

Virginia State Crime Commission

Cyberbullying

2011

Cyberbullying

Executive Summary

Delegate Robert Bell requested by letter that the Crime Commission review cyberbullying by impersonation. There has been a growing concern over the past few years, with the increased use of social media by minors, that cyberbullying is much easier to accomplish than traditional bullying. The cases of Lori Drew and Tyler Clementi highlight the potential harm to individuals in extreme instances of cyberbullying.

The use of technology has made it much easier for teenagers to harass and intimidate others. Teenagers now have increased access to cell phones and the Internet, and many of them use social media websites, such as Facebook, Myspace, and blogs. The increased use of the Internet and other electronic technologies by teens has assisted in the transition from traditional bullying to a newer form typically coined as cyberbullying, electronic bullying, or Internet harassment.

Cyberbullying has been loosely defined as behavior transmitted through phones or computers by persons who send hostile or aggressive messages intended to harm or upset others. This behavior can be accomplished through the use of cell phones, websites, and chat rooms. One of the more disconcerting issues about cyberbullying is that it can be done with a level of anonymity, which may embolden more people to engage in bullying behavior, thinking there are no consequences for their actions. Cyberbullying victimization rates vary, but have been estimated to affect a third of youths in some studies.

Currently, states can use either harassment or stalking statutes to punish cyberbullying, since the prohibited conduct in these statutes is broad enough to cover cyberbullying. In Virginia, the computer harassment and stalking statutes only cover conduct that involves either vulgar or threatening language. At least four states have passed specific cyberbullying statutes, which generally focus on protecting children from acts of cyberbullying. At least 23 states require schools to have policies that penalize cyberbullying by students. This is advantageous, because the U.S. Supreme Court gives schools wide latitude to curtail student speech. However, this standard may need to be revisited since some student speech may be created in homes, and not on school property or at school functions.

As a result of this study, no formal recommendations were made by the Crime Commission.

Background

Bullying has long been a matter of concern in schools and has captured the attention of much academic research.¹ While the Internet can be a necessary tool for searching for information and developing social networks, it can also be misused to carry out undesirable behavior. Specifically, the increased use of the Internet and other electronic technologies by adolescents has assisted in the transition from traditional bullying to a newer form, typically coined as cyberbullying, electronic bullying or Internet harassment. As a result, there has been a significant concern about cyberbullying in recent years.

Another reason that cyberbullying has received so much national attention is due to the very extreme cases that have been covered by the media. The most infamous is the "Myspace Mom," Lori Drew,² who posed as a 16 year old boy on Myspace and conducted a fake romance with a 13 year old girl.³ Four weeks into the "fake romance," Ms. Drew broke off the relationship.⁴ The girl was very distraught over the faked romance and committed suicide as a result.⁵ Ms. Drew could not be prosecuted in Missouri, where she and the young girl lived, because there was no federal crime for cyberbullying, but she was instead prosecuted under federal anti-hacking statutes in California.⁶ She was later acquitted on all charges.⁷ Another significant cyberbullying case involved Tyler Clementi, a college student at Rutgers.⁸ Mr. Clementi was secretly filmed by his roommate engaging in sexual acts with another man in his dorm room.⁹ The video was streamed live on the internet by his roommate.¹⁰ Three days after the incident, Mr. Clementi committed suicide.¹¹ While these two incidents represent extreme cases of cyberbullying, the concept of cyberbullying is relatively new and, thus, academic literature on the subject only began to emerge in the last ten years, as discussed below.

The definition of cyberbullying does vary in the literature. However, most acts of cyberbullying can be incorporated into the following general definition: "...any behavior performed through electronic or digital media by individuals or groups that repeatedly communicates hostile or aggressive messages intended to inflict harm or discomfort on others."¹² Cyberbullying can be carried out in a number of ways including harassing or incriminating messages, photos or videos via email, instant messaging, social networking sites (e.g., Facebook, Myspace), blogs, websites, chat rooms, or cellular phone text messaging.¹³

While traditional bullying and cyberbullying have many similarities, there are some important differences to consider. First, unlike traditional bullying, which is a face-to-face confrontation, cyberbullying can extend beyond the school grounds, occurring at any given time via electronic messaging.¹⁴ Additionally, the victim may or may not know who their cyberbully is. There is a sense of anonymity online that may embolden individuals to engage in cyberbullying rather than traditional bullying since they feel they will unlikely be caught or do not see the reaction of the victim to realize the negative impact of such behavior.¹⁵ Some research has suggested that such anonymity may increase the frequency and power of cyberbullying.¹⁶

Research has estimated that the number of youth engaging in cyberbullying varies between 4%-15%.¹⁷ However, the prevalence of cyberbullying victimization is much

higher, with research estimating anywhere from 19% to 42% of youth cyberbullied at least once.¹⁸ The consequences of cyberbullying are very similar to those reported from traditional bullying, such as lower self-esteem, decreased academic performance, increased stress levels, embarrassment, insecurity, and depression, social, and anxiety disorders.¹⁹

The Role of Social Media

The advent and growth of technology has changed the nature and extent of bullying in recent years. The number of teenagers using such technologies is considerable. For instance, recent surveys estimate that at least 75% of teens (12-17) own a cellular phone,²⁰ and well over 90% of all teens are connected to the Internet in some way.²¹ Social media is yet another recent mechanism that makes it much easier to communicate with a large number of people in a very short period of time, making it very simple to spread rumors and communicate false statements about people.

Facebook, the most popular of all social media sites, has more than 800 million users worldwide, with roughly 200 million users in the U.S.²² Twitter has more than 200 million active accounts, and is growing rapidly.²³ Myspace has approximately 60 million users worldwide.²⁴ There are also many “blog” platforms such “Blogger,” “Word Press,” or “Tumblr.” that make it very easy to create a blog, allowing the blog owner to post practically any message they desire, and reach anyone who subscribes to or reads the blog. It has been estimated that 73% of teens use social networking sites.²⁵ Another way teens and young adults harass and intimidate each other is by setting up fake profiles, on sites like Facebook, to impersonate another.

At the Crime Commission’s November 16, meeting, Facebook representatives made a presentation about their efforts to address cyberbullying and curb impersonation. Ms. Brooke Oberwetter of Facebook explained that Facebook is based on the concept of a “real name culture,” which means that on Facebook, you have to be your real self instead of using pseudonyms. She explained that this creates an environment where people are accountable for their actions, and deters imposters and fake names.

Ms. Oberwetter also detailed the many reporting tools available on Facebook for users to report abuse, such as acts of harassment and bullying. Users can notify Facebook when they see posts, photos, or speech that they believe may violate Facebook’s policies. There are also social reporting tools that allow users to communicate with other users regarding the content of their posts or photos that may be offensive, embarrassing or make them feel uncomfortable. If a teenager feels like they are being bullied or harassed, they can easily and discreetly notify a parent, teacher, or a mutual friend who can help them resolve the situation.

Ms. Oberwetter provided information on Facebook’s policies regarding impersonation and reported that it is a violation of their policy to set up a fake profile. Additionally, they have tools in place to detect against fake accounts, which were recently updated and implemented. Users can now notify Facebook immediately when they believe that someone is impersonating them or another person. Facebook has a security team that

operates worldwide, 24 hours a day, seven days a week, to review reports and take action when necessary. Facebook also has special tools for accounts set up by teenagers, such as limiting the amount of information that is shared on the Internet. Finally, Ms. Oberwetter explained that Facebook has been involved in multiple safety campaigns and anti-bullying initiatives. They recently partnered with Time Warner to educate the general public about cyberbullying.

Legal Analysis

Generally, cyberbullying can be addressed by existing law, since some states' harassment laws and stalking laws are broad enough to penalize most conduct that is considered cyberbullying. Additionally, there have been a few states that have created specific laws to penalize cyberbullying. Many states have also focused on this issue by requiring schools to develop policies and procedures to address acts of cyberbullying.

HARASSMENT STATUTES

At least 31 states have harassment laws that are generally broad enough to cover most facets of cyberbullying.²⁶ For example, Alabama's law provides punishment for acts targeted at individuals for electronic communications done in a "manner likely to harass or cause alarm."²⁷ Likewise, in Kentucky, using a computer "with intent to intimidate, harass, annoy, or alarm another person" subjects a person to punishment under its harassment statute.²⁸

In Virginia, there is no general harassment statute. There is, however, a specific statute that targets computer harassment.²⁹ The statute covers the following behavior:

If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he shall be guilty of a Class 1 misdemeanor.³⁰

While this statute could punish some acts of cyberbullying, it would be limited to those acts that are accompanied by "obscene, vulgar, profane, lewd, lascivious, or indecent language."³¹

STALKING STATUTES

Since the 1990s, all states, and the federal government, have enacted stalking laws.³² Stalking laws, like harassment laws, can be used to prosecute actions considered to be cyberbullying, since the focus of the statutes is to punish individuals who set out on a specific course of action to harass, annoy, or intimidate a specific person. For example:

- Florida - "any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking."³³

- Maine - “the actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person...to suffer serious inconvenience or emotional distress.”³⁴
- Mississippi - “Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to threaten, terrify or harass.”³⁵
- Rhode Island - “knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose. The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury.”³⁶

Virginia also has a stalking law, Virginia Code § 18.2-60.3. It is similar to most stalking laws and penalizes an individual:

who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury.³⁷

One important distinction with Virginia’s stalking law, in terms of dealing with cyberbullying, is that only extreme cases of cyberbullying would be covered under this statute. Specifically, it would only cover acts of cyberbullying that involve threats of injury, death, or sexual assault.

CYBERBULLYING STATUTES

As of the end of 2011, there are four states that have enacted specific cyberbullying statutes: Louisiana, North Carolina, Texas and Utah. In 2010, Louisiana passed a cyberbullying statute that punished “the transmission of any electronic textual, visual, written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen.”³⁸

Like Louisiana, North Carolina focused its cyberbullying statute on protecting minors. It covers the following acts:

- building a fake “profile or website” to:
 - either pose as a minor in a electronic message; or,
 - encourage others to post the “private or personal” information of the minor on the Internet.
- with the intent to intimidate or torment a minor, “post a real or doctored image of a minor.”

- “plant any statement, whether true or false, tending to provoke or that actually provokes any third party to stalk or harass a minor.” [emphasis added]³⁹

In September 2011, Texas began penalizing acts of cyberbullying accomplished through impersonation. Specifically, it is a crime when a person, without consent, uses another’s name with the intent to harm, defraud, intimidate, or threaten any person; or sets up a website on the Internet, or on a social networking site sends emails, instant or text messages, with the intent to harm or defraud someone.⁴⁰ Unlike Louisiana and North Carolina, the statute applies to all persons.

Finally, Utah’s cyberbullying statute penalizes electronic communications sent “with intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, or disrupt the electronic communications of another.”⁴¹ The statute applies to all persons; however, in subsequent offenses against minors, the penalty is increased from a misdemeanor to a third degree felony.⁴²

School Cyberbullying Policies

Schools and school systems have been addressing bullying for many years, and often have official policies that discourage, educate, and punish, regarding bullying.⁴³ Recently, states have been addressing cyberbullying by requiring schools to have policies in place to educate students about cyberbullying and policies that prescribe discipline for students committing acts of cyberbullying.⁴⁴ According to the National Conference of State Legislatures, there are at least 23 states that have statewide, either in code or regulation, requirements for schools and school systems to develop policies regarding cyberbullying.⁴⁵ Virginia has a statutory requirement that is similar to what most other states prescribe for schools. In 2009, language was added to Va. Code § 22.1-279.6 requiring the Board of Education to adopt guidelines that include provisions addressing cyberbullying.⁴⁶ Specifically, the Virginia Code requires the Board of Education to adopt and establish a model policy for local school boards to follow regarding: “bullying, the use of electronic means for purposes of bullying, harassment, and intimidation, and dissemination of such policies to students, their parents, and school personnel.”⁴⁷ Under this statutory scheme, school boards must adopt codes of student conduct commensurate with the guidelines of the Board of Education. In response to the requirement in Va. Code § 22.1-279.6, the Board of Education updated its guidelines in 2009 to include provisions addressing cyberbullying.⁴⁸

The critical advantage to school cyberbullying policies is that the U.S. Supreme Court has given schools significant latitude to restrict speech that otherwise would be protected by the First Amendment.⁴⁹ In the landmark case of Tinker v. Des Moines Independent School District, the Court created a basic rule that schools may restrict student speech that causes “material and substantial disruption” of school activities.⁵⁰ This rule has been refined and altered over the years to include: restricting vulgar and lewd speech, inconsistent with the schools values;⁵¹ exercising editorial control of school sponsored activities, as long as it is related to teaching purposes;⁵² and extending

the right of schools to restrict speech at school sponsored or authorized activities, to include speech outside or off school property.⁵³

One commenter has noted that the Court's complicated set of rules may need to be revisited, since students are using the Internet in large numbers and it is problematic to punish student speech that may be generated at home.⁵⁴ Two recent U.S. Circuit Court cases illustrate the tension between Tinker and its progeny, and student use of the Internet. Recently, the Fourth Circuit Court of Appeals upheld the disciplining of a student for creating a Myspace chat group that targeted a specific student with false and derogatory statements from the host and other posters.⁵⁵ The court ruled that the punishment was justified because "the speech interfered with the work and discipline of the school."⁵⁶ However, a recent case in the Third Circuit limited the reach of a school's policy in a case where a student created a fake Myspace profile of his principal.⁵⁷ The court held that there was no evidence of substantial disruption in the school, so the Tinker standard did not apply.⁵⁸ Additionally, while the court conceded that parts of the fake profile were vulgar, they reasoned that the activity occurred outside of school, and it was not proper for the school to restrict the student's speech.⁵⁹

Conclusion

The main concern with cyberbullying is the ease with which it can be accomplished through the use of the Internet and social media sites. Access to the Internet is easier than ever with the prevalence of cell phones, smart phones, tablets, gaming consoles and computers. The majority of teenagers who have access to the Internet go online frequently and use social media sites like Facebook. However, the proactive steps taken by Facebook and other networking sites may help reduce cyberbullying.

Most states can prosecute acts of cyberbullying with existing harassment or stalking statutes. In Virginia, however, only extreme cases of cyberbullying may be prosecuted with the state's computer harassment or stalking statutes. To date, only four states have created specific cyberbullying statutes. Twenty-three states, including Virginia, require schools to have policies against cyberbullying. Due to the great deference the U.S. Supreme Court gives schools to restrict student speech, this appears to be an effective policy option.

As a result of this study, no formal recommendations were made by the Crime Commission.

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Brooke Oberwetter, Associate Manager, Policy Communications, Facebook

¹ See, for example, Olweus, D., *Bullying at school: What we know and what we can do*. Cambridge, A: Blackwell Publishers (1993); Powell, M.D., & Ladd, L.D., Bullying: A review of the literature and implications for family therapists. *The American Journal of Family Therapy*, 38, 189-206 (2010).

² Kim Zettler, *Judge Acquits Lori Drew in Cyberbullying case, Overrules Jury*, Wired (July 2, 2009), http://www.wired.com/threatlevel/2009/07/drew_court/.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Lisa W. Foderaro, *Private Moment Made Public, Then a Fatal Jump*, New York Times, (September 29, 2010), <http://www.nytimes.com/2010/09/30/nyregion/30suicide.html>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Tokunaga, R.S., Following you home from school: A critical review and synthesis of research on cyberbullying victimization. *Computers in Human Behavior*, 26, 277-287 (2010).

¹³ See, for example, Patchin, J.W., & Hinduja, S., Bullies move beyond the schoolyard: A preliminary look at cyberbullying. *Youth Violence and Juvenile Justice*, 4, 148-169 (2006); Sbarbaro, V., & Smith, T.M.E., An exploratory study of bullying and cyberbullying behaviors among economically/educationally disadvantaged middle school students. *American Journal of Health Studies*, 26(3), 139-151 (2011).

¹⁴ Mason, K.L., Cyberbullying: A preliminary assessment for school personnel. *Psychology in the Schools*, 45(4), 323-348 (2008); Patchin, J.W., & Hinduja, S., Bullies move beyond the schoolyard: A preliminary look at cyberbullying. *Youth Violence and Juvenile Justice*, 4, 148-169 (2006); Willard, N.E., *Cyber-bullying and cyber-threats: Responding to the challenge of online social aggression, threats, and distress*. Illinois: Research Press (2007).

¹⁵ Ybarra, M.L., & Mitchell, K.J., Youth engaging in online harassment: Associations with caregiver-child relationships, Internet use, and personal characteristics. *Journal of Adolescence*, 27, 319-336 (2004); Li, Q., New bottle but old wine: A research of cyber-bullying in schools. *Computers & Human Behavior*, 23, 1777-1791 (2007); Bernan, T., & Li, Q., Cyber-harassment: A study of a new method for an old behavior. *Journal of Education Computer Research*, 32, 265-277 (2005); National Crime Prevention Council (NCPC), Teens and cyberbullying: Executive summary of a report on research. Available at <http://www.ncpc.org/resources/files/pdf/bullying/Teens%20and%20Cyberbullying%20Research%20Study.pdf> (2007).

¹⁶ Heirman, W., & Walrave, M., Assessing concerns and issues about the mediation of technology in cyberbullying. *Cyberpsychology*, 2, 22-44 (2008).

¹⁷ Kowalski, R.M., & Limber, S.P., Electronic bullying among middle school students. *Journal of Adolescent Health*, 41, 22-30 (2007); Ybarra, *supra* note 15; Ybarra, M.L., & Mitchell, K.J., Online

aggressors/targets, aggressors, and targets: A comparison of associated youth characteristics. *Journal of Child Psychology & Psychiatry*, 45, 1308-1316 (2004).

¹⁸ Kowalski, *supra* note 17; NCPC, *supra* note 22; Twyman, K., Saylor, C., Taylor, L.A., & Comeaux, C., Comparing children and adolescents engaged in cyberbullying to matched peers.

Cyberpsychology, Behavior, and Social Networking, 13(2), 195-199 (2010); Ybarra, *supra* note 15.

¹⁹ See, for example, NCPC, *supra* note 15; Mason, *supra* note 14; Powell, *supra* note 1; O'Moore, M., & Kirkham, C., Self-esteem and its relationship to bullying behavior. *Aggressive Behavior*, 27, 269-283 (2001); Ybarra, *supra* note 15.

²⁰ Amanda Lenhart, *Teens, Cell Phones and Texting*, Pew Research Center (2010), available at <http://pewresearch.org/pubs/1572/teens-cell-phones-text-messages>.

²¹ Tokunaga, *supra* note 12.

²² Available at <http://newsroom.fb.com/>.

²³ Tom Loftus, "Twitter Shares Active User Numbers," WSJ Blogs, Digits, September 8 (2011), available at <http://blogs.wsj.com/digits/2011/09/08/twitter-shares-active-user-numbers/>.

²⁴ Saurabh Mishra, "Myspace Users Numbers Declining From Last Month, Buzzom, March 26 (2011), <http://www.buzzom.com/2011/03/myspace-users-number-started-declining-from-last-month/>.

²⁵ Lenhart, *supra* at note 20.

²⁶ ALA CODE § 13A-11-8 (West 2011); ALASKA STAT. § 11.61.120 (2010); ARIZ. REV. STAT. § 13-2921 (2011); ARK. CODE ANN. § 5-71-209 (2010); COLO. REV. STAT. § 18-9-111 (2011); CONN. GEN. STAT. § 53a-183, 53a-182b (2011); DEL. CODE ANN. tit. 11, § 1311 (2011); HAW. REV. STAT. ANN. § 711-1106 (2011); 720 ILL. COMP. STAT. 135/1-2 (2011); IND. CODE § 35-45-2-2 (2011); IOWA CODE § 708.7 (2011); KY. REV. STAT. ANN. § 525.080 (West 2010); ME. REV. STAT. ANN. tit. 17-A, § 506-A (2011); MD. CODE ANN., CRIM. LAW § 3-803 (2011); MASS. GEN. LAWS Ch. 265, § 43A (2011); MINN. STAT. § 609.749 (2011); Mo. Rev. Stat. § 565.090 (2011); NEV. REV. STAT. § 200.571 (2010); N.H. REV. STAT. ANN. § 644:4 (2011); N.J. STAT. ANN. § 2C:33-4 (2011); N.M. STAT. ANN. § 30-3A-2 (2010); N.Y. PENAL LAW § 240.30 (2011); N.D. CENT. CODE § 12.1-17-07 (2011); OHIO REV. CODE ANN. § 2917.21 (2011); OKLA. STAT. tit. 21, § 1172 (2011); OR. REV. STAT. § 166.065 (2011); 18 PA. CONS. STAT. ANN. § 2709 (2011); TENN. CODE ANN. § 39-17-308 (2011); TEX. PENAL CODE ANN. § 42.07 (2011); W. VA. CODE § 61-3C-14a (2011); WIS. STAT. ANN. § 947.013 (2011).

²⁷ ALA. CODE § 13A-11-8 (West 2011).

²⁸ KY. REV. STAT. ANN. § 525.080 (West 2010).

²⁹ VA. CODE ANN. § 18.2-152.7:1 (2011).

³⁰ *Id.*

³¹ Additionally, Va. Code § 18.2-60(A)(2) would cover electronic threats to persons on school property, which is punished as a Class 6 felony.

³² Naomi Harlin Goodno, *Cyberstalking, A New Crime: Evaluating the Effectiveness of Current State and Federal Laws*, 72 MO. L. REV. 125, 128 (2007).

³³ FLA. STAT. ANN. § 784.048 (West 2011).

³⁴ ME. REV. STAT. tit. 17-A, § 210-A (2011).

³⁵ MISS. CODE ANN. § 97-45-15 (West 2011).

³⁶ R.I. GEN. LAWS ANN. § 11-52-4.2 (West 2011).

³⁷ VA. CODE ANN. § 18.2-60.3 (2011).

³⁸ LA. REV. STAT. ANN. § 14:40.7 (2011). The penalty for a violation of this section is not more than a \$500 fine or six months in jail.

³⁹ N.C. GEN. STAT. ANN. § 14-458.1 (West 2011). Violations of this statute are punishable as a Class 1 misdemeanor.

⁴⁰ TEX. PENAL CODE ANN. § 33.07 (West 2011).

⁴¹ UTAH CODE ANN. § 76-9-201 (West 2011).

⁴² *Id.*

⁴³ Powell, *supra*, at note 1.

⁴⁴ *Id.*

⁴⁵ National Conference of State Legislatures, State Cyberstalking, Cyberharassment, and Cyberbullying Laws, (2011) available at <http://www.ncsl.org/default.aspx?tabid=13495>.

⁴⁶ 2009 Va. Acts ch. 431.

⁴⁷ VA. CODE ANN. § 22.1-279.6 (2011).

⁴⁸ Virginia Board of Education, *Student Conduct Guidelines*, (2009),

http://www.doe.virginia.gov/boe/guidance/safety/student_conduct.pdf.

DOE is required by HJR 625 to study the nature and effectiveness of school divisions' anti-bullying policies. The report is due before the start of the 2012 General Assembly Session. Part of the study entails collecting information on every school divisions' policies on bullying and determining the general effectiveness of the policies

⁴⁹ See generally Allison E. Hayes, *From Armbands to Douchebags: How Doninger v. Niehoff Shows the Supreme Court Needs to Address Student Speech in the Cyber Age*, 43 AKRON L. REV. 247, 255 (2010).

⁵⁰ Tinker v. Des Moines Independent School District, 393 U.S. 503 (1968).

⁵¹ Bethel School District v. Frasier, 478 U.S. 675 (1986).

⁵² Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988).

⁵³ Morse v. Frederick, 551 U.S. 393 (2007).

⁵⁴ Hayes, *supra* at note 49.

⁵⁵ Kowalski v. Berkeley County Sch., 652 F.3d 565 (4th Cir. 2011).

⁵⁶ Id.

⁵⁷ Layshock ex rel. Layshock v. Hermitage Sch. Dist., 650 F.3d 205 (3d Cir. 2011).

⁵⁸ Id.

⁵⁹ Id.