriate area/district administrator shall provide awareness of this policy, as well as the process for reporting incidents, investigation and appeal, to students, school staff, parents, or

other persons responsible for the welfare of a pupil through appropriate references in the Student Code of Conduct, Employee Handbooks, the school website, and/or through other reasonable means.

V. Disciplinary sanctions (consequences) and due processes for a person who commits an act of bullying under this policy.

A. Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances, followed by the determination of disciplinary sanctions appropriate to the perpetrator's position within the District.

1. Consequences and appropriate interventions for students who commit acts of bullying may range from positive behavioral interventions up to, but not limited to suspension, as outlined in the Student Code of Conduct, the Discipline Matrix, and this Policy.

2. Consequences and appropriate interventions for a school/district employee found to have committed an act of bullying will be instituted in accordance with District policies, procedures, and agreements (Policy 4.9, Employee Disciplinary Guidelines, Part I, Section b and Policy 2410, Workplace Violence, Rules) and the Education Professionals' Contract Agreement (BTU). Additionally, egregious acts of bullying by certified educators may result in a sanction against an educator's state issued certificate (Rule 6B-1.006 F.A.C.).

3. Consequences and appropriate intervention for a visitor or volunteer, found to have committed an act of bullying shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

4. These same actions will apply to persons, whether they be students, school employees, or visitors/volunteers/independent contractors, who are found to have made wrongful and intentional accusations of another as a means of bullying.

VI. Reporting an act of bullying

A. At each school, the principal/designee is responsible for receiving oral or written complaints alleging violations of this policy, as with all infractions from the Student Code of Conduct.

B. All District faculty and staff are required and must report, in writing, any allegations of bullying or violations of this Policy to the principal/designee or appropriate area/district administrator. Failure to report will result in action(s) or discipline, consistent with the collective bargaining agreement provisions, up to and including termination of employment (SBBC Policy 2410, section 1).

C. Any other members of the school community who have credible information that an act of bullying has taken place may file a report of bullying, whether a victim or witness.

D. Any student (and/or the parent on that complainant's behalf if the complainant is a minor) who believes he/she is a victim of bullying (or any individual, including any student who has knowledge of any incident(s) involving bullying of students) is strongly encouraged to report the incident(s) in writing to a school official. Complaints should be filed as soon as possible after the alleged incident and noted on the specified data system, but must be filed within ninety (90) school days after the alleged incident (i.e., within 90 school days of the last act of alleged bullying). Failure on the part of the complainant to initiate and/or follow up on the complaint within this period may result in the complaint being deemed abandoned. For protected categories covered under Policy 4001.1, a different timeline may apply.

E. The principal of each school in the District shall establish, and prominently publicize to students, staff, volunteers, and parents, how a report of bullying may be filed and how this report will be acted upon.

F. A school district employee, school volunteer, contractor, student, parent/ or other persons who promptly reports in good faith an act of bullying to the appropriate school official, and who makes this report in compliance with the procedures set forth in this District Policy, is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident. Submission of a good faith complaint or report of bullying will not affect the complainant or reporter's future employment, grades, learning or working environment, or work assignments within the SBBC.

G. Administrators/principal/designee(s) shall document in writing and/or via the specified data system all complaints regarding bullying, as with all infractions of the Code of Student Conduct, to ensure that problems are appropriately addressed in a timely manner, whether the report is made verbally or in writing.

H. Anonymous reports may be made utilizing the Broward County Public Schools Anonymous Bullying Report Form. This reporting form can be found on the School District's website www.browardschools.com (click on special investigative unit; click on report anonymous tips), at each school's front office, or at each area/district/ department site. Anonymous reports may be delivered to the school administration's front office, put in the school's reporting box, or through the Special Investigative Unit (herein after to be referred to as SIU) via their internet website www.broward.k12.fl.us/siu or Emergency/Silence Hurts Tipline at (754) 321-0911. Administrators shall use the specified data system to log all reports and interventions. Formal disciplinary action may not be based solely on the basis of an anonymous report.

VII. Bullying Complaints and Resolution

A. The investigation of a reported act of bullying of a student, school-based employee, or other persons providing service to the school is deemed to be a school-related activity and begins with a report of such an act. (page 7)

B. The principal/designee shall document all complaints in writing and/or through the appropriate data system to ensure that problems are addressed in a timely manner. Although this Policy encourages students to use the formal written complaint process, school officials "should investigate all complaints and reports of harassment, whether or not the complaint is in writing," as stated by the Office for Civil Rights in *Protecting Students from Harassment and Hate Crime: A Guide for Schools, Part II* (1999).

C. If the complaint is about the principal or an area/district's staff member's direct supervisor, then the Area Superintendent/Designee or appropriate district administrator shall be asked to address the complaint.

D. Informal Resolution - where the administrator, along with the complainant and the accused/student, may agree to informally resolve the complaint. The incident and the resolution must be documented on the appropriate data system.

- If a mutual resolution has not been achieved, a formal written appeal must be filed within five (5) work days after the informal meeting and submitted to the principal or appropriate area/district supervisor.

E. Formal Resolution - the complainant/student/employee or parent(s), on behalf of the student, may file a written complaint with the principal/designee or appropriate area/district administrator by utilizing the Broward County Public Schools Bullying Complaint Report Form. Said form is available on the School District's website www.browardschools.com, at each school's front office, or area/district/department site.

- According to the level of infraction, parents will be promptly notified of any actions being taken to protect the victim via telephone or personal conference; the frequency of notification will depend on the seriousness of the bullying incident.

F. The resolution, all interviews and interventions that take place and the corresponding dates shall be documented in writing and/or noted in the district specified data system.

VIII. Investigation requirements for reported acts of bullying under this policy

A. The procedures for investigating school-based bullying may include the principal/designee and/or the utilization of a Prevention Liaison, in the case of student-to-student bullying. The principal or designee and Prevention Liaison shall be trained in investigative procedures and interventions as outlined in this Policy. For incidents at the area/district level, the appropriate administrator will be responsible for the investigation as outlined in this policy.

B. The investigator may not be the accused or the alleged victim.

C. The principal/designee or appropriate area/district administrator shall begin a thorough investigation and interviews with the complainant(s), accused, and witnesses within two (2) school days of receiving a notification of complaint. (The Florida Department of Education requires that school administrators/designees provide

immediate notification to the parents of both the victim and the alleged perpetrator of an act of bullying or harassment.)

D. During the investigation, the principal/designee or appropriate area/district administrator may take any action necessary to protect the complainant, other students or employees consistent with the requirements of applicable regulations and statutes.

1. In general, student complainants will continue attendance at the same school and pursue their studies as directed while the investigation is conducted and the complaint is pending resolution. Any legal order of a court will prevail.

2. When necessary to carry out the investigation or for other good reasons, and consistent with federal and state privacy laws, the principal/designee or appropriate area/district administrator also may discuss the complaint with any school district employee, the parent of the complainant or accused, if one or both is a minor (or has given consent or is an adult who has been determined to be incompetent or unable to give informed consent due to disability), and/or child protective agencies responsible for investigating child abuse.

3. During the investigation where an employee is the accused, the principal/designee or the appropriate area/district administrator may recommend to the Associate Superintendent of Human Resources/designee, any action necessary to protect the complainant, or other students or employees, consistent with the requirements of applicable statutes, State Board of Education Rules, School Board Policies, and collective bargaining agreements.

E. Within ten (10) school days of the filing of the complaint, there shall be a written decision by the Principal/Designee or appropriate area/district administrator regarding the completion of the investigation. The principal/designee shall make a decision about the validity of the allegations in the complaint and about any corrective action, if applicable, consistent with the Discipline Matrix.

F. The Principal/Designee or appropriate area/district administrator will inform all relevant parties in writing of the decision and the right to appeal. A copy of the decision will be sent to the originating school and be noted in all relevant data tracking systems including, but not limited to the SESIR and the Statewide Report on School Safety and Discipline Data system.

G. If the accused is an employee, discipline may be taken, consistent with any applicable collective bargaining agreement provisions, to resolve a complaint of bullying (Policy 4.9, Employee Disciplinary Guidelines). The supervisor/designee (e.g., principal/designee for school-based employees) of the employee shall discuss the determination and any recommended corrective action with the Area Director, for school-based actions, or the appropriate area/district supervisor, for area/district actions, and the Associate Superintendent of Human Resources.

H. No retaliation of any kind is permitted in connection with an individual's having made a bullying complaint and if it occurs, it shall be deemed an additional act of bullying as stated herein this Policy.

IX. Referral for Intervention

A. Referral of a student to the collaborative problem-solving team (or equivalent school-based team with a problem solving focus) for consideration of appropriate services is made through the school problem-solving process by school personnel or parent to the principal/designee. Parent notification is required. When such a report of formal discipline or formal complaint is made, the principal/designee shall refer the student(s) to the collaborative problem-solving team for determination of need for counseling support and interventions.

B. Referral of school or area/district personnel to the Employee Assistance Program (EAP) for consideration of appropriate services will be made by the administrator.

C. School-based intervention and assistance will be determined by the collaborative problem-solving team and may include, but is not limited to: 1. counseling and support to address the needs of the victims of bullying. (page 9)

2. counseling interventions to address the behavior of the students who bully (e.g., empathy training, anger management).

3. intervention which includes assistance and support provided to parents.

4. analysis and evaluation of school culture with resulting recommendations for interventions aimed at increasing peer ownership and support.

D. Self referral for informal consultation: District staff, students or parents may request informal consultation with school staff (e.g., school social worker, school counselor, school psychologist, Prevention Liaison, EAP, etc.) to determine the severity of concern and appropriate steps to address the concern of bullying (the involved students' parents may be included) orally or in writing to the principal/designee.

E. Any investigations and interventions shall be recorded on the District specified data system.

X. Incident reporting requirements

A. The procedure for including incidents of bullying in the school's report of safety and discipline data is required under F.S. 1006.09(6). The report must include each incident of bullying and the resulting consequences, including discipline, interventions and referrals. In a separate section, the report must include each reported incident of bullying or harassment that does not meet the criteria of a prohibited act under this policy, with recommendations regarding said incident.

B. The School District will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data, which includes bullying/harassment in its codes.

C. Discipline, referral data, investigations, interventions, and actions of discipline shall be recorded on the specified data system, as with other infractions from the Code of Student Conduct.

XI. Process for referral for external investigation

A. If the act is outside the scope of the District, and determined a criminal act, referral to appropriate law enforcement shall be made immediately, the parent will be notified, and the referral documented by the principal/designee in the specified data system.

B. While the District does not assume any liability for incidences that must be referred for external investigation, it encourages the provision of assistance and intervention as the principal/designee deems appropriate, including the use of the School Resource Officer and other personnel. The principal/designee shall use District Reporting Systems to log all reports and interventions.

XII. Appeals process

A. Appeal procedure for bullying by a student will follow the steps outlined in the Code of Student Conduct – “Right to Appeal Unfair Penalties.”

B. Appeal procedure for an accused/employee:

1. If the accused/employee wishes to appeal the action taken in resolution of the complaint, such appeal shall be filed either in accordance with SBBC Board Policy 4015 or pursuant to the relevant collective bargaining agreement.

2. For those employees not in a bargaining unit, the appeal shall be filed in accordance with SBBC Policy 4015. In reaching a decision about the complaint, the following should be taken into account:

a) SBBC Policy 4.9, Employee Disciplinary Guidelines; and (page 10)

b) Case law, state and federal laws and regulations, and the Board's Policies prohibiting bullying and discrimination, including Policy 4001.1.

XIII. Confidentiality

A. To the greatest extent possible, all complaints will be treated as confidential and in accordance with SBBC Policy 5100.1, F.S. § 1002.22(3)(d); the Family Educational Rights and Privacy Act (“FERPA”); the Health Insurance Portability and Accountability Act (“HIPAA”) and any other applicable law, such as F.S. § 119.07(1); 1012.31(3)(a); or 1012.796(1)(c).

B. Limited disclosure may be necessary to complete a thorough investigation as described

above. The District's obligation to investigate and take corrective action may supersede an individual's right to privacy.

C. The complainant's identity shall be protected, but absolute confidentiality cannot be guaranteed. The identity of the victim of the reported act shall be protected to the extent possible.

XIV. Retaliation Prohibited

A. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment in connection with filing a complaint or assisting with an investigation under this Policy.

B. Retaliatory or intimidating conduct against any individual who has made a bullying complaint or any individual who has testified, assisted, or participated, in any manner, in an investigation is specifically prohibited and as detailed in this Policy shall be treated as another incidence of bullying.

XV. Additional Referral

In all cases, the District reserves the right to refer the results of its own investigation to the State Attorney for the Seventeenth Judicial Circuit of Florida for possible criminal charges, whether or not the District takes any other action.

XVI. Constitutional Safeguard

This policy does not imply to prohibit expressive activity protected by the First Amendment of the United States Constitution or Article I, Section 4 of the Florida Constitution.

XVII. Preclusion

This policy should not be interpreted as to prevent a victim or accused from seeking redress under any other available law either civil or criminal.

XVIII. Severability

If a provision of this policy is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the validity or enforceability in that jurisdiction of any other provision of this policy.

AUTHORITY: F.S. 1006.147

POLICY ADOPTED AS AMENDED: 7/22/08

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APPENDIX C
HILLSBOROUGH COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Title of Policy	Policy Against Bullying and Harassment
Location within code	
Size of District	Large
Region	Second District
Date cyberbullying policy was adopted	November 25, 2008
Policy website	http://www.sdhc.k12.fl.us/PolicyManual/
No. of pages	7
Electronic bullying clause	
Includes "cyberbullying" provision	

Policy Against Bullying and Harassment

It is the policy of Hillsborough County Public Schools that all of its students and school employees have an educational setting that is safe, secure, and free from harassment and bullying of any kind. The district will not tolerate bullying or harassment of any type. Conduct that constitutes bullying or harassment, as defined herein, is prohibited.

Definitions

“Bullying” means systematically and chronically inflicting physical hurt or psychological distress on one or more students, employees, or visitors. It is further defined as unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual’s school performance or participation; and may involve but is not limited to:

- A. Teasing
- B. Social Exclusion
- C. Threat
- D. Intimidation
- E. Stalking
- F. Cyberbullying
- G. Cyberstalking
- H. Physical violence
- I. Theft
- J. Sexual, religious, or racial harassment
- K. Public humiliation
- L. Destruction of property

“Harassment” means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:

- A. places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property; or
- B. has the effect of substantially interfering with a student’s educational performance, opportunities, or benefits; or
- C. has the effect of substantially disrupting the orderly operation of a school

Bullying and harassment also encompasses:

- A. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.

B. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee by:

1. Incitement or coercion; (page 2)
2. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system; or
3. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

"Harassment" or "bullying" also includes electronically transmitted acts (i.e., internet, e-mail, cellular telephone, personal digital assistance (PDA), or wireless hand-held device) directed toward a student(s) or staff member(s) that causes mental or physical harm or is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student(s).

Cyberstalking as defined in s. 784.048(1)(d), F.S., means to engage in a course of conduct

to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

Expected Behavior

Hillsborough County Public Schools expects students and school employees to conduct themselves appropriately for their levels of development, maturity, and demonstrated capabilities, with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.

The school district believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline. The development of this atmosphere requires respect for self and others, as well as for district and community property on the part of students, staff, and community members. Since students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate behavior; treat others with civility and respect, and refuse to tolerate bullying or harassment.

The school district upholds that school-related bullying or harassment of any student or school employee is prohibited:

- A. During any education program or activity conducted by a school sites educational institution;
- B. During any school-related or school-sponsored program or activity;
- C. On a school bus or bus stop of a school sites educational institution; or

D. Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a school sites education institution.

Consequences

Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances. The physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action. Consequences and appropriate remedial action for students who commit acts of bullying or harassment may range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the Code of Student Conduct. A district employee found to have committed an act of bullying or harassment may be disciplined in accordance with district policies, procedures, and agreements. Additionally, egregious acts of harassment by certified educators may result in a sanction against that educator's state issued certificate. (See State Board of Education Rule 6B-1.006, FAC., The Principles of Professional Conduct of the Education Profession in Florida.) Consequences and appropriate remedial action for a visitor or volunteer, found to have committed an act of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

Consequences and appropriate remedial action for a student found to have wrongfully and intentionally accused another as a means of bullying or harassment range from positive behavioral (page 3) interventions up to and including suspension or expulsion, as outlined in the Code of Student Conduct. A district employee found to have wrongfully and intentionally accused another as a means of bullying or harassment may be disciplined in accordance with district policies, procedures, and agreements. Consequences and appropriate remedial action for a visitor or volunteer, found to have wrongfully and intentionally accused another as a means of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

Procedure for Reporting

At each school, the principal or the principal's designee is responsible for receiving complaints alleging violations of this policy. All school employees are required to report alleged violations of this policy to the principal or the principal's designee. All other member of the school community, including students, parents/legal guardians, volunteers, and visitors are encouraged to report any act that may be a violation of this policy anonymously or in-person to the principal or principal's designee. The principal/site administrator of each school or site in the district shall establish, publicize, and prominently post (e.g., posters, student handbook, district website, school website) to students, staff, volunteers, and parents/legal guardians, how a report of bullying or harassment may be filed either in-person or anonymously and how this report will be acted upon. The victim of bullying or harassment, anyone who witnessed the bullying or

harassment, and anyone who has credible information that an act of bullying or harassment has taken place may file a report of bullying or harassment. A district employee, school volunteer, student, parent/legal guardian or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official and who makes this report in compliance with the procedures set forth in the district policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident. Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning, working environment, or work assignments. Any written or oral reporting of an act of bullying or harassment shall be considered an official means of reporting such act(s). Reports may be made anonymously, but formal disciplinary action may not be based solely on the basis of an anonymous report. (page 4)

Procedure for Investigation

The investigation of a reported act of bullying or harassment is deemed to be a school related activity and begins with a report of such an act. All complaints about bullying and/or harassment that may violate this policy shall be promptly investigated by a school official. Documented interviews of the victim, alleged perpetrator, and witnesses are conducted privately, separately, and are confidential. Each individual (victim, alleged perpetrator, and witnesses) will be interviewed separately and at no time will the alleged perpetrator and victim be interviewed together. The investigator shall collect and evaluate the facts including, but not limited to:

- A. Description of incident(s) including nature of the behavior; context in which the alleged incident(s) occurred, etc.;
- B. How often the conduct occurred;
- C. Whether there were past incidents or past continuing patterns of behavior;
- D. The relationship between the parties involved;
- E. The characteristics of parties involved (i.e., grade, age, etc.);
- F. The identity and number of individuals who participated in bullying or harassing behavior;
- G. Where the alleged incident(s) occurred;
- H. Whether the conduct adversely affected the student's education or educational environment;
- I. Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and
- J. The date, time, and method in which the parents/legal guardians of all parties involved were contacted.

Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances and includes:

- A. Recommended remedial steps necessary to stop the bullying and/or harassing behavior;
- B. A written final report to the principal.

The maximum of 10 school days shall be the limit for the initial filing of incidents and completion of the investigative procedural steps. The highest level of confidentiality possible will be upheld regarding the submission of a complaint or a report of bullying and/or harassment, and the investigative procedures that follow.

Scope

The individual investigating the incident shall provide a report on results of the investigation with recommendations to determine if an act of bullying or harassment falls within the authority of the district.

- If it is within authority of district, move to Procedures for Investigating Bullying and/or Harassment.
- If it is outside authority of district, and determined a criminal act, refer to appropriate law enforcement.
- If it is outside authority of district, and determined not a criminal act, inform parents/legal guardians of all students involved. (page 5)

Parent Notification

The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). If the bullying incident results in the perpetrator being charged with a crime, the principal, or designee, shall by telephone or in writing by first class mail, inform parents/legal guardian of the victim(s) involved in the bullying incident about the Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532) that states "...a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school." Once the investigation has been completed and it has been determined that criminal charges may be pursued against the perpetrator, all appropriate local law enforcement agencies will be notified by telephone and/or in writing.

Counseling Referral

A district referral procedure will establish a protocol for intervening when bullying or harassment is suspected or when a bullying incident is reported. The procedure shall include:

- A. A process by which the teacher or parent/legal guardian may request informal consultation with school staff (specialty staff, e.g., school counselor, school psychologist, etc.) to determine the severity of concern and appropriate steps to address the concern (the involved students' parents or legal guardian may be included).
- B. A referral process to provide professional assistance or services that includes:

A process by which school personnel or parent/legal guardian may refer a student to the school intervention team (or equivalent school-based team with a problem-solving focus) for consideration of appropriate services.

(Parent or legal guardian involvement is required at this point.)

If a formal discipline report or formal complaint is made, the principal or designee must refer the student(s) to the school intervention team for determination of counseling support and interventions. (Parent or legal guardian involvement is required at this point.)

C. A school-based component to address intervention and assistance as determined appropriate by the intervention team that includes:

Counseling and support to address the needs of the victims of bullying or harassment

Research-based counseling/interventions to address the behavior of the students who bully and harass others (e.g., empathy training, anger management)

Research-based counseling/interventions which includes assistance and support provided to parents/legal guardians, if deemed necessary or appropriate

Data Report

The school district will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data, which includes bullying/harassment as an incident code as well as bullying-related as a related element code. The SESIR definition of bullying/harassment is unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting or dehumanizing gesture, by an adult or student that is severe or pervasive enough to create an intimidating, hostile or offensive educational environment, cause discomfort or humiliation, or unreasonably interfere with the individual's school performance or participation. If a bullying and/or harassment incident occurs then it will be reported in SESIR with the bullying/harassment code. If the bullying/harassment results in any of the following SESIR incidents the incident will be coded appropriately using the relevant incident code AND the related element code entitled bullying-related code. Those incidents are:

- Arson
- Battery
- Breaking and Entering
- Disruption on Campus
- Major Fighting
- Homicide
- Kidnapping
- Larceny/Theft
- Robbery
- Sexual Battery
- Sexual Harassment
- Sexual Offenses

- Threat/Intimidation
- Vandalism
- Weapons Possession
- Other Major (Other major incidents that do not fit within the other definitions)

Discipline and referral data will be recorded in Student Discipline/Referral Action Report and Automated Student Information System.

The district will provide bullying incident, discipline, and referral data to the Florida Department of Education in the format requested, through Survey 5 from Education Information and Accountability Services, and at designated dates provided by the Department. Training and Instruction

The district expects that schools sustain healthy, positive, and safe learning environments for all students and affirms the importance of the social climate and norms about respect and civility. This requires the efforts of all stakeholders.
(page 7)

Annually, the district and school shall provide resources and information to all stakeholders regarding identifying, preventing and responding to bullying and harassment.

Victim's Parent Reporting

The principal or designee shall report any incident to the parent or legal guardian of all students involved on the same day an investigation of the incident has been initiated. Parents/legal guardians will be notified by telephone and/or writing of actions being taken to protect the child. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

Policy Publication

At the beginning of each school year, the Superintendent or designee shall, in writing, inform school staff, parents/legal guardians, or other persons responsible for the welfare of a student of the district's student safety and violence prevention policy.

Each district school shall provide notice to students and staff of this policy through appropriate references in the code of student conduct and employee handbooks, and/or through other reasonable means. The Superintendent shall also make all contractors contracting with the district aware of this policy.

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APPENDIX D
ORANGE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

<http://www.ocps.net/sb/Superintendent/Pages/SuperintendentsDocuments.aspx>

No. of Pages: 11

Size: Large

District: Fifth

Title of Policy	Policy Against Bullying and Harassment
Location within code	
Size of District	Large
Region	Second District
Date cyberbullying policy was adopted	November 25, 2008
Policy website	http://www.sdhc.k12.fl.us/PolicyManual/
No. of pages	11
Electronic bullying clause	
Includes "cyberbullying" provision	

SAFE SCHOOLS: Bullying and Harassment

POLICY:

(1) Statement prohibiting bullying and harassment:

The school board of Orange County, Florida, is committed to protecting its students, employees, and applicants for admission from bullying, harassment, or discrimination for any reason and of any type. The school board believes that all students and employees are entitled to a safe, equitable, and harassment-free school experience. Bullying, harassment, or discrimination will not be tolerated and shall be just cause for disciplinary action. This policy shall be interpreted and applied consistently with all applicable state and federal laws and the board's collective bargaining agreements. The best practices to ensure school safety and violence prevention initiatives for the school community (students, parents, staff and community members) are essential components of this policy. This policy is designed to assure that awareness, intervention and follow-up training components are in place within each school community with the goal of establishing and maintaining a safe learning and working environment.

Conduct that constitutes bullying, harassment or discrimination, as defined herein is prohibited.

(2) Definition of bullying, harassment, cyberstalking:

(a) Bullying means systematically and chronically inflicting physical hurt or psychological distress on one or more students or school district employees. It is further defined as unwanted and repeated written, verbal, or physical behavior, including any threatening,

insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve but is not limited to:

1. Unwanted Teasing
2. Social Exclusion
3. Threat
4. Intimidation
5. Stalking
6. Physical violence
7. Theft
8. Sexual, religious, or racial harassment
9. Public humiliation
10. Destruction of property

(b) Harassment means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct (page 2) directed against a student or school district employee that:

1. Places a student or school district employee in reasonable fear of harm to his or her person or damage to his or her property
2. Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits
3. Has the effect of substantially disrupting the orderly operation of a school

(c) Bullying and harassment also encompasses:

1. Retaliation against a student or school district employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.
2. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school district employee by:
 - a. Incitement or coercion
 - b. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system
 - c. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment

(d) Cyberstalking as defined in s. 784.048(1)(d), F.S., means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(e) "Bullying," "Cyberbullying", "Harassment," and "Discrimination" (hereinafter referred to as bullying, as defined in Section B, for the purpose of this Policy) also encompass, but are not limited to, unwanted harm towards a student or employee in regard to their real or perceived: sex, race, color, religion, national origin, age, disability (physical, mental, or educational), marital status, socio-economic background, ancestry, ethnicity,

gender, gender identity or expression, linguistic preference, political beliefs, sexual orientation, or social/family background or being viewed as different in its education programs or admissions to education programs and therefore prohibits bullying of any student or school district employee by any board member, district employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the District.

(3) Description of the type of behavior expected from each student and school employee of a public k-12 educational institution: (page 3)

(a) The Orange County School District expects students to conduct themselves as appropriate for their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students and school district employees, the goal of student success underlying all school activities, and the care of school facilities and equipment.

(b) The Orange County School District believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, school district employees, and community members producing a school climate that encourages students to grow in self-discipline. The development of this positive school climate requires respect for self and others, as well as for district and community property on the part of students, school district employees, parents and community members. Since students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate modeling behavior; treat others with civility and respect, and refuse to accept bullying or harassment.

(c) The Orange County School District upholds that bullying or harassment of any student or school district employee is prohibited:

1) During any education program or activity conducted by an Orange County School District K-12 educational institution;

2) During any Orange County School District school-related or school sponsored program or activity; (Morse)

3) On a school bus of a public K-12 educational institution; or

4) Through the use of data or computer software that is accessed through a computer, computer system, or computer network of an Orange County School District public K-12 education institution. Each school community is required to implement appropriate recognition for positive reinforcement for good conduct, self discipline, good citizenship and academic success. These areas are addressed in each school improvement plan which is submitted to, reviewed and approved by the district.

Student rights shall be explained as outlined in this policy and in the Code of Student Conduct: Students Rights and Responsibilities. Proper prevention and intervention steps shall be applied based on the level of severity of infraction as outlined in the Student Code of Conduct and this Policy.

(4) Consequences for a student or school district employee of a public K-12 educational institution who commits an act of bullying or harassment:

(a) Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances,

followed by the determination of disciplinary sanctions appropriate to the offenders' position within the District. (page 4)

(b) Consequences and appropriate interventions for students who commit acts of bullying may range from positive behavioral interventions up to, but not limited to an expulsion, as outlined in the Code of Student Conduct.

(c) Consequences and appropriate interventions for a school district employee found to have committed an act of bullying will be instituted in accordance with District policies, procedures, and agreements. Additionally egregious acts of bullying or harassment by certified educators may result in a sanction against an educators state issued certificate (see State Board of Education Rule 6B-1.006,FAC.,The Principles of Professional Conduct of the Education Profession in Florida).

(d) Consequences and appropriate intervention for a visitor or volunteer, found to have committed an act of bullying shall be determined by the school administrator after consideration of the nature and circumstances of the act, which may include reports to appropriate law enforcement officials.

(e) In addressing consequences of computer related bullying the physical location or time of access of a computer related incident cannot be raised as a defense in any disciplinary action initiated under this section.

Consequences will be taken as outlined in the section on, Abuse of Electronic and Internet/Communication Devices as outlined in Code of Student Conduct; Code of Civility (school board policy KFB).

(5) Consequences for a student or school district employee of a public K-12 educational institution who is found to have wrongfully and intentionally accused another of an act of bullying or harassment:

(a) Consequences and appropriate remedial action for a student found to have wrongfully and intentionally accused another as a means of bullying or harassment range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the Code of Student Conduct.

(b) Consequences and appropriate remedial action for a school district employee found to have wrongfully and intentionally accused another as a means of bullying or harassment will be referred to Employee Relations and may be disciplined in accordance with district policies, procedures, and agreements.

(c) Consequences and appropriate remedial action for a visitor or volunteer, found to have wrongfully and intentionally accused another as a means of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, which may include reports to appropriate law enforcement officials. (page 5)

(6) A procedure for reporting an act of bullying or harassment, including provisions that permit a person to anonymously report such an act:

(a) At each school, the principal/designee is responsible for receiving oral or written complaints alleging violations of this policy, as with all infractions from the Code of Student Conduct.

(b) All school district employees are required and must report, in writing, any allegations of bullying or violations of this Policy to the principal/designee or appropriate area/district administrator.

(c) Any other members of the school community who have credible information that an act of bullying has taken place may file a report of bullying at the school location, whether they are a victim or a witness.

(d) Any student who believes he/she is a victim of bullying, or has knowledge of any incidents involving bullying of students is strongly encouraged to report the incident(s) in writing to a school official. A parent/legal guardian may intervene on behalf of their child. Complaints should be filed as soon as possible after the alleged incident and noted on the specified district reporting form, but must be filed within ten (10) school days after the alleged incident. Failure on the part of the complainant to initiate and/or follow up on the complaint within this period may result in the complaint being deemed abandoned.

(e) The Principal shall establish, and prominently publicize to students, staff, volunteers, and parents, how a report of bullying may be filed and how this report will be acted upon. This notification will occur through school newsletters, pre-planning staff meetings, school announcements, Code of Student Conduct review meetings and school web sites. Forms will be available at each school to make a written report when student bullying is witnessed.

(f) A school district employee, school volunteer, contractor, student, parent/legal guardian or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official, and who makes this report in compliance with the procedures set forth in the District Policy, is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident.

Submission of a good faith complaint or report of bullying will not affect the complainant or reporter's future employment, grades, learning or working environment, or work assignments.

(g) Administrators/principal/designee(s) shall document in writing and/or via the discipline data system all complaints regarding bullying, as with all infractions of the Code of Student Conduct, to ensure that problems are (page 6) appropriately addressed in a timely manner, whether the report is made verbally or in writing.

(h) Anonymous reports may be made utilizing The Speakout Hotline. The Speakout Hotline is promoted to schools at the district level and in return each school will publicize The Speakout Hotline through PSA's, and/or other promotional materials. Reports made to this anonymous hotline are immediately followed up on and written copies of this anonymous report will be sent to the principal/designee for follow-up. Formal disciplinary action may not be based solely on the basis of an anonymous report.

(7) A procedure for the prompt investigation of a report of bullying or harassment and the persons responsible for the investigation. The investigation of a reported act of bullying or harassment is deemed to be a school-related activity and begins with a report of such an act:

(a) The procedures for investigating school-based bullying (student-to- student bullying) may include the principal/designee and is deemed to be a school related activity. The principal or designee shall be trained by the District SAFE Office in investigative procedures and interventions as outlined in this Policy. For incidents of bullying which are the most serious acts of misconduct (Code of

Student Conduct) the area/district level administrator will work cooperatively with the principal/designee as outlined in this policy.

Documented interviews of the victim, alleged offender, and witnesses are conducted privately, separately, and are confidential. The victim will be interviewed first. Each individual (victim, alleged offender, and witnesses) will be interviewed separately and at no time will the alleged offender and victim be interviewed together.

The investigator shall collect and evaluate the facts including, but not limited to:

- Description of incident(s) including nature of the behavior; context in which the alleged incident(s) occurred, etc.;
- How often the conduct occurred;
- Whether there were past incidents or past continuing patterns of behavior;
- The relationship between the parties involved;
- The characteristics of parties involved (i.e., grade, age, etc.)
- The identity and number of individuals who participated in bullying or harassing behavior;
- Where the alleged incident(s) occurred;
- Whether the conduct adversely affected the student's education or educational environment;
- Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and (page 7)
- The date, time, and method in which the parents/legal guardians of all parties involved were contacted.

The investigator may not be the accused or the alleged victim or related to the alleged victim. The principal/designee or appropriate area/district administrator shall begin a thorough investigation and interviews with the complainant(s), accused, and witnesses within 24 hours or no more than two (2) school days of receiving a notification of complaint. The principal/designee will provide immediate notification to the parents of both the victim and the alleged offender of an act of bullying or harassment.

During the investigation, the principal/designee or appropriate area/district administrator may take any action necessary to protect the complainant, other students or school district employees consistent with the requirements of applicable regulations and statutes. In general, student complainants will continue attendance at the same school and pursue their studies as directed while the investigation is conducted and the complaint is pending resolution. Any legal order of a court will prevail and/or state and federal laws. When necessary to carry out the investigation or for other good reasons and consistent with federal and state privacy laws, the principal/designee or appropriate area/district administrator also may discuss the complaint with any school district employee, the parent of the complainant or accused, and/or child protective agencies responsible for investigating child abuse.

(b) During the investigation where a school district employee is the accused, the principal/designee will make contact with the designee of Employee Relations who may recommend any action necessary to protect the complainant, or other students or school district employees, consistent with the requirements of applicable statutes, State Board of Education Rules, School Board Policies, and collective bargaining agreements.

Within ten (10) school days of the filing of the complaint, there shall be a written decision by the Principal/Designee or appropriate area/district administrator regarding the completion of the investigation. The principal/designee shall make a decision about the validity of the allegations in the complaint and about any corrective action, if applicable. The principal/designee or appropriate area/district administrator will inform all relevant parties in writing of the decision and the right to appeal. A copy of the decision will be sent to the originating school and be noted in all relevant data tracking systems including, but not limited to the (page 8) SESIR and the Statewide Report on School Safety and Discipline Data system.

If the accused is a school district employee, discipline may be taken, consistent with any applicable collective bargaining agreement provisions, to resolve a complaint of bullying (Employee Disciplinary Guidelines). The supervisor/designee (e.g., principal/designee for school-based district employees) of the employee shall discuss the determination and any recommended corrective action with Employee Relations and/or the appropriate area/district supervisor.

No retaliation of any kind is permitted in connection with an individual's having made a bullying complaint and if it occurs, it shall be deemed an additional act of bullying as stated herein this Policy.

(8) A process to investigate whether a reported act of bullying or harassment is within the scope of the district school system and, if not, a process for referral of such an act to the appropriate jurisdiction. Each school's principal/designee will receive training in bullying investigation.

The principal/designee will determine whether the act of bullying or harassment is within the scope of the school district. The team decision making approach may be utilized in this process and consultation with Area Administrators may be used in this determination.

- If it is determined that it is in the scope of the school system the procedures outlined for investigating the bullying act or harassment act will be applied.
- If it is outside the scope of the district, and determined that it is a criminal act a referral to the appropriate law enforcement agency will be applied.
- If it is outside the scope of the district, and determined not to be a criminal act all parents/legal guardians of each student involved will be informed.

(9) A procedure for providing immediate notification to the parents/legal guardians of a victim of bullying or harassment and the parents/legal guardians of the offender of an act of bullying or harassment, as well as, notification to all local agencies where criminal charges may be pursued against the offender

(a) The principal/designee who will conduct the investigation will receive training on investigative procedures regarding bullying or harassment.

The required training will include that the principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

(b) The required training for the principal/designee will include, information if page 9) the bullying incident results in the offender being charged with a crime. The principal, or designee, shall by telephone or in writing by first class mail inform parents/legal guardian of the victim(s) involved in the bullying incident about the Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532) that states "...a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school." The required training for the principal/designee will include information that once the investigation has been completed and it has been determined that criminal charges may be pursued against the offender, all appropriate local law enforcement agencies will be notified by telephone and/or in writing.

(10) A procedure to refer victims and offenders of bullying or harassment for counseling.

(a) Each school will have a principal/designee who will attend a training which will include the protocol for intervening when bullying or harassment is suspected or reported. The principal/designee will disseminate to school district employee the protocol and procedure for intervening which includes the district referral process for suspected or reported bullying (victim and offender).

(b) Each school will have a Student Assistance Team (SAFE) or Child Study Team in place. The principal designee(s) who attended the district trainings will be a member of either the Student Assistance Team (SAFE) or Child Study Team. A parent/ legal guardian may request consultation from the school team. A referral form to the team will be available for parent/guardians and school staff.

(c) If a level III or IV (most severe) bullying or harassment discipline report is made, the principal or designee may refer the student(s) (victim or offender) to The Response Team for additional determination of counseling support and interventions. Parent or legal guardian involvement is required at this point. In utilizing the team approach, The Response Team identifies and accesses appropriate support services for students who have received most severe disciplinary referrals. The services recommended for the students are not to replace disciplinary action but will offer family and individual support regarding appropriate therapeutic interventions.

(11) A procedure for including incidents of bullying or harassment in the school's report of data concerning school safety and discipline data required under s. 1006.09(6), F.S. The report must include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report must include, in a separate section, each reported incident of bullying or (page 10) harassment that does not meet the criteria of a prohibited act under this section with recommendations regarding such incidents: (a) All bullying and/or harassment offenses will be reported in SESIR with the bullying/harassment code.

(b) Discipline, referral data, investigations, interventions and actions of discipline will be recorded on the discipline data form(s) as is applied for other discipline infractions from the Code of Student Conduct.

(12) A procedure for providing instruction to students, parents/legal guardians, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing and responding to bullying or harassment:

(a) The District SAFE Office will provide a training of trainer model. The trainings will be ongoing and the delivery model will allow participants to return to their school site and train students, parents/legal guardians, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing and responding to bullying or harassment.

(b) The best practices which include individual, classroom, community/parent and school wide efforts for bullying prevention will be included in the training of trainer model.

(13) A procedure for regularly reporting to a victim's parent's/legal guardians the actions taken to protect the victim:

The principal or designee shall by telephone and/or in writing, report the occurrence of any incident of bullying victimization as defined by this policy to the parent or legal guardian of the victim on the same day an investigation of the incident has been initiated. According to the level of infraction, parents/legal guardians will be notified by telephone and/or writing of actions being taken to protect the child; the frequency of notification will depend on the seriousness of the bullying or harassment incident. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

(14) A procedure for publicizing the policy which must include its publication in the Code of Student Conduct required under s. 1006.07(2), F.S. and in all employee handbooks.

Orange County Public Schools shall provide notice to students and school district employees of this policy through Code of Student Conduct, Employee Handbook, Superintendent Documents and/or through other reasonable means. (15) A plan to implement curriculum, discipline policies and violence prevention efforts which are ongoing and throughout the school year:

The goal to create a safe learning and working environment at schools will be accomplished through the selection of the following initiatives: (page 11)

- Violence Prevention Efforts (curriculum, activities and programs)
- Nonviolent Crisis Intervention Training
- Threat Assessments
- Response Teams
- Student Assistance Teams
- Child Study Teams
- Elementary, Middle and High School Bullying Prevention Programs
- SAFE Ambassadors
- Internet Safety Curriculum
- Class Meetings/Discussions
- Preventing Disruptive Behaviors Training
- Parent Interaction Training
- Student Recognition Programs
- Bullying Prevention Trainings (principal/designee)

- School Climate Surveys (available for parents, staff and students)
- Discipline/Bullying Procedure Training (principal/designee)

The components listed above are a violence prevention plan developed by the District SAFE Office for the schools to assist in creating and maintaining a positive and welcoming school culture free of violence. The above ongoing plan promotes a Policy Web site: http://www.escambia.k12.fl.us/board/board_rules/toc. comprehensive approach for curriculum implementation, discipline policy awareness and violence prevention initiatives.

LAW IMPLEMENTED: Section 1006.147, Florida Statute

APPENDIX E
ESCAMBIA COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Title: Policy Against Bullying and Harassment

Cyberbullying Policy Adopted: 1/20/09

Total No. of Pages on Cyberbullying: 13

Size: Large

District: First

- (1) Policy Against Bullying and Harassment
 - (a) Definition of bullying and a definition of harassment:
 1. Bullying means systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees. It is further defined as unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve but is not limited to:
 - a. Unwanted Teasing
 - b. Social Exclusion
 - c. Threat
 - d. Intimidation
 - e. Stalking
 - f. Physical violence
 - g. Theft
 - h. Sexual, religious, or racial harassment
 - i. Public humiliation
 - j. Destruction of property
 2. Harassment means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:
 - a. Places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property;
 - b. Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
 - c. Has the effect of substantially disrupting the orderly operation of a school.
 3. Bullying and harassment also encompasses:
 - a. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.

b. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee by:

- I. Incitement or coercion;
- II. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system; or
- III. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

(b) Cyberstalking as defined in Section 784.048(1)(d), Fla. Stat.

1. Engaging in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(2) Description of the type of behavior expected from each student and school employee of a public K-12 educational institution:

(a) The Escambia County School District expects students to conduct themselves as appropriate for their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.

(b) The school district believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline. The development of this atmosphere requires respect for self and others, as well as for district and community property on the part of students, staff, and community members. Since students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate behavior, treat others with civility and respect, and refuse to tolerate bullying or harassment.

(c) The school district upholds that bullying or harassment of any student or school employee is prohibited:

1. During any education program or activity conducted by a public K-12 educational institution;
2. During any school-related or school-sponsored program or activity;
3. On a school bus of a public K-12 educational institution; or

4. Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 education institution.

(d) All administrators, faculty, and staff, in collaboration with parents, students, and community members, will incorporate systemic methods for student and staff recognition through positive reinforcement for good conduct, self-discipline, good citizenship, and academic success, as seen in the required school plan to address positive school culture and behavior (aka Adjudication Guidelines and School Discipline Plans).

1. Student rights shall be explained as outlined in this policy and in the Adjudication Guidelines, School Discipline Plans and Rights and Responsibilities Handbooks.

(e) Proper prevention and intervention steps shall be taken based on the level of severity of infraction as outlined in the Adjudication Guidelines, School Discipline Plans and Rights and Responsibilities Handbooks.

(f) Consequences for a student or employee of a public K-12 educational institution who commits an act of bullying or harassment:

1. Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances. The physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action. Consequences and appropriate remedial action for students who commit acts of bullying or harassment may range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the Rights and Responsibilities Handbooks. Consequences and appropriate remedial action for a school employee found to have committed an act of bullying or harassment may be disciplined in accordance with district policies, procedures, and agreements. Additionally, egregious acts of harassment by certified educators may result in a sanction against an educator's state issued certificate. (See State Board of Education Rule 6B-1.006, FAC., The Principles of Professional Conduct of the Education Profession in Florida.) Consequences and appropriate remedial action for a visitor or volunteer, found to have committed an act of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

(g) Consequences for a student or employee of a public K-12 educational institution who is found to have wrongfully and intentionally accused another of an act of bullying or harassment:

1. Consequences and appropriate remedial action for a student found to have wrongfully and intentionally accused another as a means of bullying or harassment range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the Rights and Responsibilities Handbooks. Consequences and appropriate remedial action for a school employee found to have wrongfully and intentionally accused another as a means of bullying or harassment may be disciplined in accordance with district policies, procedures, and agreements. Consequences and appropriate remedial action for a visitor or volunteer, found to have wrongfully and intentionally accused another as a means of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

(3) Procedure for reporting an act of bullying or harassment, including provisions that permit a person to anonymously report such an act.

(a) At each school, the principal or the principal's designee is responsible for receiving complaints alleging violations of this policy. All school employees are required to report alleged violations of this policy to the principal or the principal's designee. All other members of the school community, including students, parents/legal guardians, volunteers, and visitors are encouraged to report any act that may be a violation of this policy anonymously or in-person to the principal or principal's designee.

(b) The principal of each school in the district shall establish and prominently publicize to students, staff, volunteers, and parents/legal guardians, how a report of bullying or harassment may be filed either in-person or anonymously and how this report will be acted upon. The victim of bullying or harassment, anyone who witnessed the bullying or harassment, and anyone who has credible information that an act of bullying or harassment has taken place may file a report of bullying or harassment. A school employee, school volunteer, student, parent/legal guardian or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official and who makes this report in compliance with the procedures set forth in the district policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident. Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning or working environment, or work assignments.

(c) Any written or oral reporting of an act of bullying or harassment shall be considered an official means of reporting such act(s). Reports may be made anonymously, but formal disciplinary action may not be based solely based on an anonymous report.

- (4) Procedure for the prompt investigation of a report of bullying or harassment and the persons responsible for the investigation. The investigation of a reported act of bullying or harassment is deemed to be a school-related activity and begins with a report of such an act:
- (a) The principal or designee will select a designee(s), employed by the school, trained in investigative procedures to initiate the investigation. The designee(s) may not be the accused perpetrator (harasser or bully) or victim.
 - (b) Documented interviews of the victim, alleged perpetrator, and witnesses shall be conducted privately, separately, and are confidential. Each individual (victim, alleged perpetrator, and witnesses) will be interviewed separately and at no time will the alleged perpetrator and victim be interviewed together.
 - (c) The investigator shall collect and evaluate the facts including, but not limited to:
 - 1. Description of incident(s) including nature of the behavior;
 - 2. Context in which the alleged incident(s) occurred, etc.;
 - 3. How often the conduct occurred;
 - 4. Whether there were past incidents or past continuing patterns of behavior;
 - 5. The relationship between the parties involved;
 - 6. The characteristics of parties involved (i.e., grade, age, etc.);
 - 7. The identity and number of individuals who participated in bullying or harassing behavior;
 - 8. Where the alleged incident(s) occurred;
 - 9. Whether the conduct adversely affected the student's education or educational environment;
 - 10. Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and
 - 11. The date, time, and method in which the parents/legal guardians of all parties involved were contacted.
- (5) Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances and includes:
- (a) Recommended remedial steps necessary to stop the bullying and/or harassing behavior; and
 - (b) A written final report to the principal.
- (6) A maximum of 10 school days shall be the limit for the initial filing of incidents and completion of the investigative procedural steps. The highest level of confidentiality possible will be upheld regarding the submission of a complaint or

a report of bullying and/or harassment, and the investigative procedures that follow.

- (7) Process to investigate whether a reported act of bullying or harassment is within the scope of the district school system and, if not, the process for referral of such an act to the appropriate jurisdiction:
 - (a) A principal or designee will assign a designee(s) trained in investigative procedures to initiate an investigation of whether an act of bullying or harassment is within the scope of the school district.
 - (b) The trained designee(s) will provide a report on results of investigation with recommendations for the principal to make a determination if an act of bullying or harassment falls within the scope of the district.
 1. If it is within scope of district, move to Procedures for Investigating Bullying and/or Harassment.
 2. If it is outside scope of district, and determined a criminal act, refer to appropriate law enforcement.
 3. If it is outside scope of district, and determined not a criminal act, inform parents/legal guardians of all students involved.
- (8) Procedure for providing immediate notification to the parents/legal guardians of a victim of bullying or harassment and the parents/legal guardians of the perpetrator of an act of bullying or harassment as well as notification to all local agencies where criminal charges may be pursued against the perpetrator:
 - (a) The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated.
 - (b) Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).
- (9) If the bullying incident results in the perpetrator being charged with a crime, the principal, or designee, shall by telephone or in writing by first class mail, inform parents/legal guardian of the victim(s) involved in the bullying incident about the Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532) that states "...a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

- (10) Once the investigation has been completed and it has been determined that criminal charges may be pursued against the perpetrator, all appropriate local law enforcement agencies will be notified by telephone and/or in writing.
- (11) Procedure to refer victims and perpetrators of bullying or harassment for counseling:
- (a) A teacher or parent/legal guardian may request informal consultation with school staff (specialty staff, e.g., school counselor, school psychologist, etc.) to determine the severity of concern and appropriate steps to address the concern in any bullying incident (the involved students' parents or legal guardian may be included).
 - (b) School personnel or the parent/legal guardian may refer students to the school intervention team (or equivalent school-based team with a problem-solving focus) for consideration of appropriate services. (Parent or legal guardian involvement is required at this point.)
 - (c) If a formal discipline report or formal complaint is made, the principal or designee must refer the student(s) to the school intervention team for determination of counseling support and interventions. (Parent or legal guardian involvement is required at this point.)
 - (d) The intervention team may determine appropriate intervention and assistance that includes:
 - 1. Counseling and support to address the needs of the victims of bullying or harassment;
 - 2. Research-based counseling/interventions to address the behavior of the students who bully and harass others (e.g., empathy training, anger management); or
 - 3. Research-based counseling/interventions, which includes assistance and support, provided to parents/legal guardians, if deemed necessary or appropriate.
- (12) Procedure for including incidents of bullying or harassment in the school's report of data concerning school safety and discipline data required under s. 1006.09(6), Fla. Stat.
- (a) The report shall include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report shall include, in a separate section, each reported incident of bullying or harassment that does not meet the criteria of a prohibited act under this section with recommendations regarding such incidents:

1. The school district will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data, which includes bullying/harassment as an incident code as well as bullying-related as a related element code. The SESIR definition of bullying/harassment is unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment, cause discomfort or humiliation, or unreasonably interfere with the individual's school performance or participation.

2. If a bullying and/or harassment incident occurs then it will be reported in SESIR with the bullying/harassment code. If the bullying/harassment results in any of the following SESIR incidents the incident will be coded appropriately using the relevant incident code

AND the related element code entitled bullying-related code. Those incidents are:

- a. Arson
- b. Battery
- c. Breaking and Entering
- d. Disruption on Campus
- e. Major Fighting
- f. Homicide
- g. Kidnapping
- h. Larceny/Theft
- i. Robbery
- j. Sexual Battery
- k. Sexual Harassment
- l. Sexual Offenses
- m. Threat/Intimidation
- n. Vandalism
- o. Weapons Possession
- p. Other Major (Other major incidents that do not fit within the other definitions)

(13) Discipline and referral data will be recorded in Student Discipline/Referral Action Report and Automated Student Information System.

(14) The district will provide bullying incident, discipline, and referral data to the Florida Department of Education in the format requested, through Survey 5 from Education Information and Accountability Services, and at designated dates provided by the Department.

(15) Procedure for providing instruction to students, parents/legal guardians, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment:

(a) The district shall endeavor to ensure that schools sustain healthy, positive, and safe learning environments for all students. It is important to change the social climate of the school and the social norms with regards to bullying. This requires the efforts of everyone in the school environment – teachers, administrators, counselors, school nurses, other non-teaching staff (such as bus drivers, custodians, cafeteria workers, and/or school librarians), parents/legal guardians, and students.

(b) Students, teachers, school administrators, counseling staff, and school volunteers shall be given instruction at a minimum on an annual basis on the district's Policy and Regulations against bullying and harassment. Instruction on the district's Policy and Regulations against bullying and harassment shall be offered to parent/legal guardians and school volunteers at least annually. The instruction shall include evidence-based methods of preventing bullying and harassment, as well as how to effectively identify and respond to bullying in schools.

(16) Procedure for regularly reporting to a victim's parents/legal guardians the actions taken to protect the victim:

(a) The principal or designee shall by telephone and/or in writing report the occurrence of any incident of bullying as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident has been initiated. According to the level of infraction, parents/legal guardians will be notified by telephone and/or writing of actions being taken to protect the child; the frequency of notification will depend on the seriousness of the bullying or harassment incident. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

(17) Procedure for publicizing the policy, which must include its publication in the Rights and Responsibilities Handbooks, required under s. 1006.07(2), F.S., and in all employee handbooks:

(a) At the beginning of each school year, the Superintendent or designee shall, in writing, inform school staff, parents/legal guardians, or other persons responsible for the welfare of a student of the district's student safety and violence prevention policy.

(b) Each district school shall provide notice to students and staff of this policy through appropriate references in the Rights and Responsibilities Handbooks and employee handbooks, and/or through other reasonable means.

The Superintendent shall also make all contractors contracting with the district aware of this policy.

(18) Each school principal shall develop an annual process for discussing the school district policy on bullying and harassment with students in a student assembly or other reasonable format. Reminders of the policy and bullying prevention messages such as posters and signs will be displayed around each school and on the district school buses.

SPECIFIC LEGAL AUTHORITY UNDER WHICH AUTHORIZED: Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532); State Board of Education Rule 6B-1.006, F.A.C.; Sections 784.048(1)(d); 1006.09(6); 1006.07(2); 1006.147, Florida Statutes.

LAW BEING IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532); State Board of Education Rule 6B-1.006, F.A.C.; Sections 784.048(1)(d); 1006.09(6); 1006.07(2); 1006.147, Florida Statutes.

HISTORY: 01/20/09

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APPENDIX F
MONROE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Title: Anti Bullying Policy

Cyberbullying Policy Adopted: 4/18/08

Policy Web site: <http://www.neola.com/monroe-fl/>,

No. of Pages: 13

Size: Small

District: Third

The School Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees.

The District will not tolerate bullying and harassment of any type. Conduct that constitutes bullying and harassment, as defined herein, is prohibited:

- A. during any education program or activity conducted by the District;
- B. during any school-related or school-sponsored program or activity or on a school bus of the District; or
- C. through the use of data or computer software that is accessed through a computer, computer system, or computer network of the District

This policy has been developed in consultation with District students, parents, teachers, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies as prescribed in F.S. 1006.147 and in conformity with the Florida Department of Education (FLDOE) Model Policy.

The Superintendent shall develop a comprehensive plan intended to prevent bullying and harassment and to cultivate the school climate so as to appropriately identify, report, investigate, and respond to situations of bullying and harassment as they may occur on school grounds, at school-sponsored events, and through school computer networks or that may impact the safety of students while at school. Implementation of the plan will be ongoing throughout the school year and will be integrated with the school curriculum, District disciplinary policies, and violence prevention efforts.

Definitions

"Bullying" means systematically and chronically inflicting physical hurt or psychological distress on one (1) or more students or employees. It is defined as any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve but not limited to:

- A. Teasing
- B. social exclusion
- C. Threat
- D. Intimidation
- E. Stalking

- F. physical violence
- G. Theft
- H. public humiliation
- I. destruction of property

Bullying" and **"harassment"** also encompass

A. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.

B. Perpetuation of conduct listed in the definition of bullying and/or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee by

1. incitement or coercion
2. accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the District school system;
3. acting in a manner that has an effect substantially similar to the effect of bullying or harassment;
4. engaging in bullying against an individual on the basis but not limited to the individual's: sex, race, color, religion, national origin, age, disability (physical, mental, or educational), marital status, socio-economic background, ancestry, ethnicity, gender, gender identity or expression, linguistic preference, political beliefs, sexual orientation, or social/family background, or being viewed as different in its education programs, or admissions to education programs"

Cyber-bullying" means electronically transmitted acts (i.e., internet, e-mail, cellular telephone, personal digital assistance (PDA), or wireless hand-held device) that a student or a group of students exhibits toward another particular student(s) and the behavior both causes mental and/or physical harm to the other student and is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student(s).

"Cyber-stalking" means to engage repetitively in an unwanted course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

"Harassment" means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:

- A. places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;
- B. has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
- C. has the effect of substantially negatively impacting a student's or employee's emotional or mental well-being; or
- D. has the effect of substantially disrupting the orderly operation of a school.

"Stakeholders" include Any School Board member, District employee, consultant, contractor, agent, visitor, volunteer, student or other person in the school or at school sponsored events or on school buses, or other district facilities.

Expected Behavior

Behavior is essential in maintaining an environment that provides each student the opportunity to obtain a high quality education in a uniform, safe, secure, efficient, and high quality system of education.

The District expects all stakeholders to conduct themselves in keeping with their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.

The standards for student behavior shall be set cooperatively through interaction among students, parents/guardians, staff and community member, producing an atmosphere that encourages students to grow in self-discipline. The development of such an atmosphere requires respect for self and others, as well as for District and community property on the part of students, staff, and community members. School board, administrators, faculty, staff, community partners and volunteers serve as role models for students and are expected to demonstrate appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment or bullying.

Students are expected to conform to reasonable standards of socially acceptable behavior; respect the person, property, and rights of others; obey constituted authority; and respond appropriately to those who hold that authority.

The District shall provide for appropriate recognition and positive reinforcement for good conduct, self-discipline, good citizenship, and academic success.

Consequences

Consequences and appropriate remedial action for students who commit acts of bullying or harassment or found to have falsely accused another as a means of bullying or harassment may range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the Student Handbook.

Consequences and appropriate remedial action for a school employee found to have committed an act of bullying or harassment or found to have falsely accused another as a means of bullying or harassment shall include discipline in accordance with District policies, administrative procedures, and the collective bargaining agreement. Egregious acts of harassment by certified educators may result in a sanction against an educator's State-issued certificate. (See the Principles of Professional Conduct of the Education Profession in Florida - F.A.C. 6B-1006)

Consequences and appropriate remedial action for a visitor or volunteer found to have committed an act of bullying or harassment or found to have falsely accused another as a means of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials if appropriate.

Procedure for Reporting

Any student or student's parent/guardian who believes s/he has been or is the victim of bullying or harassment should immediately report the situation to the school principal. The student may also report concerns to teachers and other school staff who will be responsible for notifying the appropriate administrator. Complaints against an employee should be reported to their supervisor. All reports should be filed as soon as possible and may be filed up to ninety days after the last alleged act of bullying occurred.

All other members of the school community, including students, parents, volunteers, and visitors, are encouraged to report any act that may be a violation of this policy.

Written and oral reports shall be considered official reports. Reports may be made anonymously. Reports may be delivered to the front office at each school. A reporting form can be found at Keysschools.com Formal disciplinary action may not be based solely on the basis of an anonymous report.

The principal shall establish and prominently publicize to students, staff, volunteers, and parents the procedure for reporting bullying and how such a report will be acted upon. A victim of bullying and/or harassment, anyone who witnessed the act, and anyone who has credible information that an act of bullying and/or harassment has taken place may file a report.

Procedure for Investigation

All complaints about bullying and/or harassment that may violate this policy shall be promptly investigated by an individual, designated by the principal, who is trained in

investigative procedures. Documented interviews of the victim, alleged perpetrator, and witnesses shall be conducted privately and shall be confidential. The investigator shall collect and evaluate the facts including but not limited to:

- A. the nature of the behavior;
- B. how often the conduct occurred;
- C. whether there were past incidents or past continuing patterns of behavior;
- D. the relationship between the parties involved;
- E. the characteristics of the parties involved;
- F. the identity of the alleged perpetrator, including whether the individual was in a position of power over the individual allegedly subjected to bullying or harassment;
- G. the number of alleged bullies/harassers;
- H. the age of the alleged bully/harasser;
- I. where the bullying and/or harassment occurred;
- J. whether there have been other incidents in the school involving the same or other students;
- K. whether the conduct adversely affected the student's education or educational environment;
- L. the context in which the alleged incidents occurred; and
- M. the physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action initiated pursuant to this policy.

Whether a particular action or incident constitutes a violation of the policy requires a determination based on all the facts and surrounding circumstances and shall include:

- A. a recommendation of remedial steps necessary to stop the bullying and/or harassing behavior; and
- B. a written report to the principal or supervisor

Reasonable effort shall be made to respond expeditiously to all reports of bullying. A maximum of ten (10) school days shall be the limit for the initial filing of incidents and completion of the investigative procedural steps. The highest level of confidentiality possible shall be provided regarding the submission of a complaint or a report of bullying and/or harassment and for the investigative procedures that are employed.

Scope

The investigator will provide a report on the results of the investigation with recommendations for the principal to make a determination if an act of bullying or harassment falls within the scope of District authority. If the action is within the scope of the District, District procedures for investigating bullying and/or harassment shall be followed. If the action is outside the scope of the District, and believed to be a criminal act, the action shall be referred to the appropriate law enforcement agency. If the action is outside the scope of the District and believed not a criminal act, the principal shall inform parents/guardians of all students.

Parent Notification

The principal or designee shall report the occurrence of an incident of bullying as defined by District policy to the parent/guardian of all students known to be involved in the incident after a determination has been made that there has been an incident of bullying as it is defined. Notification shall be by telephone or by personal conference and in writing and shall be consistent with the student privacy rights under applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). The notice shall advise the individuals involved of their respective due process rights including the right to appeal any resulting determination or action to the State Board of Education.

If the bullying incident results in the perpetrator being charged with a crime, the principal shall inform the parent/guardian of the identified victim(s) involved in the bullying incident about the Unsafe Schools Choice Option (No Child Left Behind (NCLB), Title IX, Part E, Subpart 2, Section 932) that states:

"A student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school."

Upon the completion of the investigation and if criminal charges are to be pursued against the perpetrator, the appropriate law enforcement agencies shall be notified by telephone and/or in writing.

Counseling Referral

The District shall provide a referral procedure for interventions that will go to a committee when such support is needed. Each school principal will establish which committee will review referrals at their school for bullying intervention.

School-based intervention and assistance will be determined by the school-based committee and may include, but is not limited to:

- A. counseling and support to address the needs of the victims of bullying
- B. counseling intervention to address the behavior of those who bully (e.g., empathy training, anger management)
- C. intervention which includes assistance and support provided to parents
- D. analysis and evaluation of school culture with resulting recommendations for interventions aimed at increasing peer ownership and support

Data Report

The District will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data as prescribed. If a bullying and/or harassment incident occurs it will be reported in SESIR, coded appropriately using the relevant incident code and the related element code. Discipline and referral data will be recorded in Student Discipline/Referral Action Report and Automated Student Information System. Using a district defined code the District shall include each reported incident of bullying or harassment that does not meet the criteria of a prohibited act under this policy with recommendations regarding such incidents.

The District will provide bullying incident, discipline, and referral data to the Florida Department of Education (FLDOE) in the format requested, through Survey 5 from Education Information and Accountability Services, and at designated dates provided by the Department.

Training and Instruction

Training for students, parents teachers, area/district staff, school board, district and school based administrators, students support staff, counseling staff, bus drivers, School Resource Officers, contractors, and school volunteers on identifying, preventing and responding to bullying will be conducted.

At the beginning of each school year, the school principal and department heads shall provide awareness of this policy, as well as the process for reporting incidents, investigation and appeal to students, school staff, parents, or other persons responsible for the welfare of students through appropriate references in the Student Handbook, Employee Handbooks, the district website, and/or through other reasonable means.

Victim's Parent Reporting

The principal shall report the occurrence of an incident of bullying as defined herein to the parent/guardian of students known to be involved in the incident after a determination has been made that there has been an incident of bullying as it is defined. Notification shall be by telephone or in conference and shall be consistent with the

student privacy rights under applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). According to the level of infraction, the victim's parents will be notified by telephone and/or in writing of actions being taken to protect the child; the frequency of notification will depend on the seriousness of the bullying or harassment incident.

Policy Publication

At the beginning of each school year, the Superintendent shall inform school staff, parents/guardians/other persons responsible for the welfare of a student of the District's student safety and violence prevention policy.

The District shall provide notice to students and staff of this policy in the Student Handbook, employee handbooks and the district website. The Superintendent will also provide such notification to all District contractors.

Each principal shall implement a process for discussing, at least annually, the District policy on bullying and harassment with students. Reminders of the policy and bullying prevention messages will be displayed, as appropriate, at each school and at District facilities.

Immunity

A school employee, school volunteer, students, parent/guardian, or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official and who makes this report in compliance with the procedures set forth in District policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident.

Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning or working environment, or work assignments. Such immunity from liability shall not apply to an employee, student, or volunteer determined to have made an intentionally false report about harassment, intimidation, and/or bullying.

Privacy/Confidentiality

- A. To the greatest extent possible, all complaints will be treated as confidential and be handled in accordance to the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA) and any other applicable law.
- B. Limited disclosure may be necessary to complete a thorough investigation. The District's obligation to investigate and take corrective action may supersede an individual's right to privacy.
- C. The complainant's identity shall be protected, but absolute confidentiality

cannot be guaranteed. The identity of the victim of the report shall be protected to the extent possible.

Retaliation Prohibited

- A. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment in connection with filing a complaint of assisting with an investigation under this Policy.
- B. Retaliatory or intimidating conduct against any individual who has made a bullying complaint or any individual who has testified, assisted, or participated, in any manner, in a investigation is specifically prohibited, and will be treated as another incidence of bullying.

Constitutional Safeguard

This policy does not imply to prohibit expressive activity protected by the First Amendment of the United State Constitution or Article I, Section of the Florida Constitution.

F.S. 110.1221, 1002.20, 1006.13, 1006.147
Florida Department of Education Model Policy (June 2008)

Adopted 11/18/08
Revised 4/21/09

APPENDIX G
OKEECHOBEE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Title: Bullying and Harassment Policy

Cyberbullying Policy Adopted: 11/18/2008

Cyberbullying policy Web site:

<http://ocsb.okee.k12.fl.us/board.nsf/be38f07bbe5d617385256a04004a98b6/3c482c07fa94cd78525750c0071a4d8?OpenDocument>

Total No. of Pages:

Size: Small

District: Fourth

I. Statement Prohibiting Bullying and Harassment

A. It is the policy of the Okeechobee County School District that all of its students and school employees have an educational setting that is safe, secure and free from harassment and bullying of any kind. The District will not tolerate bullying and harassment of any type. Conduct that constitutes bullying and harassment, as defined herein, is prohibited.

B. The District upholds that bullying or harassment of any student or school employee is prohibited:

1. During any education program or activity conducted by a public K- 12 educational institution;
2. During any school-related or school-sponsored program or activity;
3. On a school bus of a public K-12 educational institution; or
4. Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K- 12 education institution.

II. Definitions

A. Bullying means systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees. It is further defined as unwanted and repeated written, verbal, graphic, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve but is not limited to:

1. Teasing;
2. Social exclusion;
3. Threat;
4. Intimidation;
5. Stalking;
6. Physical violence;
7. Theft;
8. Sexual, religious, disability, or racial/ethnic harassment;
9. Public humiliation; or
10. Destruction of property.

B. Harassment means any threatening, insulting or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:

1. Places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;
2. Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
3. Has the effect of substantially disrupting the orderly operation of a school.

C. Bullying and harassment also encompass:

1. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.
2. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee by:
 - a. Incitement or coercion;
 - b. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the District school system;
 - c. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

D. Cyberstalking as defined in Florida Statute, means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

III. Behavior Standards

- A. The Okeechobee County School District expects students to conduct themselves as appropriate for their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.
- B. The District believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline. The development of this atmosphere requires

respect for self and others, as well as for District and community property on the part of students, staff, and community members. Because students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate behavior, treat others with civility and respect, and refuse to tolerate bullying or harassment.

C. Students have the responsibility to conform to reasonable standards or socially acceptable behavior; respect the person, property, and rights of others; obey constituted authority; and respond to those who hold that authority as stated in the *Code of Student Conduct*.

IV. Consequences for Committing, or Wrongful and Intentional Accusation of an Act of Bullying or Harassment

A. Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances. The physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action.

B. Consequences and appropriate remedial action for students who commit acts of bullying or harassment or for students found to have wrongfully and intentionally accused another as a means of bullying or harassment may range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the *Code of Student Conduct*.

C. Consequences and appropriate remedial action for a school employee, found to have committed an act of bullying or harassment, or found to have wrongfully and intentionally accused another as a means of bullying or harassment, shall be determined in accordance with District policies, procedures, and agreements. Additionally, egregious acts of harassment by certified educators may result in a sanction against an educator's state issued certificate as stipulated in the *Code of Ethics and Principles of Professional Conduct of the Education Profession in Florida*.

D. Consequences and appropriate remedial action for a visitor or volunteer found to have committed an act of bullying or harassment, or found to have wrongfully and intentionally accused another as a means of bullying or harassment, shall be determined by the school administrator after consideration of the nature and circumstances of the act, including possible exclusion from school grounds, and, if appropriate, reported to appropriate law enforcement officials.

V. Reporting an Act of Bullying or Harassment

A. At each school, the principal or the principal's designee shall be responsible for receiving complaints alleging violations of this policy.

B. All school employees are required to report alleged violations of this policy to the principal or the principal's designee.

C. All other members of the school community, including students, parents/legal guardians, volunteers, and visitors are encouraged to report any act that may be

a violation of this policy anonymously or in person to the principal or principal's designee.

D. The principal of each school in the District shall establish and prominently publicize to students, staff, volunteers, and parents/legal guardians, how a report of bullying or harassment may be filed either in person or anonymously and how this report will be acted upon.

E. The victim of bullying or harassment, anyone who witnessed the bullying or harassment, and anyone who has credible information that an act of bullying or harassment has taken place may file a report of bullying or harassment.

F. A school employee, school volunteer, student, parent/legal guardian or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official and who makes this report in compliance with the procedures set forth in the District policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident.

G. Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning or working environment, or work assignments.

H. Any written or oral reporting of an act of bullying or harassment shall be considered an official means of reporting such act(s).

I. Reports may be made anonymously, but formal disciplinary action may not be based solely on the basis of an anonymous report.

VI. Investigation of a Report of Bullying or Harassment

A. The investigation of a reported act of bullying or harassment is deemed to be a school-related activity and shall begin with a report of such an act.

B. The principal or designee shall select an individual(s) trained in investigative procedures to initiate the investigation. The person may not be the accused perpetrator (harasser or bully) or victim.

C. Documented interviews of the victim, alleged perpetrator, and witnesses shall be conducted privately, separately, and shall be confidential. Each individual (victim, alleged perpetrator, and witnesses) will be interviewed separately and at no time will the alleged perpetrator and victim be interviewed together.

D. The investigator shall collect and evaluate the facts including but not limited to:

1. Description of incident(s) including nature of the behavior;
2. Context in which the alleged incident(s) occurred;
3. How often the conduct occurred;
4. Whether there were past incidents or past continuing patterns of behavior;
5. The relationship between the parties involved;

6. The characteristics of parties involved, *i.e.*, grade, age;
7. The identity and number of individuals who participated in bullying or harassing behavior;
8. Where the alleged incident(s) occurred;
9. Whether the conduct adversely affected the student's education or educational environment;
10. Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and
11. The date, time, and method in which the parents/legal guardians of all parties involved were contacted.

E. Whether a particular action or incident constitutes a violation of this policy shall require a determination based on all the facts and surrounding circumstances and shall include:

1. Recommended remedial steps necessary to stop the bullying and/or harassing behavior; and
2. A written final report to the principal.

F. The maximum of ten (10) school days shall be the limit for the initial filing of incidents and completion of the investigative procedural steps.

G. The highest level of confidentiality possible will be upheld regarding the submission of a complaint or a report of bullying and/or harassment and the investigative procedures that follow.

VII. Investigation to Determine Whether a Reported Act of Bullying or Harassment is Within the Scope of the District

A. The principal or designee will assign an individual(s) who is trained in investigative procedures to initiate an investigation of whether an act of bullying or harassment is within the scope of the School District.

B. The trained investigator(s) will provide a report on results of investigation with recommendations for the principal to make a determination if an act of bullying or harassment falls within the scope of the District.

1. If it is within the scope of the District, a thorough investigation shall be conducted.

2. If it is outside the scope of the District and determined a criminal act, the principal shall refer the incident(s) to appropriate law enforcement.

3. If it is outside the scope of the District and determined not a criminal act, the principal or designee shall inform the parents/legal guardians of all students involved.

VIII. Notification to Parents/Guardians of Incidents of Bullying or Harassment

A. Immediate notification to the parents/legal guardians of a victim of bullying or harassment.

1. The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

2. If the bullying incident results in the perpetrator being charged with a crime, the principal, or designee, shall by telephone or in writing by first class mail, inform the parents/legal guardian of the victim(s) involved in the bullying incident about the Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532) that states “. . . a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.”

B. Immediate notification to the parents/legal guardians of the perpetrator of an act bullying or harassment.

The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

C. Notification to local agencies where criminal charges may be pursued.

Once the investigation has been completed and it has been determined that criminal charges may be pursued against the perpetrator, all appropriate local law enforcement agencies will be notified by telephone and/or in writing.

IX. Referral of Victims and Perpetrators of Bullying or Harassment for Counseling

When bullying or harassment is suspected or when a bullying incident is reported, counseling services shall be made available to the victim(s), perpetrator(s), and parents/guardians.

A. The teacher or parent/legal guardian may request informal consultation with school staff, e.g., school counselor, school psychologist, and/or crisis counselor to determine the severity of concern and appropriate steps to address the concern. The teacher may request that the involved student's parents or legal guardians are included.

B. School personnel or the parent/legal guardian may refer a student to the school-based intervention team for consideration of appropriate services. Parent or legal guardian involvement shall be required when the student is referred to the school-based intervention team.

C. If a formal discipline report or formal complaint is made, the principal or designee must refer the student(s) to the school-based intervention team for determination of counseling support and interventions. Parent or legal guardian involvement shall be required.

D. The school-based intervention team may recommend:

1. Counseling and support to address the needs of the victims of bullying or harassment;
2. Research-based counseling or interventions to address the behavior of the students who bully and harass others, e.g., empathy training, anger management, small group counseling, and/or classroom training; and/or
3. Research-based counseling or interventions which include assistance and support provided to parents/legal guardians, if deemed necessary or appropriate.

X. Reporting Incidents of Bullying and Harassment

A. Incidents of bullying or harassment shall be reported in the school's report of data concerning school safety and discipline data required under Florida Statute. The report shall include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report shall also include each reported incident of bullying or harassment that did not meet the criteria of a prohibited act under this section with recommendations regarding such incidents.

B. The District will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data, which includes bullying/harassment as an incident code as well as bullying-related as a related element code.

1. Bullying and/or harassment incidents shall be reported in SESIR with the bullying/harassment code.
2. If the bullying/harassment results in any of the following SESIR incidents, the incident will be coded appropriately using the relevant incident code and the bullying-related code. Such incidents are:

- a. Arson
- b. Battery
- c. Breaking and Entering
- d. Disruption on Campus
- e. Major Fighting
- f. Homicide
- g. Kidnapping
- h. Larceny/Theft
- i. Robbery
- j. Sexual Battery
- k. Sexual Harassment
- l. Sexual Offenses
- m. Threat/Intimidation
- n. Vandalism
- o. Weapons Possession
- p. Other Major (Other major incidents that do not fit within the other definitions)

C. Discipline and referral data shall be recorded in Student Discipline/Referral Action Report and Automated Student Information System.

D. The District shall provide bullying incident, discipline, and referral data to the Florida Department of Education in the format requested, through Survey 5 from Education Information and Accountability Services, and at designated dates provided by the Department.

XI. Instruction on Identifying, Preventing, and Responding to Bullying or Harassment

A. The District shall ensure that schools sustain healthy, positive, and safe learning environments for all students. It is committed to maintain a social climate and social norms in all schools that prohibit bullying and harassment. This requires the efforts of everyone in the school environment – teachers; administrators; counselors; school nurses; other non-instructional staff such as bus drivers, custodians, food service personnel, media specialists; parents/legal guardians; and students.

B. Students, parents/legal guardians, teachers, all non-instructional staff members, school administrators, counseling staff, and school volunteers shall be given instruction at a minimum on an annual basis on the District's policy and regulations against bullying and harassment. The instruction shall include evidence-based methods of preventing bullying and harassment as well as how to effectively identify and respond to bullying in schools.

XII. Reporting to a Victim's Parents/Legal Guardians the Actions Taken to Protect the Victim

The principal or designee shall by telephone, personal conference, and/or in writing report the occurrence of any incident of bullying or harassment as defined by this

policy to the parent or legal guardian of all students involved on the same day an investigation of the incident has been initiated. According to the level of infraction, parents/legal guardians will be notified by telephone, personal conference, and/or writing of actions being taken to protect the child; the frequency of notification will depend on the seriousness of the bullying or harassment incident. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

XIII. Publicizing the Policy

- A. At the beginning of each school year, the Superintendent or designee shall, in writing, inform school staff, parents/legal guardians, or other persons responsible for the welfare of a student of the District's student safety and violence prevention policy.
- B. Each District school shall provide notice to students and staff of this policy through appropriate references in the Code of Student Conduct and employee handbooks and through other reasonable means.
- C. The Superintendent shall also make all contractors contracting with the District aware of this policy.
- D. Each school principal shall develop an annual process for discussing the school district policy on bullying and harassment with students.
- E. Reminders of the policy and bullying prevention messages such as posters and signs will be displayed around each school and on the District school buses.

STATUTORY AUTHORITY:

1001.41, 1001.42, F.S.

LAWS IMPLEMENTED:

1001.43, 1003.04, 1003.31, 1003.32, 1006.07, 1006.08, 1006.09, 1006.10, 1006.147, F.S.; 20 USC 1232g

**STATE BOARD OF
EDUCATION
RULES:**

Adopted: 06/12/2007
Revision Date(s): 11/18/2008
Formerly: New
©EMCS

HISTORY:

APPENDIX G
PUTNAM COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Title: Bullying and Harassment

Cyberbullying Policy Adopted: 1/16/07

Policy Web site: http://www.putnamschools.org/board/policy_index.html

Total No. of Pages on Cyberbullying: 11

Size: Small

District: Fifth

I. Statement Prohibiting Bullying and Harassment

A. It is the policy of the Putnam County School District that all of its students and school employees have an educational setting that is safe, secure and free from harassment and bullying of any kind. The District will not tolerate bullying and harassment of any type. Conduct that constitutes bullying and harassment, as defined herein, is prohibited.

B. The District upholds that bullying or harassment of any student or school employee is prohibited.

1. During any education program or activity conducted by a public K- 12 educational institution;

2. During any school-related or school-sponsored program or activity;

3. On a school bus of a public K-12 educational institution; or

4. Through the use of data or computer software that is accessed through

a computer, computer system, or computer network of a public K-12 education institution.

II. Definitions

A. Bullying means systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees. It is further defined as unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve but is not limited to

1. Teasing;

2. Social Exclusion;

3. Threat;

4. Intimidation;

5. Stalking; (page 2)

6. Physical violence;

7. Theft;

8. Sexual, religious, or racial harassment;

9. Public humiliation; or

10. Destruction of property.

B. Harassment means any threatening, insulting or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that

1. Places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;

2. Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or

3. Has the effect of substantially disrupting the orderly operation of a school.

C. Bullying and harassment also encompass

1. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.
2. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee by
 - a. Incitement or coercion;
 - b. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the District school system;
 - c. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment. (page 3)

D. Cyberstalking as defined in s.784.048(1)(d), F.S., means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. Districts have the flexibility to add additional specific categories of students to which bullying and harassment is prohibited in excess of what is listed. Example(s) of approved District policies with additional categories will be available at www.fldoe.org/family.

III. Behavior Standards

as A. The Putnam County School District expects students to conduct themselves appropriate for their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.

B. The District believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline. The development of this atmosphere requires respect for self and others, as well as for District and community property on the part of students, staff, and community members. Because students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate behavior, treat others with civility and respect, and refuse to tolerate bullying or harassment. The policy shall also

A. Describe student responsibilities, including the requirements for students to conform to reasonable standards of socially acceptable behavior; respect the person, property, and rights of others; obey constituted authority; and respond to those who hold that authority

- B. Address appropriate recognition for positive reinforcement for good conduct, self discipline, good citizenship, and academic success
- C. Explain student rights
- D. Identify disciplinary sanctions and due process

IV. Consequences

- A. Committing an act of bullying or harassment
 - 1. Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances. The physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action.
 - 2. Consequences and appropriate remedial action for students who commit acts of bullying or harassment may range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the *Code of Student Conduct*.
 - 3. Consequences and appropriate remedial action for a school employee, found to have committed an act of bullying or harassment, shall be determined in accordance with district policies, procedures, and agreements. Additionally, egregious acts of harassment by certified educators may result in a sanction against an educator's stat issued certificate.
 - 4. Consequences and appropriate remedial action for a visitor or volunteer, found to have committed an act of bullying or harassment, shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.
- B. Wrongful and intentional accusation of an act of bullying or harassment
 - 1. Consequences and appropriate remedial action for a student, found to have wrongfully and intentionally accused another as a means of bullying or harassment, range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the *Code of Student Conduct*.
 - 2. Consequences and appropriate remedial action for a school employee, found to have wrongfully and intentionally accused another as a means of bullying or harassment, shall be determined in accordance with District policies, procedures, and agreements.
 - 3. Consequences and appropriate remedial action for a visitor or volunteer, found to have wrongfully and intentionally accused another as a means of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials. (page 5)

V. Reporting an Act of Bullying or Harassment

- A. At each school, the principal or the principal's designee shall be responsible for receiving complaints alleging violations of this policy.

- B. All school employees are required to report alleged violations of this policy to the principal or the principal's designee.
- C. All other members of the school community, including students, parents/legal guardians, volunteers, and visitors are encouraged to report any act that may be a violation of this policy anonymously or in person to the principal or principal's designee.
- D. The principal to each school in the District shall establish and prominently publicize to students, staff, volunteers, and parents/legal guardians, how a report of bullying or harassment may be filed either in person or anonymously and how this report will be acted upon.
- E. The victim of bullying or harassment, anyone who witnessed the bullying or harassment, and anyone who has credible information that an act of bullying or harassment has taken place may file a report of bullying or harassment.
- F. A school employee, school volunteer, student, parent/legal guardian or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official and who makes this report in compliance with the procedures set forth in the District policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident.
- G. Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning or working environment, or work assignments.
- H. Any written or oral reporting of an act of bullying or harassment shall be considered an official means of reporting such act(s).
- I. Reports may be made anonymously, but formal disciplinary action may not be based solely on the basis of an anonymous report.

VI. Investigation of a Report of Bullying or Harassment

- A. the investigation of a reported act of bullying or harassment is deemed to be a school-related activity and shall begin with a report of such an act.
- B. The principal or designee shall select an individual(s), employed by the school and trained in investigative procedures, to initiate the investigation. The person may not be the accused perpetrator (harasser or bully) or victim. (page 6)
- C. Documented interviews of the victim, alleged perpetrator, and witnesses shall be conducted privately, separately, and shall be confidential. Each individual (victim, alleged perpetrator, and witnesses) will be interviewed separately and at no time will the alleged perpetrator and victim be interviewed together.
- D. The investigator shall collect and evaluate the facts including but not limited to:
 - 1. Description of incident(s) including nature of the behavior;
 - 2. Context in which the alleged incident(s) occurred;
 - 3. How often the conduct occurred;
 - 4. Whether there were past incidents or past continuing patterns of behavior.
 - 5. The relationship between the parties involved;

6. The characteristics of parties involved, *i.e.*, grade, age;
7. The identity and number of individuals who participated in bullying or harassing behavior;
8. Where the alleged incident(s) occurred;
9. Whether the conduct adversely affected the student's education or educational environment;
10. Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and
11. The date, time, and method in which the parents/legal guardians of all parties involved were contacted.

E. Whether a particular action or incident constitutes a violation of this policy shall require a determination based on all the facts and surrounding circumstances and shall include

1. Recommended remedial steps necessary to stop the bullying and/or harassing behavior; and
2. A written final report to the principal.

F. The maximum of ten (10) school days shall be the limit for the initial filing of incidents and completion of the investigative procedural steps.
(page 7)

G. The highest level of confidentiality possible will be upheld regarding the submission of a complaint or a report of bullying and/or harassment and the investigative procedures that follow.

VII. Investigation to Determine Whether a Reported Act of Bullying or Harassment is Within the Scope of the District

A. The principal or designee will assign an individual(s) who is trained in investigative procedures to initiate an investigation of whether an act of bullying or harassment is within the scope of the School District.

B. The trained investigator(s) will provide a report on results of investigation with recommendations for the principal to make a determination if an act of bullying or harassment falls within the scope of the District.

1. If it is within the scope of the District, a thorough investigation shall be conducted.
2. If it is outside the scope of the District and determined a criminal act, the principal shall refer the incident(s) to appropriate law enforcement.
3. If it is outside the scope of the District and determined not a criminal act, the principal or designee shall inform the parents/legal guardians of all students involved.

VIII. Notification to parents/Guardians of Incidents of Bullying or Harassment

A. Immediate notification to the parents/legal guardians of a victim of bullying or harassment.

1. The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all

students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational rights and privacy act of 1974 (FERPA).

2. If the bullying incident results in the perpetrator being charged with a crime, the principal, or designee, shall by telephone or in writing by first class mail, inform the parents/legal guardian (o the victims) involved in the bullying incident about the Unsafe School Choice Option (No child left Behind, Title IX, Part E, Subpart 2, Section 9532) that states "...a student who becomes a victim of a violent (page 8) criminal offense, as determined by state law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school."

B. Immediate notification to the parents/legal guardians of the perpetrator of an act bullying or harassment. The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

C. Notification to local agencies where criminal charges may be pursued. Once the investigation has been completed and it has been determined that criminal charges may be pursued against the perpetrator, all appropriate local law enforcement agencies will be notified by telephone and/or in writing.

IX. Referral of Victims and Perpetrators of Bullying or Harassment for Counseling

When bullying or harassment is suspected or when a bullying incident is reported, counseling services shall be made available to the victim(s), perpetrator(s), and parents/guardians.

A. The teacher or parent/legal guardian may request informal consultation with school staff, e.g., school counselor, school psychologist, to determine the severity of concern and appropriate steps to address the concern. The teacher may request that the involved student's parents or legal guardian are included.

B. School personnel or the parent/legal guardian may refer a student to the school intervention team for consideration of appropriate services. Parent or legal guardian involvement shall be required when the student is referred to the intervention team.

C. If a formal discipline report or formal complaint is made, the principal or designee must refer the student(s) to the school intervention team for

determination of counseling support and interventions. Parent or legal guardian involvement shall be required. (page 9)

D. The intervention team may recommend

1. Counseling and support to address the needs of the victims of bullying or harassment;
2. Research-based counseling or interventions to address the behavior of the students who bully and harass others, *e.g.*, empathy training, anger management; and/or
3. Research-based counseling or interventions which include assistance and support provided to parents/legal guardians, if deemed necessary or appropriate.

X. Reporting Incidents of Bullying and Harassment

A. Incidents of bullying or harassment shall be reported in the school's report of data concerning school safety and discipline data required under s. 1006.09(6), F.S. The report shall include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report shall also include each reported incident of bullying or harassment that did not meet the criteria of a prohibited act under this section with recommendations regarding such incidents.

B. The District will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data, which includes bullying/harassment as an incident code as well as bullying-related as a related element code.

1. Bullying and/or harassment incidents shall be reported in SESIR with the bullying/harassment code.
2. If the bullying/harassment results in any of the following SESIR incidents, the incident will be coded appropriately using the relevant incident code and the bullying-related code. Such incidents are
 - a. Arson
 - b. Battery
 - c. Breaking and Entering
 - d. Disruption on Campus
 - e. Major Fighting
 - f. Homicide
 - g. Kidnapping (page 10)
 - h. Larceny/Theft
 - i. Robbery
 - j. Sexual Battery

- k. Sexual Harassment
- l. Sexual Offenses
- m. Threat/Intimidation
- n. Vandalism
- o. Weapons Possession
- p. Other major (Other major incidents that do not fit within the other definitions)

C. Discipline and referral data shall be recorded in Student Discipline/Referral Action Report and Automated Student Information System.

D. The District shall provide bullying incident, discipline, and referral data to the Florida Department of Education in the format requested, through Survey 5 from Education Information and Accountability Services, and at designated dates provided by the Department.

XI. Instruction on Identifying, Preventing, and Responding to Bullying or Harassment

A. The District shall ensure that schools sustain healthy, positive, and safe learning environments for all students. It is committed to maintain a social climate and social norms in all schools that prohibit bullying and harassment. This requires the efforts of everyone in the school environment – teachers; administrators; counselors; school nurses; other nonteaching staff such as bus drivers, custodians, cafeteria workers; school librarians; parents/legal guardians; and students.

B. Students, parents/legal guardians, teachers, school administrators, counseling staff, and school volunteers shall be given instruction at a minimum on an annual basis on the District's policy and regulations against bullying and harassment. The instruction shall include evidence based methods of preventing bullying and harassment as well as how to effectively identify and respond to bullying in schools.

XII. Reporting to a Victim's Parents/Legal Guardians the Actions Taken to Protect the Victim

(page 11) The principal or designee shall by telephone and/or in writing report the occurrence of any incident of bullying as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident has been initiated. According to the level of infraction, parents/legal guardians will be notified by telephone and/or writing of actions being taken to protect the child; the frequency of notification will depend on the seriousness of the bullying or harassment incident. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and privacy Act of 1974 (FERPA).

XIII. Publicizing the Policy

A. At the beginning of each school year, the Superintendent or designee shall, in writing, inform school staff, parents/legal guardians, or other persons responsible for the welfare of a student of the District's student safety and violence prevention policy.

B. Each District school shall provide notice to students and staff of this policy through appropriate references in the *Code of Student Conduct* and employee handbooks and through other reasonable means.

C. The superintendent shall also make all contractors contracting with the District aware of this policy.

D. Each school principal shall develop an annual process for discussing the school district policy on bullying and harassment with students.

E. Reminders of the policy and bullying prevention messages such as posters and signs will be displayed around each school and on the District school buses.

STATUTORY AUTHORITY: 1001.41, 1001.42, F.S. LAW(S) IMPLEMENTED: 1001.43, 1003.04, 1003.31, 1003.32, 1006.07, 1006.08, 1006.09, 1006.10, 1006.147, F.S.

HISTORY: ADOPTED: 01-16-07

REVISION DATE(S): 12-16-08

FORMERLY: NEW

APPENDIX I
GLADES COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Cyberbullying Policy Adopted: 2/11/09 (document created)

School District Web site: <http://www.glades-schools.org/>

Cyberbullying policy Web site: <http://www.gladesschools.org/files/BullyingPolicy.pdf>

Total No. of Pages on Cyberbullying: 9

Size: Small

District: Second

Policy Against Bullying and Harassment

2a. Statement prohibiting bullying and harassment:

It is the policy of the Glades County School District that all of its students and school employees have an educational setting that is safe, secure, and free from harassment and bullying of any kind. The district will not tolerate bullying and harassment of any type. Conduct that constitutes bullying and harassment, as defined herein, is prohibited.

1

2b. Definition of bullying and a definition of harassment:

Bullying means systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees. It is further defined as unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve but is not limited to:

1. Teasing
2. Social Exclusion
3. Threat
4. Intimidation
5. Stalking
6. Physical violence
7. Theft
8. Sexual, religious, or racial harassment
9. Public humiliation
10. Destruction of property

Harassment means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:

1. Places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property
2. Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits
3. Has the effect of substantially disrupting the orderly operation of a school

Bullying and **harassment** also encompasses:

1. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation. (page 2)
2. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause
 1. Emotional or physical harm to a student or school employee by:
 - a. Incitement or coercion
 - b. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system

- c. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment

Cyberstalking as defined in s. 784.048(1)(d), F.S., means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

1. Description of the type of behavior expected from each student and school employee of a public K-12 educational institution:

The Glades County School District expects students to conduct themselves as appropriate for their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.

The school district believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline. The development of this atmosphere requires respect for self and others, as well as for district and community property on the part of students, staff, and community members. Since students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate behavior, treat others with civility and respect, and refuse to tolerate bullying or harassment.

The school district upholds that bullying or harassment of any student or school employee is prohibited:

- a) During any education program or activity conducted by a public K-12 educational institution;
- b) During any school-related or school-sponsored program or activity;
- c) On a school bus of a public K-12 educational institution; or
- d) Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 education institution.

1. Consequences for a student or employee of a public K-12 educational institution who commits an act of bullying or harassment: (page 3)

Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances. The physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action. Consequences and appropriate remedial action for students who commit acts of bullying or harassment may range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the Code of Student Conduct. Consequences and appropriate remedial action for a school employee found to have committed an act of bullying or harassment may be disciplined in accordance with district policies, procedures, and agreements. Additionally, egregious acts of harassment by certified educators may result in a sanction against an educator's state issued certificate. (See State Board of Education Rule 6B-1.006, FAC., The Principles of Professional Conduct of the Education Profession in Florida.) Consequences and appropriate remedial action for a visitor or volunteer, found to have

committed an act of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

12. Consequences for a student or employee of a public K-12 educational institution who is found to have wrongfully and intentionally accused another of an act of bullying or harassment:

Consequences and appropriate remedial action for a student found to have wrongfully and intentionally accused another as a means of bullying or harassment range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the Code of Student Conduct. Consequences and appropriate remedial action for a school employee found to have wrongfully and intentionally accused another as a means of bullying or harassment may be disciplined in accordance with district policies, procedures, and agreements. Consequences and appropriate remedial action for a visitor or volunteer, found to have wrongfully and intentionally accused another as a means of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.

1f. A procedure for reporting an act of bullying or harassment, including provisions that permit a person to anonymously report such an act.

At each school, the principal or the principal's designee is responsible for receiving complaints alleging violations of this policy. All school employees are required to report alleged violations of this policy to the principal or the principal's designee. All other members of the school community, including students, parents/legal guardians, volunteers, and visitors are encouraged to report any act that may be a violation of this policy anonymously or in-person to the principal or principal's designee.

The principal of each school in the district shall establish and prominently publicize to students, staff, volunteers, and parents/legal guardians, how a report of bullying or harassment may be filed either in-person or anonymously and how this report will be (page 4) acted upon. The victim of bullying or harassment, anyone who witnessed the bullying or harassment, and anyone who has credible information that an act of bullying or harassment has taken place may file a report of bullying or harassment. A school employee, school volunteer, student, parent/legal guardian or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official and who makes this report in compliance with the procedures set forth in the district policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident. Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning or working environment, or work assignments. Any written or oral reporting of an act of bullying or harassment shall be considered an official means of reporting such act(s). Reports may be made anonymously, but formal disciplinary action may not be based solely on the basis of an anonymous report.

g. A procedure for the prompt investigation of a report of bullying or harassment and the persons responsible for the investigation. The investigation of a reported act of bullying or harassment is deemed to be a school-related activity and begins with a report of such an act:

At each school in the district, the Procedures for Investigating Bullying and/or Harassment include:

- 1- The principal or designee selects a designee(s), employed by the school, trained in investigative procedures to initiate the investigation. The designee(s) may not be the accused perpetrator (harasser or bully) or victim.
- 2- Documented interviews of the victim, alleged perpetrator, and witnesses are conducted privately, separately, and are confidential. Each individual (victim, alleged perpetrator, and witnesses) will be interviewed separately and at no time will the alleged perpetrator and victim be interviewed together.
- 3- The investigator shall collect and evaluate the facts including, but not limited to:
 - 0 o Description of incident(s) including nature of the behavior; context in which the alleged incident(s) occurred, etc.;
 - 1 o How often the conduct occurred;
 - 2 o Whether there were past incidents or past continuing patterns of behavior;
 - 0 o The relationship between the parties involved;
 - 1 o The characteristics of parties involved (i.e., grade, age, etc.);
 - 2 o The identity and number of individuals who participated in bullying or harassing behavior;
 - 3 o Where the alleged incident(s) occurred;
 - 4 o Whether the conduct adversely affected the student's education or educational environment; (page 5)
 - 5 o Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and
 - 6 o The date, time, and method in which the parents/legal guardians of all parties involved were contacted.
- 2- Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances and includes:
 - 1o Recommended remedial steps necessary to stop the bullying and/or harassing behavior; and
 - 2o A written final report to the principal.
- 3- The maximum of 10 school days shall be the limit for the initial filing of incidents and completion of the investigative procedural steps. The highest level of confidentiality possible will be upheld regarding the submission of a complaint or a report of bullying and/or harassment, and the investigative procedures that follow.
 - 1h. A process to investigate whether a reported act of bullying or harassment is within the scope of the district school system and, if not, a process for referral of such an act to the appropriate jurisdiction:

A principal or designee will assign a designee(s) that is trained in investigative procedures to initiate an investigation of whether an act of bullying or harassment is within the scope of the school district.

The trained designee(s) will provide a report on results of investigation with recommendations for the principal to make a determination if an act of bullying or harassment falls within the scope of the district.
- 1• If it is within scope of district, move to Procedures for Investigating Bullying and/or Harassment.

2• If it is outside scope of district, and determined a criminal act, refer to appropriate law enforcement.

3• If it is outside scope of district, and determined not a criminal act, inform parents/legal guardians of all students involved. 1i. A procedure for providing immediate notification to the parents/legal guardians of a victim of bullying or harassment and the parents/legal guardians of the perpetrator of an act of bullying or harassment as well as, notification to all local agencies where criminal charges may be pursued against the perpetrator: The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). (page 6)

If the bullying incident results in the perpetrator being charged with a crime, the principal, or designee, shall by telephone or in writing by first class mail, inform parents/legal guardian of the victim(s) involved in the bullying incident about the Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532) that states "...a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school."

Once the investigation has been completed and it has been determined that criminal charges may be pursued against the perpetrator, all appropriate local law enforcement agencies will be notified by telephone and/or in writing.

12

j. A procedure to refer victims and perpetrators of bullying or harassment for counseling: A district referral procedure will establish a protocol for intervening when bullying or harassment is suspected or when a bullying incident is reported. The procedure shall include:

1• A process by which the teacher or parent/legal guardian may request informal consultation with school staff (specialty staff, e.g., school counselor, school psychologist, etc.) to determine the severity of concern and appropriate steps to address the concern (the involved students' parents or legal guardian may be included).

2• A referral process to provide professional assistance or services that includes:

1o A process by which school personnel or parent/legal guardian may refer a student to the school intervention team (or equivalent school based team with a problem-solving focus) for consideration of appropriate services. (Parent or legal guardian involvement is required at this point.)

2o If a formal discipline report or formal complaint is made, the principal or designee must refer the student(s) to the school intervention team for determination of counseling support and interventions. (Parent or legal guardian involvement is required at this point.)

3• A school-based component to address intervention and assistance as determined appropriate by the intervention team that includes:

0 o Counseling and support to address the needs of the victims of bullying or harassment

o Research-based counseling/interventions to address the behavior of the students who bully and harass others (e.g., empathy training, anger management)

0 o Research-based counseling/interventions which includes assistance and support provided to parents/legal guardians, if deemed necessary or appropriate (page 7)

1k. A procedure for including incidents of bullying or harassment in the school's report of data concerning school safety and discipline data required under s. 1006.09(6), F.S.

The report must include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report must include, in a separate section, each reported incident of bullying or harassment that does not meet the criteria of a prohibited act under this section with recommendations regarding such incidents: The school district will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data, which includes bullying/harassment as an incident code as well as bullying-related as a related element code. The SESIR definition of bullying/harassment is unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting or dehumanizing gesture, by an adult or student that is severe or pervasive enough to create an intimidating, hostile or offensive educational environment, cause discomfort or humiliation, or unreasonably interfere with the individual's school performance or participation.

If a bullying and/or harassment incident occurs then it will be reported in SESIR with the bullying/harassment code. If the bullying/harassment results in any of the following SESIR incidents the incident will be coded appropriately using the relevant incident code AND the related element code entitled bullying-related code. Those incidents are:

- 1• Arson
- 2• Battery
- 3• Breaking and Entering
- 4• Disruption on Campus
- 5• Major Fighting
- 6• Homicide
- 7• Kidnapping
- 8• Larceny/Theft
- 9• Robbery
- 10• Sexual Battery
- 11• Sexual Harassment
- 12• Sexual Offenses
- 13• Threat/Intimidation
- 14• Vandalism
- 15• Weapons Possession
- 16• Other Major (Other major incidents that do not fit within the other definitions)

Discipline and referral data will be recorded in Student Discipline/Referral Action Report and Automated Student Information System.

The district will provide bullying incident, discipline, and referral data to the Florida

Department of Education in the format requested, through Survey 5 from Education (page 8) Information and Accountability Services, and at designated dates provided by the Department.

12

l. A procedure for providing instruction to students, parents/legal guardians, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment: The district ensures that schools sustain healthy, positive, and safe learning environments for all students. It is important to change the social climate of the school and the social norms with regards to bullying. This requires the efforts of everyone in the school environment – teachers, administrators, counselors, school nurses other non-teaching staff (such as bus drivers, custodians, cafeteria workers, and/or school librarians), parents/legal guardians, and students. Students, parents/legal guardians, teachers, school administrators, counseling staff, and school volunteers shall be given instruction at a minimum on an annual basis on the district's Policy and Regulations against bullying and harassment. The instruction shall include evidence-based methods of preventing bullying and harassment, as well as how to effectively identify and respond to bullying in schools.

12

m. A procedure for regularly reporting to a victim's parents/legal guardians the actions taken to protect the victim:

The principal or designee shall by telephone and/or in writing report the occurrence of any incident of bullying as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident has been initiated. According to the level of infraction, parents/legal guardians will be notified by telephone and/or writing of actions being taken to protect the child; the frequency of notification will depend on the seriousness of the bullying or harassment incident.

Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

12

n. A procedure for publicizing the policy which must include its publication in the code of student conduct required under s. 1006.07(2), F.S., and in all employee handbooks: At the beginning of each school year, the Superintendent or designee shall, in writing, inform school staff, parents/legal guardians, or other persons responsible for the welfare of a student of the district's student safety and violence prevention policy.

Each district school shall provide notice to students and staff of this policy through appropriate references in the code of student conduct and employee handbooks, and/or through other reasonable means. The Superintendent shall also make all contractors contracting with the district aware of this policy.

Each school principal shall develop an annual process for discussing the school district policy on bullying and harassment with students in a student assembly or (page 9) other reasonable format. Reminders of the policy and bullying prevention messages such as posters and signs will be displayed around each school and on the district school buses.

School Board Approved by: _____ Date: _____

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APPENDIX J
LAFAYETTE COUNTY SCHOOL DISTRICT ANTI-CYBERBULLYING POLICY

Title: Lafayette School District School Board Policy

Cyberbullying Policy Adopted:

Policy Web site: <http://www.lafayette.k12.fl.us/school%20board%20policies.pdf>:

No. of Pages:

Size: Small

District: First

I. Statement Prohibiting Bullying and Harassment

A. It is the policy of the Lafayette County School District that all of its students and school employees have an educational setting that is safe, secure and free from harassment and bullying of any kind. The District will not tolerate bullying and harassment of any type. Conduct that constitutes bullying and harassment, as defined herein, is prohibited.

B. The District upholds that bullying or harassment of any student or school employee is prohibited

1. During any education program or activity conducted by a public K- 12 educational institution;

2. During any school-related or school-sponsored program or activity;

3. On a school bus of a public K-12 educational institution; or

4. Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K- 12 education institution.

II. Definitions

A. Bullying means systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees. It is further defined as unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve but is not limited to

1. Teasing;

2. Social Exclusion;

3. Threat;

4. Intimidation;

5. Stalking;

6. Physical violence

7. Theft;

8. Sexual, religious, or racial harassment;

9. Public humiliation; or

10. Destruction of property.

B. Harassment means any threatening, insulting or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that

1. Places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property;

2. Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or

3. Has the effect of substantially disrupting the orderly operation of a school.

C. Bullying and harassment also encompass

1. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.

2. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee by
 - a. Incitement or coercion;
 - b. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the District school system;
 - c. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

III. Behavior Standards

D. Cyberstalking as defined in s. 784.048(1)(d), F.S., means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose

A. The Lafayette County School District expects students to conduct themselves as appropriate for their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.

B. The District believes that standards for student behavior must be set cooperatively through interaction among the students, parents/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline. The development of this atmosphere requires respect for self and others, as well as for District and community property on the part of students, staff, and community members. Because students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate behavior, treat others with civility and respect, and refuse to tolerate bullying or harassment.

Students will conform to reasonable standards of socially acceptable behavior; respect the person, property and rights of others; obey constituted authority and respond to those who hold that authority. There will be appropriate recognition for positive reinforcement for good conduct, self-discipline, good citizenship and academic success. These awards will be given at the end of the year at the awards ceremonies for each school. Student rights, disciplinary sanctions and due process will be set forth in the Student Code of Conduct. Students and parents receive a copy of the Code of Conduct. Students receive an explanation at the beginning of school regarding their rights, sanctions and due process.

IV. Consequences

A. Committing an act of bullying or harassment

1. Concluding whether a particular action or incident constitutes a violation of this policy requires a determination based on all of the facts and surrounding circumstances. The physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action.

2. Consequences and appropriate remedial action for students who commit acts of bullying or harassment may range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the *Code of Student Conduct*.
 3. Consequences and appropriate remedial action for a school employee, found to have committed an act of bullying or harassment, shall be determined in accordance with District policies, procedures, and agreements. Additionally, egregious acts of harassment by certified educators may result in a sanction against an educator's state issued certificate.
 4. Consequences and appropriate remedial action for a visitor or volunteer, found to have committed an act of bullying or harassment, shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.
- B. Wrongful and intentional accusation of an act of bullying or harassment
1. Consequences and appropriate remedial action for a student, found to have wrongfully and intentionally accused another as a means of bullying or harassment, range from positive behavioral interventions up to and including suspension or expulsion, as outlined in the *Code of Student Conduct*.
 2. Consequences and appropriate remedial action for a school employee, found to have wrongfully and intentionally accused another as a means of bullying or harassment, shall be determined in accordance with District policies, procedures, and agreements.
 3. Consequences and appropriate remedial action for a visitor or volunteer, found to have wrongfully and intentionally accused another as a means of bullying or harassment shall be determined by the school administrator after consideration of the nature and circumstances of the act, including reports to appropriate law enforcement officials.
- V. Reporting an act of Bullying or Harassment
- A. At each school, the principal or the principal's designee shall be responsible for receiving complaints alleging violations of this policy.
 - B. All school employees are required to report alleged violations of this policy to the principal or the principal's designee.
 - C. All other members of the school community, including students, parents/legal guardians, volunteers, and visitors are encouraged to report any act that may be a violation of this policy anonymously or in person to the principal or principal's designee.
 - D. The principal of each school in the District shall establish and prominently publicize to students, staff, volunteers, and parents/legal guardians, how a report of bullying or harassment may be filed either in person or anonymously and how this report will be acted upon.
 - E. The victim of bullying or harassment, anyone who witnessed the bullying or harassment, and anyone who has credible information that an act of bullying or harassment has taken place may file a report of bullying or harassment.
 - F. A school employee, school volunteer, student, parent/legal guardian or other persons who promptly reports in good faith an act of bullying or harassment to the appropriate school official and who makes this report in compliance with the procedures set forth in the District policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident.

G. Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning or working environment, or work assignments.

H. Any written or oral reporting of an act of bullying or harassment shall be considered an official means of reporting such act(s).

I. Report may be made anonymously, but formal disciplinary action may not be based solely on the basis of an anonymous report.

VI. Investigation of a Report of Bullying or Harassment

A. The investigation of a reported act of bullying or harassment is deemed to be a school-related activity and shall begin with a report of such an act.

B. The principal or designee shall select an individual(s), employed by the school and trained in investigative procedures, to initiate the investigation. The person may not be the accused perpetrator (harasser or bully) or victim.

C. Documented interviews of the victim, alleged perpetrator, and witnesses shall be conducted privately, separately, and shall be confidential. Each individual (victim, alleged perpetrator, and witnesses) will be interviewed separately and at no time will the alleged perpetrator and victim be interviewed together.

D. The investigator shall collect and evaluate the facts including but not limited to

1. Description of incident(s) including nature of the behavior;
2. Context in which the alleged incident(s) occurred;
3. How often the conduct occurred;
4. Whether there were past incidents or past continuing patterns of behavior;
5. The relationship between the parties involved;
6. The characteristics of parties involved, *i.e.*, grade, age;
7. The identity and number of individuals who participated in bullying or harassing behavior;
8. Where the alleged incident(s) occurred;
9. Whether the conduct adversely affected the student's education or educational environment;
10. Whether the alleged victim felt or perceived an imbalance of power as a result of the reported incident; and
11. The date, time and method through which all parents/guardians of all parties involved were contacted.

E. Whether a particular action or incident constitutes a violation of this policy shall require a determination based on all the facts and surrounding circumstances and shall include

1. Recommended remedial steps necessary to stop the bullying and/or harassing behavior; and
2. A written final report to the principal.

F. The maximum of ten (10) school days shall be the limit for the initial filing of incidents and completion of the investigative procedural steps.

G. The highest level of confidentiality possible will be upheld regarding the submission of a complaint or a report of bullying and/or harassment and the investigative procedures that follow.

VII. Investigation to Determine Whether a Reported Act of Bullying or Harassment is Within the Scope of the District

A. The principal or designee will assign an individual(s) who is trained in investigative procedures to initiate an investigation of whether an act of bullying or harassment is within the scope of the School District.

B. The trained investigator(s) will provide a report on results of investigation with recommendations for the principal to make a determination if an act of bullying or harassment falls within the scope of the District.

1. If it is within the scope of the District, a thorough investigation shall be conducted.

2. If it is outside the scope of the District and determined a criminal act, the principal shall refer the incident(s) to appropriate law enforcement.

3. If it is outside the scope of the District and determined not a criminal act, the principal or designee shall inform the parents/legal guardians of all students involved.

VIII. Notification to Parents/Guardians of Incidents of Bullying and Harassment

A. Immediate notification to the parents/legal guardians of a victim of bullying or harassment.

1. The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

2. If the bullying incident results in the perpetrator being charged with a crime, the principal, or designee, shall by telephone or in writing by first class mail, inform the parents/legal guardian of the victim(s) involved in the bullying incident about the Unsafe School Choice Option (No Child Left Behind, Title IX, Part E, Subpart 2, Section 9532) that states “. . . a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.”

B. Immediate notification to the parents/legal guardians of the perpetrator of an act bullying or harassment.

The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying or harassment as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

C. Notification to local agencies where criminal charges may be pursued.

Once the investigation has been completed and it has been determined that criminal charges may be pursued against the perpetrator, all appropriate local law enforcement agencies will be notified by telephone and/or in writing.

IX. Referral of Victims and Perpetrators of Bullying or Harassment for Counseling

When bullying or harassment is suspected or when a bullying incident is reported, counseling services shall be made available to the victim(s), perpetrator(s), and parents/guardians.

- A. The teacher or parent/legal guardian may request informal consultation with school staff, *e.g.*, school counselor, school psychologist, to determine the severity of concern and appropriate steps to address the concern. The teacher may request that the involved student's parents or legal guardian are included.
- B. School personnel or the parent/legal guardian may refer a student to the school intervention team for consideration of appropriate services. Parent or legal guardian involvement shall be required when the student is referred to the intervention team.
- C. If a formal discipline report or formal complaint is made, the principal or designee must refer the student(s) to the school intervention team for determination of counseling support and interventions. Parent or legal guardian involvement shall be required.
- D. The intervention team may recommend
 1. Counseling and support to address the needs of the victims of bullying or harassment;
 2. Research-based counseling or interventions to address the behavior of the students who bully and harass others, *e.g.*, empathy training, anger management; and/or
 3. Research-based counseling or interventions which include assistance and support provided to parents/legal guardians, if deemed necessary or appropriate.

X. Reporting Incidents of Bullying and Harassment

Incidents of bullying or harassment shall be reported in the school's report of data concerning school safety and discipline data required under s. 1006.09(6), F.S. The report shall include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report shall also include each reported incident of bullying or harassment that did not meet the criteria of a prohibited act under this section with recommendations regarding such incidents

B. The District will utilize Florida's School Environmental Safety Incident Reporting (SESIR) Statewide Report on School Safety and Discipline Data, which includes bullying/harassment as an incident code as well as bullying-related as a related element code.

1. Bullying and/or harassment incidents shall be reported in SESIR with the bullying/harassment code.
2. If the bullying/harassment results in any of the following SESIR incidents, the incident will be coded appropriately using the relevant incident code and the bullying-related code. Such incidents are
 - a. Arson
 - b. Battery
 - c. Breaking and Entering
 - d. Disruption on Campus
 - e. Major Fighting
 - f. Homicide
 - g. Kidnapping

- h. Larceny/Theft
- i. Robbery
- j. Sexual Battery
- k. Sexual Harassment
- l. sexual offenses
- m. Threat/Intimidation
- n. Vandalism
- o. Weapons Possession
- p. Other Major (Other major incidents that do not fit within the other definitions)

C. Discipline and referral data shall be recorded in Student Discipline/Referral Action Report and Automated Student Information System.

D. The District shall provide bullying incident, discipline, and referral data to the Florida Department of Education in the format requested, through Survey 5 from Education Information and Accountability Services, and at designated dates provided by the Department.

XI. Instruction on Identifying, Preventing, and Responding to Bullying or Harassment

A. The District shall ensure that schools sustain healthy, positive, and safe learning environments for all students. It is committed to maintain a social climate and social norms in all schools that prohibit bullying and harassment. This requires the efforts of everyone in the school environment – teachers; administrators; counselors; school nurses; other nonteaching staff such as bus drivers, custodians, cafeteria workers; school librarians; parents/legal guardians; and students.

B. Students, parents/legal guardians, teachers, school administrators, counseling staff, and school volunteers shall be given instruction at a minimum on an annual basis on the District's policy and regulations against bullying and harassment. The instruction shall include evidence-based methods of preventing bullying and harassment as well as how to effectively identify and respond to bullying in schools.

XII. Reporting to a Victim's Parents/Legal Guardians the Actions Taken to Protect the Victim

XIII. Publicizing the Policy

The principal or designee shall by telephone and/or in writing report the occurrence of any incident of bullying as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident has been initiated. According to the level of infraction, parents/legal guardians will be notified by telephone and/or writing of actions being taken to protect the child; the frequency of notification will depend on the seriousness of the bullying or harassment incident. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

A. At the beginning of each school year, the Superintendent or designee shall, in writing, inform school staff, parents/legal guardians, or other persons responsible for the welfare of a student of the District's student safety and violence prevention policy.

B. Each District school shall provide notice to students and staff of this policy through appropriate references in the *Code of Student Conduct* and employee handbooks and through other reasonable means.

C. The Superintendent shall also make all contractors contracting with the District aware of this policy.

D. Each school principal shall develop an annual process for discussing the school district policy on bullying and harassment with students.

E. Reminders of the policy and bullying prevention messages such as posters and signs will be displayed around each school and on the District school buses.

STATUTORY AUTHORITY 1001.41, 1001.42, F.S.

**LAW(S) IMPLEMENTED: 1001.43, 1003.04, 1003.31, 1003.32,
1006.07, 1006.08, 1006.09,
1006.10, 1006.147, F.S.**

20 USC 1232g

HISTORY: ADOPTED: _____ REVISION DATE(S): _____ FORMERLY: NEW

LIST OF REFERENCES

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OR. REV. STAT. ANN. § 339.356 (2007)

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BIOGRAPHICAL SKETCH

Upon graduation from her Master of Arts in Mass Communication program, Kara Carnley Murrhee will be attending the University of Florida, pursuing a joint juris doctor /doctoral degree in mass communication law. She began her Master of Arts in Mass Communication degree at the University of Florida in 2007. While working on her master's degree, Murrhee maintained her professional experiences through teaching as an assistant in the College of Journalism and interning in the Levin College of Law communications office. She also pursued publication of her research, earning the award of First Place Student Paper at the 2010 Southeast Colloquium. Murrhee was accepted into the joint J.D./Ph.D. program in media law at UF in 2010.

Before coming to UF, Murrhee attended the University of Central Florida as an undergraduate, earning her bachelor's degree in mass communication in 2006. While in Orlando, she pursued several professional opportunities, working for various communications and public relations organization in downtown Orlando. She grew up in Tampa, Fla.