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## **Parry Aftab's guide for schools on cyberbullying**

### **Sticks and Stones - Defaming Others Online**

Sticks and stones will break their bones, but words will never hurt them—right? Wrong! While the First Amendment gives us the right of free speech, it does not give us the right to say false and horrible things about others. In the United States, someone whose reputation is damaged by a false statement made by another can sue that person for defamation. (Libel is when the defamatory statement is written, and slander is when it is spoken.) Under rare circumstances, such statements and the way they are delivered may rise to the level of cyberstalking or harassment, considered a crime in more than 46 states.

Unfortunately, since the advent of the Web, many are taking their grievances to the public, online. They are building defamatory websites and posting defamatory comments online. While initially the victims of the defamation may ignore the postings and websites, they are starting to take action more and more frequently. And kids and teenagers are getting into the act as well. When harassment occurs and young people are on both sides of the events, with a young person harassing another young person, it is typically called cyberbullying. (When an adult is on one side or another, it is typically called cyberstalking or harassment.)

Our kids need to know that the online services and ISPs will provide their identity pursuant to legal process. And they can be found and held responsible for what they say and do online. It's very important that we teach our children to understand accountability, online and offline. Schools can be very helpful here. Unfortunately, sometimes when cyberbullying occurs the schools get involved in trying to discipline the students for off-hours and off-premises activities, often to their detriment.

### **Off-School Web sites**

Just as kids have circulated derogatory jokes and drawings of teachers over the generations, these digital kids circulate their jokes, insults, and drawings using the power of the Web, where they can be viewed by everyone. They then share the URL (Web address) of the site, so fellow classmates can appreciate their work. Often the URL ends up in the hands of a teacher. Teachers and administrators who are the target of the site report it, and threaten to file a lawsuit or to report it to the police. The school then feels compelled to do something. Typically the child is suspended or expelled, or college recommendations are withdrawn.

But several times the ACLU has taken these schools to court for disciplining a child for actions taken off-premises, and in most cases the school has lost the lawsuit. It can be a very costly mistake—a school system may have to pay \$50,000 or more in damages when it exceeds its authority in this area. So what's a school to do? I would suggest they take their lead from a very experienced school superintendent.

A teenager in that high school, after getting angry with certain teachers and administrators, lashed out by posting some pretty vulgar and insulting things about them on a personal website. He wrote the site from home and posted it online. It wasn't posted on the school's server, but was available to everyone with Internet access once they had the URL. URLs of classmates' sites get passed around quickly, and many of the kids in the school accessed the site from the school's computers.

When the word got back to the teachers and administrators, they were understandably furious. They sought help from the police, who threatened to charge the teenager with harassment (but they wouldn't have been able to make that charge stick).

Everyone involved seemed to lose their head, but the superintendent managed to keep his. He recognized that this wasn't a school matter, and that the parents needed to be involved. He called in the parents, who were appalled and took this situation as seriously as they should have. Together they worked out a suitable apology and a way to handle the case without blowing it out of proportion. The press had a field day. This superintendent stood firm against the anger of the teachers and the pressures of the community. He was right.

Months later he shared something with me. He told me that he had met the young teenager at a school event, and the student apologized once again. He also thanked the superintendent for handling the situation with grace. The boy had acted out in anger, and hadn't thought about the consequences of his anger. Eventually, even the teachers came around. I was sorry my children were already out of high school—they would have benefited from attending a school system run by such a patient and wise administrator. We could use many more like him.

An even greater risk occurs when a student is targeting another student with cyberbullying tactics. They may post derogatory things about them online, pose as them in communications with others or postings online, change their passwords, hack into their accounts, take digital images of them and post those (sometimes in altered pornographic poses) using mobile phone cameras, digital cameras and video. The methods used by kids to harass each other are limited only by their limitless imaginations, bandwidth and tech skills.

The courts in the United States have reviewed several of the cases where the school has taken disciplinary action to protect its staff or the school itself from harassment and another student from cyberbullying, even if it occurs from outside of school. Most cases rule against the school, but some new ones are ruling in the school's favor on the basis that these matters affect the safety in the school itself. (Our [WiredSafety.org](http://WiredSafety.org) cyberbullying and cyberharassment legal pages will launch soon, check back, or sign up for notice of our Web site alerts.)

### **What Can a School Do About This?**

While taking disciplinary action against a student that does something outside of school hours and off school grounds may exceed a school's normal authority and land the school in legal hot water, doing so with the consent of the parties is not. Most schools have an acceptable use policy. And the smart ones have it signed by the parents and the students. It typically deals with what is and is not permitted use of the schools technology and computer systems. And, it is a legal contract binding the parents and the school (and the students themselves once they are of legal contracting age).

By adding a provision that covers dangerous or abusive actions by a student that directly affects another student, the school itself or its staff, the school now has authority to take appropriate action to deal with the dangerous or abusive conduct. It is the impact on the school, its safety and the safety and well-being of its staff and students that will trigger the school's authority, not whether the actions took place from a school computer within school hours. Laying out the problems and the impact of these problems on others at the school and the need to protect students, staff and the educational environment of the school is the place to start. Then, add an express consent to the school's taking action in the event it deems the matter to have an adverse impact on safety and the welfare of students, staff and the educational environment. It's that simple. But, as in all things legal, the devil is in the details.

School board attorneys, or special cyberspace attorneys expert in children's issues should be retained to draft and implement policies to enforce acceptable use policies and risks management programs. This is not an area for amateurs or "wanna-be lawyers." It's also not the time to cut and paste another school's acceptable use policy and use it as your own.

The school should conduct an audit of its technology uses and needs. It needs to know how the technology is being used currently, as well as the recommendation of the experts within the school. These experts should include, at minimum, the school safety officer, the school board attorney, the principal, disciplinary officer, technology lab instructors, IT department and the librarian or library media specialist. It is best to also include a student representative and a parent representative, guidance counselor and mental health professional.

Then do some strategic planning. What's on the horizon as far as new software applications and hardware installations? What is the five-year plan? Does the school even have a five-year plan? If not, what's the two-year plan? (If you don't have one of those, do not read further...find a professional to help you on more elemental things. You have serious problems.) Are their possible partners you can rely on? What about your computer suppliers? Your ISP? These companies have an amazing number of resources available to them to help schools. See what they have and don't be afraid to ask for their help.

Once you have a snapshot of what you are doing and what you plan to do, think about what you should be doing. Look to other schools for guidance as well as professional educational associations. Then, put your pen to paper (or your fingers to the keyboard J) and explain what you are now doing, what you will be doing and the rules. Once that is done, lay out the range of disciplinary actions that might be taken and the parameters. Use simple language that the students and non-techies can understand. When that's all done, run it by the lawyers to make sure you haven't done anything wrong and haven't left anything out. Then cross your fingers, hold your breath and wait.

I am interested in hearing from those you of who have been through this process, and would love to highlight your work and share your successes (publicly) and your disasters (anonymously). Drop me an e-mail. We're all in this together.

Parry