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Cyberbullying, K-12 Public Schools, and the 1st Amendment

Jennifer A. Mezzina
jennifer.mezzina@student.shu.edu

CYBERBULLYING, K-12 PUBLIC SCHOOLS, AND THE 1ST AMENDMENT

By

Jennifer A. Mezzina

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Mentor:
Dr. Luke Stedrak _____ 3/1/17

Committee Member:
Dr. Robert Kelchen _____ 3/28/17

Committee Member:
Dr. Carolyn Sattin-Bajaj _____ 3/28/17

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ABSTRACT

The first amendment protected students' first amendment rights in K-12 public schools; however, state antibullying legislation required school officials to discipline students for bullying and, in most states, cyberbullying as well. An increasing number of students had access to mobile devices at home and during the school day. School officials had the responsibility to protect students from instances of bullying and cyberbullying; however, school officials did not fully understand the extent of their authority to discipline students for acts of bullying that occurred online, off school grounds. Despite the existence of state antibullying laws in all fifty states, contradictory appellate court decisions in cases involving cyberbullying and K-12 public schools made it difficult for school administrators to understand their authority. Appellate courts utilized a *Tinker* test when determining the outcomes of cases involving cyberbullying and K-12 public schools. The *Tinker* test was derived from the Supreme Court decision in Tinker vs. Des Moines Independent Community School District (1969), in which the Supreme Court overturned the suspension of students that wore armbands to protest the Vietnam War. There were two prongs of the *Tinker* test: (1) whether the instance of cyberbullying caused a substantial interference in the school, and (2) whether or not a substantial interference could be reasonably forecasted.

The purpose of this public policy dissertation was to provide state legislators and school administrators with an in-depth review of state antibullying laws as well as greater insight into how the appellate courts interpreted the extent and limitations of First Amendment in K-12 public schools.

This public policy dissertation compared state antibullying legislation in all 50 states in the United States and reviews all appellate court decisions involving K-12 public schools and cyberbullying. Each state's legislation was reviewed between October 31, 2016, and December 31, 2016, to determine (1) if there was an antibullying law in effect, (2) if cyberbullying was included in the legislation, (3) if bullying was defined as a one-time event, (4) if school officials were given the authority to discipline students for off-campus behavior, (5) if schools were required to implement an antibullying policy, (6) if the substantial interference or substantial disruption language from *Tinker* was included in the antibullying legislation, (7) if there was a school sanction for bullying, (8) if there was a criminal sanction for face-to-face bullying, and (9) if there was a criminal sanction for cyberbullying. Each appellate court decision involving K-12 public schools and cyberbullying was reviewed to determine how the *Tinker* test was applied in each case.

Keywords: cyberbullying, bullying, first amendment, public schools, antibullying laws

DEDICATION

I dedicate this work to my family. To my husband, Dan Mezzina, thank you for your love, unwavering support, and for believing in me even when I didn't believe in myself. Thank you for taking the children out on Sunday mornings so that I could write this dissertation, and thank you for helping me to relax, laugh, and see the bigger picture. To my children, Joseph and Christopher, I hope that this will inspire you to stay motivated, never stop learning, and accomplish your dreams.

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CHAPTER I

INTRODUCTION

The First Amendment

The First Amendment to the United States Constitution has played a critical role in K-12 public schools; it has maintained a separation of church and state, ensured that students have access to information, and has protected the speech of teachers and students. According to the landmark Supreme Court decision in *Tinker v. Des Moines* (1969), in which the suspension of students for wearing armbands in school in protest of the Vietnam War was overturned, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students." Although students retained their First Amendment rights in K-12 public schools, there were greater limitations imposed in a school setting. In *Bethel School Dist. No. 404 v. Fraser*, (1986), a case involving student expression that followed *Tinker,* the Supreme Court upheld the suspension of a student that made lewd comments during a speech. The Supreme Court asserted that the undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior (Bethel School Dist. No. 404 v. Fraser, 1986).

While groundbreaking Supreme Court rulings involving the First Amendment and public schools defined the First Amendment as applied to K-12 public school settings, it was still not clear to administrators when student speech should be afforded constitutional protection and when it was within their authority to discipline students for their speech (Mezzina & Stedrak, 2015; Fenn, 2013; Goodno, 2011). One of the areas that created a great deal of confusion among K-12 public school administrators was with cyberbullying.

According to the U.S. Department of Education, 22 percent of students aged 12-18 were bullied during the 2013 school year. Bullying included face-to-face bullying and cyberbullying. In a 2008 study of 20,000 public high school students in the Boston metropolitan area, Kessel, Schneider, O'Donnell, Stueve, and Coulter (2012), found that 15.8% of students reported being victims of cyberbulling and 25.9% of students reported being victims of face-to-face bullying in the past 12 months. Victims of cyberbullying were found to suffer from more psychological distress than victims of face-to-face bullying (Kessel Schneider, O'Donnell, Stueve, and Coulter, 2012). Additionally, victims of both cyberbullying and school bullying were found to be "more than 4 times as likely to experience depressive symptoms and more than 5 times as likely to attempt suicide as were nonvictims (Kessel Schneider, O'Donnell, Stueve, and Coulter, 2012).

Cyberbullying was much like traditional face-to-face bullying, except the bullying occurred online or through use of an electronic device (Mezzina & Stedrak, 2015). Unlike traditional bullies, cyberbullies could reach their victims 24 hours a day, 365 days a year (Mezzina & Stedrak, 2015). Cyberbullying was potentially more harmful than regular bullying because cyberbullies had the ability to reach their victims at any time and hide behind a screenname or email address (Sumrall, 2015; Fenn, 2013; Hinduja & Patchin, 2011; King, 2010). Unlike in cases of regular bullying, there was potential for a cyberbullying attack to go viral, enabling more people to participate in the cyberbullying attack (Fenn, 2013; Hinduja & Patchin, 2011; King, 2010).

As students had greater access to mobile devices during the school day and a greater number of students were communicating online via social media, cyberbullying became a pervasive problem in public schools (Mezzina & Stedrak, 2015; Fenn, 2013). Not only did students have increased access to electronic devices, but also school districts were often

providing students with access to electronic devices throughout the school day. According to Lenhart et al. (2015), an estimated 73% of teens had access to a smartphone, 87% of teens had access to a desktop or laptop computer, and 58% of teens had access to a tablet in 2015. According to a 2013 study conducted by nonpartisan think tank Project Tomorrow, 31% of students in grades 3-5, 31% of students in grades 6-8, and 33% of students in grades 9-12 had access to a school-provided device in 2013. Of the students that had access to school-issued devices, 75% of students in grades 3-5, 58% of students in grades 6-8, and 64% of students in grades 9-12 were permitted to take the device home (Project Tomorrow, 2013b). As an increased number of students had access to personal and school-issued electronic devices, it was inevitable that cyberbullying would become a prevalent problem in K-12 public schools.

Despite the existence of state antibullying laws, K-12 public school administrators did not have a clear understanding of their authority to discipline students that engaged in bullying through use of an electronic device. Although 48 state antibullying statutes included cyberbullying or online harassment in their definitions of bullying, only 14 states' antibullying laws required schools to discipline students for off-campus behavior (Hinduja & Patchin, 2016). As cyberbullying could occur off school grounds, this created confusion among K-12 public school administrators as to when they had the authority to discipline students for participating in cyberbullying.

The Supreme Court refused to hear cases of cyberbullying, as education was considered a states' issue (Hoestler, 2014), and appellate court decisions in cases involving students and cyberbullying were inconsistent (Mezzina & Stedrak, 2015). Five appellate court cases involving cyberbullying in K-12 public schools were decided by the appellate courts: *Wisniewski v. Board of Education* (2007), *J. S. v. Blue Mountain School District* (2011), *Layshock v.*

Hermitage (2011), *Kowalski v. Berkeley County School District* (2011), and *Bell v. Itawamba County School Board* (2015). In four out of the five cases, the appellate courts applied the *Tinker* test, utilizing the decision in *Tinker v. Des Moines* (1969), when determining cases of cyberbullying and schools; the appellate courts considered whether the instance of cyberbullying caused a substantial interference in the school, and whether or not a substantial interference could be reasonably forecasted. While appellate courts utilized the *Tinker* test to determine cases of cyberbullying, the appellate courts did not agree on what constituted a substantial interference. Furthermore, some appellate courts did not consider the second aspect of *Tinker*—whether or not a substantial interference could be reasonably forecasted (Mezzina & Stedrak, 2015).

As students had increased access to electronic devices during the school day, school administrators had a greater responsibility to protect students from instances of cyberbullying (Mezzina & Stedrak, 2015); however, school administrators did not understand their authority to discipline students in cyberbullying cases (Hoffman, 2010; Goodno, 2011; Mezzina & Stedrak, 2015). Many state antibullying laws did not include the terms cyberbullying or online harassment in their definition of bullying.

In this public policy dissertation, I will compare state antibullying legislation across the nation to determine the gaps in states' definition of bullying. I will specifically examine whether cyberbullying is included in the states' definition of bullying, whether cyberbullying is defined as a one time or repeated offense, and whether school officials are required to sanction students for speech that occurs off school grounds. Additionally, I will examine the decisions in appellate court cases to compare how the *Tinker* test was applied in each court decision. I will identify the gaps in both appellate court decisions and antibullying legislation. Finally, I will make

recommendations for K-12 public school practitioners as to how to develop school antibullying policies and how to handle cases of cyberbullying.

In Chapter 1 of this public policy dissertation, I will use momentous Supreme Court decisions to define each clause of the First Amendment so that the reader understands the extent and limitations of the First Amendment as applied to the general public. In the following chapter, I will use landmark Supreme Court decisions and appellate court cases to define each clause of the First Amendment as applied to K-12 public schools, teachers, and students. In Chapter 3, I will formulate the research questions and outline the methods of this public policy study. In Chapter 4, I will analyze the data, and in Chapter 5, I will make recommendations for K-12 public school practitioners and state legislators based upon the findings.

First Amendment Protections

On December 15, 1791, Congress ratified the Constitution of the United States with 10 amendments commonly referred to as the Bill of Rights. The Bill of Rights established freedoms that cannot be taken away. In a letter to James Madison, Thomas Jefferson explained that "a bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inference" (Jefferson, 1787, as cited in Jefferson, 2009). The purpose of the Bill of Rights was stated in the preamble as follows:

> [T]he Conventions of a number of the States, having the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution. (U.S. Const., Bill of Rights)

The First Amendment protected freedom of speech, freedom of religion, freedom of the press, the right to assemble, and freedom to petition the government (U.S. Const. amend. I). The First Amendment enabled citizens to express themselves verbally and nonverbally without fear of persecution. Court cases defined and continue to define extent and limitations of the First Amendment. Although students and teachers did not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines Independent Community School Dist.*, 1969), First Amendment rights were further limited in school settings. School practitioners needed to understand the First Amendment and how it was applied in school settings in order to ensure that the rights of students and teachers were upheld. The Bill of Rights guaranteed the rights of citizens, regardless of political agenda or interest.

Within the Bill of Rights was the First Amendment, which gave United States citizens the freedom to express thoughts and beliefs in a variety of ways. It was as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const. amend. I)

This basic human right of freedom of speech was paramount to democracy. In Baumgartner v. United States (1944), the Supreme Court reversed the decision to cancel a man's certificate of naturalization for expressing pro-German and pro-Nazi views, asserting that "[o]ne of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation.

In fact, a symbiotic relationship exists between democracy and the First Amendment (Redish, 2013). According to Redish (2013), "[d]emocracy could not exist in any meaningful sense absent a society commitment to basic notions of free expression, nor could free expression flourish in a society uncommitted to democracy" (p. 1).

Although the First Amendment entitled citizens to the freedom of speech and press, freedom to practice religion, and the right to assemble and petition, the extent and limitations of the First Amendment were left to court interpretation. While the First Amendment was a federal Constitutional law, state courts viewed it differently throughout United States history. The United States Supreme Court ruled that some states were incorrectly interpreting the First Amendment. For example, in *Gitlow v. NY* (1925), a case in which the Supreme Court upheld the arrest of a man for distributing a Left Wing Manifesto on the grounds that speech intending to overthrow the government is unlawful, the Supreme Court declared that First Amendment rights must be applied to states under the due process clause of the 14th amendment (*Gitlow v. NY*, 1925).

During the civil rights movement of the 1950s and 1960s, Supreme Court decisions protected the First Amendment rights of protesters. Supreme Court decisions such *Edwards et al. v. South Carolina* (1963) and *Cox v. Louisiana* (1965) helped to ensure that all citizens are protected equally under the First Amendment. State governments did not have the right to punish citizens for speech that was unpopular.

In *Edwards et al v. South Carolina* (1963), the Supreme Court overturned the South Carolina Court's decision to convict a group of blacks protesting segregation of breaching the peace. According to the Supreme Court, the criminal convictions in this case were not "resulting from the evenhanded application of a precise and narrowly drawn regulatory statute evincing a

legislative judgment that certain specific conduct be limited or proscribed" (*Edwards et. al v. South Carolina*, 1963). The Supreme Court reversed the state court's decision:

> These petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, "not susceptible of exact definition." And they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection. (*Edwards et. al v. South Carolina*, 1963)

In *Cox v. Louisiana* (1965), the Supreme Court overturned the disturbing the peace and obstructing public passages convictions of Reverend Mr. B. Elton Cox, the leader of a civil rights demonstration. Justice Arthur Goldberg expressed the opinion of the Supreme Court as follows:

> Our conclusion that the record does not support the contention that the students' cheering, clapping and singing constituted a breach of the peace is confirmed by the fact that these were not relied on as a basis for conviction by the trial judge, who, rather, stated as his reason for convicting Cox of disturbing the peace that "[i]t must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as 'black and white together' and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so."

The landmark Supreme Court decision in *Cox v. Louisiana* (1965) ensured that United States citizens had the right to express their opinions, regardless of whether or not they were popular.

The First Amendment established freedom of expression for United States citizens through five major clauses: freedom of religion, freedom of speech, freedom of the press, right to assemble, and the right to petition. Court cases further established the extent and limitations of each of the five major clauses of the First Amendment.

Freedom of Religion

The First Amendment entitled all citizens to freedom of religion and freedom from religion. There were two clauses that made up the Freedom of Religion clause of the First Amendment: the Free Exercise Clause and the Free Establishment Clause.

Free exercise clause. The Free Exercise Clause enabled citizens to practice or not practice religion without interference from the United States government. According to Choper (2013):

> The Free Exercise Clause protects adherents of religious faiths and nonbelievers from government action that either hostilely singles them out for the imposition of adverse consequences, or although benignly motivated, has the effect of burdening religious observers because of action or inaction mandated by the precepts of their faith....it prevents the state from *impeding* the practices of religious minorities that are either disfavored or unacknowledged by the majority. (p. 13)

Although citizens were entitled to express their beliefs freely, unlawful actions were not excusable under the Freedom of Religion Clause of the First Amendment. In *Reynolds v. United States* (1878), the United States Supreme Court upheld a federal law banning polygamy,

asserting that a citizen cannot excuse his practices because of religious belief. According to *Reynolds v. United States* (1878):

> To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could only exist in name under such circumstances.

Furthermore, the government could compel citizens to action even if it was against their religious beliefs. In *Prince v. Massachusetts* (1944), the Supreme Court ruled in favor of compulsory vaccinations for public school children, asserting that "[t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death."

Free establishment clause. The Free Establishment Clause of the First Amendment prevents the United States government from imposing religion on its citizens. According to U.S. Courts (n.d.), "The Establishment clause prohibits the government from 'establishing' a religion." Not only is the United States government prohibited from establishing religion, it is also prohibited from establishing laws that favor one particular religion over another. According to Choper (2013), "the major thrust of the Establishment Clause concerns government action whose intent or independent impact *favors* religion even though its overall effect may be much broader" (p. 13). The United States government had to act neutrally and not support one religion over another.

Freedom of Speech

The Freedom of Speech Clause of the First Amendment restricted the United States government from censoring speech. The Freedom of Speech clause enabled citizens to express their opinion, verbally or nonverbally, without fear of arrest or persecution.

The First Amendment protected offensive speech and controversial political messages. In Cohen v. California (1971) the Supreme Court reversed the arrest of a man that stood in the hallway of a Los Angeles County Courthouse wearing a jacket that displayed the message "Fuck the draft." According to the Court, his actions were protected under the Free Speech Clause of the First Amendment. In its decision, the Court reiterated the importance of the Free Speech Clause of the First Amendment:

> We cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views. (*Cohen v. California*, 1971)

Not only did the First Amendment protect controversial speech, it also protected the right not to speak. In *West Virginia Board of Education v. Barnette* (1943), the Supreme Court ruled that forcing students to salute the flag was a violation of the First Amendment. According to the Court: "compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control" (*West Virginia Board of Education v. Barnette*, 1943).

Symbolic speech, such as flag burning and wearing an armband to protest a war, was protected speech under the First Amendment, as it was another means of conveying a message (Texas v. Johnson, 1989; United States v. Eichman, 1990; *Tinker v. Des Moines Independent Community School District*, 1969). According to *Texas v. Johnson* (1989), "the government may not prohibit expression simply because it disagrees with its message," and this "is not dependent on the particular mode in which one chooses to express an idea."

Although citizens were entitled to express their opinion both verbally and nonverbally, this freedom was not absolute. There were instances when citizens could be sanctioned for their speech. According to the Supreme Court:

> 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 the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. (*Chaplinsky v. New Hampshire*, 1942)

Although controversial speech was protected under the First Amendment, speech that could incite violence or panic was not tolerable. In *Schenck v. United States* (1919), the Supreme Court asserted, "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

Freedom of the Press

The Freedom of the Press Clause protected academic freedom, enabling the press to publish speech regardless of the content of its message. According to Cook (2013), the Free Press Clause both enabled a marketplace of ideas as well as allowed the press to act as a watchdog. In *New York Times Co. v. Sullivan* (1964), the Supreme Court ruled that despite some factual discrepancies in a newspaper ad in the New York Times declaring that the arrest of Martin Luther King Jr. was part of a scheme to dismantle King's efforts in the civil rights movement, the ad was protected under the First Amendment because it was not published with malicious intent. In his deliverance of the Court opinion in *New York Times Co v. Sullivan* (1964), Justice Brennan asserted that there is a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well

include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public official."

The Freedom of the Press Clause was not without limitations. In *New York Times Co. v. Sullivan* (1964), the Court asserted that false statements made with malicious intent are not protected under the First Amendment:

> The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

Additionally, the First Amendment did not give the press the right to publish an entire performance without the consent of the performer, as it "poses a substantial threat to the economic value of that performance" (*Zacchini v. Scripps-Howard Broadcasting Co.*, 1977).

Right to Assemble

Under the Right to Assemble Clause of the First Amendment, the United States government was prohibited from establishing laws that prevent citizens from assembling peaceably. The right to assemble was not without limitations. According to Winston (2014):

> Government officials cannot simply prohibit a public assembly in their own discretion, but the government can impose restrictions on the time, place, and manner of peaceful assembly, provided that constitutional safeguards are met. Time, place, and manner restrictions are permissible so long as they "are justified without reference to the content of the regulated speech, . . . are narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information." (*Ward v. Rock Against Racism*, 1989)

The Right to Assemble Clause enabled citizens to peaceably assemble, regardless of the popularity of the views or opinions being expressed. In *Edwards v. South Carolina* (1963), the Supreme Court declared the arrest of students that were protesting segregation unconstitutional, asserting the students "were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection."

The Right to Assemble Clause did not entitle citizens to assemble on private property. In *Lloyd Corporation v. Tanner* (1972), the Supreme Court ruled that a shopping mall can prevent the distribution of handbills since it is a private facility. The Court asserted "the First and 14th Amendments safeguard the rights of free speech and assembly by limitations on state action, not on action by the owner of private property used nondiscriminatorily for private purposes only."

Right to Petition

Under the First Amendment, citizens were also entitled to the right to petition the Government for a redress of grievances. The Petition Clause enabled citizens to ask government at any level to right a wrong or correct a problem (Newton, 2002). The Right to Petition Clause was often considered the forgotten clause of the First Amendment (Newton, 2002; Mark, 1998, Spanbauer, 1993), as it has not received much court attention. The Right to Petition Clause was considered to be obvious, encompassed by its fellow clauses of the First Amendment. According to Spanbauer (1993): "The Amendment Petition Clause is rarely invoked by litigants as a substantive constitutional right and, when invoked, it affords no greater or different protection than under the Speech, Press, or Assembly Clause." In *McDonald v. Smith* (1985), the Supreme Court asserted "the right to petition is cut from the same cloth as the other guarantees of [the First] Amendment, and is an assurance of a particular freedom of expression."

Public Schools and the First Amendment

Although students and teachers did not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines*, 1969), the First Amendment was applied differently in K-12 public school settings. School administrators had greater authority to limit both student and teacher expression. For example, while school administrators could not compel students to pray (*Engel v. Vitale*, 1962) or recite the Pledge of Allegiance (*West Virginia State Board of Education v. Barnette* (1943), they could censure speech that interfered with the rights of other students or the orderly operation of the school. Additionally, school administrators had the authority to censure speech in school publications as well as prevent the distribution of materials on school grounds if it interfered with the orderly operation of the school.

Although the First Amendment afforded the freedoms of speech, religion, the press, the right to assemble, and the right to petition, the rights were not without limitations. The First Amendment rights were even more limited for K-12 public schools, students, and teachers; however, the extent and limitations of the First Amendment rights as applied to K-12 public schools was not always clear. State antibullying legislation gave public school officials the authority and the responsibility to sanction students for instances of bullying and cyberbullying; however, it was often unclear whether or not school officials had the authority to discipline students for cyberbullying that occurred off school grounds. As the Supreme Court declined to hear cases of cyberbullying and there was no federal law addressing cyberbullying, school administrators did not understand the extent and limitations of the First Amendment as applied to cyberbullying cases. State antibullying laws were inconsistent, as some state laws included the terms cyberbullying or electronic harassment in their definitions of bullying and others did not.

Statement of the Problem

Despite the inclusion of cyberbullying in many state antibullying laws, appellate courts sent mixed messages in regard to what speech was considered protected under the First Amendment and what speech was not protected. For example, in *Emmett v.v. Kent* (2000), the court overturned a suspension of a student for creating a mock school website filled with the obituaries of the student's friends. In *Layshock v. Hermitage School District* (2011) the court overturned the suspension of a student that created an offensive MySpace profile for the school principal, since no threatening language was found on the page. In *J.S. v. Bethlehem School District* (2000) the court upheld the suspension of a student that created a website that contained threats and sought donations to hire a hit man to kill the teacher as it substantially interfered with the educational process. In *Wisniewski v. Board of Ed* (2007), the court upheld the suspension of a student that created the icon of a teacher with a bullet through his head. In *Kowalski v. Berkley County Schools* (2011), the court upheld the suspension of a student that created a MySpace page alleging that a student had a sexually transmitted disease.

The inconsistent court interpretations generated confusion among school administrators as to the extent of their authority to discipline students for cyberbullying. At the time of this study, there was no federal law addressing cyberbullying and the Supreme Court had not heard a case involving cyberbullying and K-12 public schools. As an increasing number of students had access to electronic devices during the school day, school leaders needed to understand the extent and limitations of the First Amendment as it applied to cyberbullying and K-12 public schools.

The following chapter will define the extent and limitations of the First Amendment as it pertains to K-12 public schools, teachers, and students through landmark Supreme Court

decisions. Additionally, I will explain the gaps in state antibullying legislation and the authority of school administrators to discipline students for cyberbullying on or off school grounds.

CHAPTER II

THE FIRST AMENDMENT AND K-12 PUBLIC SCHOOLS

Introduction

While students and teachers of K-12 public schools retained their First Amendment rights in the school building, the Supreme Court ruled that their First Amendment rights were not without limitations. Landmark Supreme Court decisions defined the First Amendment as applied to K-12 public schools, teachers, and students.

Despite the existence of state antibullying laws involving cyberbullying, the authority of K-12 public school officials to discipline students for cyberbullying remained ambiguous. The Supreme Court refused to consider cases involving cyberbullying and K-12 schools. Additionally, no federal law regarding cyberbullying and K-12 public schools existed at the time of this study. Finally, state antibullying laws contained inconsistent definitions of bullying; some states included cyberbullying or electronic harassment in their definition of bullying and others did not. As students had increased access to technology throughout the school day, cyberbullying was becoming a threat in K-12 public schools and school administrators did not understand the extent of their authority when addressing cyberbullying cases.

This chapter will define the First Amendment as it pertained to K-12 public schools, teachers, and students through Supreme Court decisions. Additionally, I will address the existence of state antibullying laws, student technology access and use, and the inconsistencies in appellate court interpretations.

Separation of Church and State

The First Amendment afforded students freedom of and freedom from religion. The First Amendment ensured that religion could not be imposed on public school students, public school

funding could not be used for secular initiatives, and students in public schools could not be forced to pray during the school day. According to the Supreme Court, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable" (*Everson v. Board of Education*, 1947). Landmark Supreme Court decisions in cases such as *Everson v. Board of Education* (1947), *Illinois Ex. Rel. McCollum v. Board of Education of School District no. 71* (1948), *Engel v. Vitale* (1962), *Abington School District v. Schempp* (1963), *Epperson v. Arkansas* (1968), *Lemon v. Kurtzman* (1971), *Stone v. Graham* (1980), *Wallace v. Jaffree* (1985), *Edwards v. Aguillard* (1987), and *Lee v. Weisman* (1992) both solidified as well as defined the wall between church and state.

In *Everson v. Board of Education* (1947), the Supreme Court ruled that the First Amendment does not prohibit the state from reimbursing bus transportation for students that attend parochial schools because the reimbursement was part of a program that provides funding for students attending public and other private schools (*Everson v. Board of Ed*, 1947). In this case, the state was not favoring or supporting parochial schools. In providing transportation reimbursement for all students, the state was acting neutrally.

In *Illinois ex rel. McCollum v. Board of Education of School District no. 71* (1948), the Supreme Court ruled that it was unconstitutional for religious educators to be permitted to come to a public school building to teach religious education to students during the regular hours of the school day. In *Illinois ex rel. McCollum v. Board of Education of School District no. 71* (1948), the school district was using tax supported public school buildings for the dissemination of religious doctrines. Due to the state's compulsory education law, students were forced to participate in religious education. According to the court, "this is not a separation of church and

state." Forcing students to take religious education classes in public schools was a violation of the Establishment Clause of the First Amendment.

In *Engel v. Vitale* (1962), the Supreme Court ruled that New York's mandated morning prayer in public schools was a violation of the First Amendment. Although it was argued that the prayer was nondenominational and optional, it was still ruled unconstitutional. According to the court, the Establishment Clause of the First Amendment "is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not" (*Engel v. Vitale*, 1962).

In a similar case, *Abington School District v. Schempp* (1963), the Supreme Court ruled it unconstitutional for Bible verses to be read over the morning announcements in public schools as well as recitation of the Lord's Prayer before the Pledge of Allegiance. According to the court:

> What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government. (*Abington School District v. Schempp*, 1963)

In *Epperson v. Arkansas* (1968), the Supreme Court ruled that a state statute prohibiting the teaching of evolution in public schools was unconstitutional. According to the court, "the law's effort was confined to an attempt to blot out a particular theory because of its supposed conflict with the Biblical account, literally read." As the state was not acting neutrally, it was a clear violation of the First Amendment.

In *Lemon v. Kurtzman* (1971), the Supreme Court ruled that a state statute that funded textbooks and supplemented teacher salaries in parochial schools was unconstitutional. Through this case, a "Lemon test" was established. The Lemon test was used to determine if future cases

violate the Free Establishment Clause of the First Amendment: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, finally, the statute must not foster "an excessive government entanglement with religion."

In *Stone v. Graham* (1980), the Supreme Court ruled that a Kentucky law requiring public schools to display the Ten Commandments in each classroom was unconstitutional. According to the court, the posted copies of the Ten Commandments served no educational purpose. According to the court:

> If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause. (*Stone v. Graham*, 1980)

In *Wallace v. Jaffree* (1985), the Supreme Court reviewed an updated Alabama statute that permitted "a period of silence for voluntary prayer or meditation." The previous statute did not include the words "voluntary prayer." According to Senator Holmes, the purpose of the revised statute was to "return voluntary prayer to public schools" (*Wallace v. Jaffree*, 1985). According to the Supreme Court:

> [t]he addition of "or voluntary prayer" indicates that the State intended to characterize prayer as a favored practice. Such an endorsement is not consistent with the established principle that the government must pursue a course of complete neutrality toward religion. (*Wallace v. Jaffree*, 1985)

The addition of voluntary prayer into the statute was a violation of the Free Establishment clause of the First Amendment because it endorsed prayer activities in public schools.

In *Edwards v. Aguillard* (1987), the Supreme Court examined the Creationism Act, a Louisiana statute that required the teaching of creationism along with the teaching of evolution. While schools were not required to teach creationism or evolution, if one theory was taught, the act required the other theory to be taught as well. The Supreme Court deemed this act to be unconstitutional. According to the Supreme Court, the act "advances a religious doctrine by requiring either the banishment of the theory of evolution from public school classrooms or the presentation of a religious viewpoint that rejects evolution in its entirety" (*Edwards v Aguillard*, 1987). According to the court, the act was a violation of the Establishment Clause of the First Amendment as it sought "to employ the symbolic and financial support of government to achieve a religious purpose."

In *Lee v. Weisman* (1992), school principals of public schools in Providence, Rhode Island, were inviting clergymen to recite invocation and benediction prayers at graduation ceremonies. The Supreme Court ruled that prayer at graduation ceremonies forced all students to conform, which was a violation of the Establishment Clause of the First Amendment, and therefore unconstitutional.

Not only did the First Amendment erect a wall between church and state, but it also protected the expression of public school teachers. Although public school teachers retained their First Amendment rights, their rights were more limited in a public school setting.

Teacher Expression

While school officials have some latitude to sanction K-12 public school teachers for their speech, teachers do not shed their First Amendment rights at the schoolhouse gate (*Tinker v. Des Moines Independent Community School Dist.*, 1968). Courts have strengthened the First Amendment rights of public employees (McNee, 2012). According to McNee (2012), "[u]ntil the

late twentieth century, […] government employers could discharge or discipline their employees for speech without limit." Starting in the 1960s, courts made several important rulings that protected the speech of public employees. Today, there is a balancing test that must be applied to determine whether the speech is protected under the First Amendment, or outside of the school's reach. According to McNee (2012):

> When a public employee makes a claim that his or her speech is protected under the First Amendment, the court will consider whether the employee is making a statement pursuant to official duties. If the employee is not speaking as a citizen, but as an employee of the government, the speech will not be protected. (McNee, 2012)

The Supreme Court described the rationale for the balancing test in *Pickering v. Board of Education* (1968) as follows:

> The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. (*Pickering v. Board of Education*, 1968)

Several Supreme Court cases involving the speech of government employees illustrated the use of the balancing test and showed the extent of the authority that school officials have in sanctioning teachers for their speech.

In *Pickering v. Board of Education* (1968), a teacher was fired for writing an inflammatory letter to the editor, accusing the Board of Education of mismanaging school funds. The Supreme Court ruled that the teacher's dismissal was unconstitutional. The teacher's statements did not impede the teacher's performance in the classroom or interfere with the

orderly operation of the school (*Pickering v. Board of Education*, 1968). According to the Supreme Court:

> A State cannot authorize the recovery of damages by a public official for defamatory statements directed at him except when such statements are shown to have been made either with knowledge of their falsity or with reckless disregard for their truth or falsity. (*Pickering v. Board of Education*, 1968)

The Supreme Court found that the teacher did not knowingly make false statements to the press, and was merely expressing his opinion about public issues; therefore, dismissing the teacher was a violation of his First Amendment rights. According to the Supreme Court, "a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment." (*Pickering v. Board of Education*, 1968)

In *Mt. Healthy City Board of Education v. Doyle* (1977), the Supreme Court considered whether a school board was within its rights to fire a nontenured employee that criticized the school administration on the radio. Prior to Doyle's criticism of school administrators, he had been involved in an argument with a colleague that resulted in a one-day suspension (*Mt. Healthy City Board of Education v. Doyle*, 1977). Doyle also referred to students as "sons of bitches" and made an obscene gesture at two students in the school cafeteria. The Supreme Court ruled that while Doyle's speech on the radio was protected, his dismissal was not a violation of his First Amendment rights because it could not be proven that he was dismissed solely on the basis of the radio broadcast (*Mt. Healthy City Board of Education v. Doyle*, 1977).

In *Connick v. Meyers* (1983), assistant district attorney Sheila Meyers distributed a questionnaire to employees in her office inquiring about the district attorney's management practices after learning that she had been transferred. After distributing the questionnaire,

Meyers was dismissed from her job. According to the Supreme Court the questionnaire was "most accurately characterized as an employee grievance regarding internal office policy" rather than a matter of public concern (*Connick v. Meyers*, 1983). Furthermore, the court found that it was reasonable to assume that its distribution would "disrupt the office, undermine [the district attorney's] authority, and destroy close relationships"; therefore, the Supreme Court ruled that the district attorney did not violate Meyers' First Amendment rights when he dismissed her (*Connick v. Meyers*, 1983). According to the Supreme Court, the "First Amendment's primary aim is the full protection of speech upon issues of public concern" (*Connick v. Meyers*, 1983). In this case, Meyers' questionnaire primarily touched upon internal issues rather than public matters, and therefore her speech was not protected under the First Amendment.

While teachers did not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines Independent Community School Dist*., 1969), not all speech was protected under the First Amendment. Courts applied a balancing test to determine whether the speech was a matter of public concern or whether the speech pertained to the employee's official duties (McNee, 2012). According to McNee (2012), "when an employee speaks pursuant to his official duties, even if the speech is on a matter of public concern, the employee has no First Amendment protection."

As teachers retained their First Amendment rights in public school settings, students also retained their First Amendment rights in school settings. Student speech, as teacher speech, was more limited in a school setting. School officials had latitude to censor student speech that interfered with the rights of others or created substantial disruption in the school environment. In the next section, I will detail students' First Amendment rights through momentous Supreme Court rulings.

Students and the First Amendment

Student Access to Information

The First Amendment protected students' rights to receive information; school officials could not censor materials that they did not agree with (Chmara, 2015). In *Board of Education v. Pico* (1982), the Supreme Court ruled that school officials did not have the right to remove books from a school library simply because they disagreed with the content. Justice Brennan, who delivered the decision for the court, explained the importance of not censoring the content of school libraries:

> Just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.

While school officials did not have the right to censor materials in school libraries, they did have greater authority over designing school curricula (Chmara, 2015).

Student Expression

Although students retained their constitutional rights to freedom of speech and expression within K-12 public schools, school officials did have the authority to discipline students for speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" (*Tinker v. Des Moines Independent Community School Dist*., 1969). In *Bethel School Dist. No. 403 v. Fraser* (1986), a case involving a student that was disciplined for making lewd comments and sexual innuendos during a school-sponsored speech, the Supreme Court asserted that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." Although school officials had some

latitude in disciplining students for speech, they did not have the authority to sanction students for merely expressing unpopular or controversial views (*Tinker v. Des Moines Independent Community School Dist.*, 1969).

In *Tinker v. Des Moines Independent Community School District* (1969), the Supreme Court ruled it unconstitutional for school officials to suspend students for wearing armbands in protest of the Vietnam War to school. According to the court, wearing armbands was a passive form of protest, which did not "concern speech or action that intrudes upon the work of the schools or the rights of other students" (*Tinker v. Des Moines Independent Community School Dist.*, 1969). The Supreme Court found that the wearing of armbands would not "reasonably have led school authorities to forecast substantial disruption of or material interference with school activities" (*Tinker v. Des Moines Independent Community School Dist.,* 1969). Furthermore, the passive protest did not cause a disruption in the school environment. According to the court, suspending students for their passive expression was a violation of their First Amendment rights.

In *Bethel School District No. 403 v. Fraser* (1986), the Supreme Court considered whether school officials had the authority to discipline a student for giving a lewd speech at a school assembly. The student's speech included sexual innuendos and graphic content. The Supreme Court ruled that suspending the student for the lewd speech was not a violation of the student's First Amendment rights. According to the Supreme Court:

> The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech…would undermine the school's basic educational mission. …it was perfectly appropriate for the school…to make the point to pupils that

> vulgar speech and lewd conduct is wholly inconsistent with the "fundamental values" of public school education. (*Bethel School Dist. No. 403 v. Fraser,* 1986)

School officials have latitude to sanction students for speech that is lewd or vulgar.

In *Hazelwood School District v. Kuhlmeier* (1988), the Supreme Court considered whether the principal's removal of two pages of the student newspaper was a violation of students' First Amendment rights. Principal Reynolds removed two pages from the school newspaper that contained an article about student pregnancy and another about the impact of divorce upon students. The principal was concerned about the appropriateness of the content of the pregnancy article, as well as protecting the identities of the girls in the article. The principal was also concerned that the parents of students featured in the divorce article did not have the opportunity to respond to the remarks in the article. The Supreme Court explained the authority that educators have as follows:

> Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. (*Hazelwood School Dist. v. Kuhlmeier*, 1988)

The court ruled in favor of the school district, asserting that the students' First Amendment rights had not been violated by the removal of the two newspaper pages. The principal had the authority to censor the material given that it may not be appropriate for all students in the school. Additionally, according to the court:

> Reynolds could reasonably have concluded that the students who had written and edited these articles had not sufficiently mastered those portions of the Journalism II curriculum

> that pertained to the treatment of controversial issues and personal attacks, the need to protect the privacy of individuals whose most intimate concerns are to be revealed in the newspaper, and "the legal, moral, and ethical restrictions imposed upon journalists within [a] school community" that includes adolescent subjects and readers. (*Hazelwood School Dist. v. Kuhlmeier*, 1988)

The court decision in *Hazelwood School District v Kuhlmeier* (1988) affirmed that school officials have significant control over the content of school-sponsored publications. The landmark decision in *Hazelwood School District v. Kuhlmeier* (1998) was still referenced in cases involving student speech in school-sponsored publications.

The Supreme Court considered whether school officials have the authority to discipline students for off-campus speech in *Morse v. Frederick* (2007). In *Morse v. Frederick*, high school students attended the Olympic Torch Rally, as part of a school-sanctioned and school-sponsored activity. Frederick, a high school senior, and several classmates displayed a banner revealing the message "BONG HiTS 4 JESUS.". The principal instructed students to take down the banner; all students complied, with the exception of Frederick. The principal then suspended Frederick. The Supreme Court found that Frederick's First Amendment rights were not violated because the banner "was reasonably viewed as promoting illegal drug use." According to the Supreme Court:

> It was reasonable for [the principal] to conclude that the banner promoted illegal drug use—in violation of established school policy—and that failing to act would send a powerful message to the students in her charge…about how serious the school was about the dangers of illegal drug use. The First Amendment does not require schools to tolerate

at school events student expression that contributes to those dangers. (*Morse v. Frederick*, 2007)

Morse v. Frederick illustrated the leeway that school officials had in disciplining students for speech. Even though the student was not on school grounds, the principal had the authority to sanction him for his speech because he was at a school-sponsored event and the speech promoted illegal drug activity.

Although student speech was protected under the First Amendment, Supreme Court decisions in landmark student speech cases such as *Tinker v. Des Moines Independent Community School Dist.* (1969), *Bethel School District No. 403 v. Fraser* (1986), *Hazelwood v. Kuhlmeier* (1988), and *Morse v. Frederick* (2007) created foundational guidelines for when school administrators could discipline students for their speech.

Antibullying Laws and the First Amendment

Bullying was a widely controversial First Amendment policy issue that legislators, school administrators, and educators faced across the nation. According to the U.S. Department of Education (2015), 22 percent of students aged 12-18 were bullied during the school year in 2013. According to Stuart-Cassel, Bell, & Springer (2011), "bullying in schools has become widely viewed as an urgent social, health, and education concern that has moved to the forefront of public debate on school legislation and policy." Instances of school violence made legislators, educators, and the public focus attention on school-aged children and bullying (Stuart-Cassel, Bell, & Springer, 2011). In the wake of the Columbine High School massacre of 1999, in which two high school students opened fire on students and teachers at Columbine High School in Littleton, Colorado, state legislators developed antibullying laws to protect students from the

harmful effects of bullying (Cornell & Limber, 2015; Andersen, 2012; Stuart-Cassel, Bell, & Springer, 2011; Hong, Cho, Allen-Meares, & Espelage, 2011).

Definition of Bullying

According to Cornell & Limber (2015), "bullying is such a broad and omnibus concept that there is potential for confusion and controversy over its meaning, severity, and relation with other constructs." Cornell & Limber (2015) asserted that the conventional definition of bullying includes three major components: "(1) intentional aggression, (2), a power imbalance between aggressor and victim, and (3) repetition of the aggressive behavior." The U.S. Department of Health and Human Services (n.d) defined bullying as follows: "Bullying is unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time."

The inclusion of the language "real or perceived" and "has the potential to be repeated, over time" in the U.S. Department of Health and Human Services' definition of bullying resulted in an unclear, vague definition. As bullying is a broad concept that is difficult to define, "law and policy about bullying remain fragmented and inconsistent" (Cornell & Limber, 2015). Furthermore, there was no federal law that addressed bullying (Cornell & Limber, 2015, U.S. Department of Health and Human Services, n.d.-b).

History of State Antibullying Legislation

Without federal antibullying legislation, state legislators developed their own antibullying laws, which included their own definition of bullying (Hinduja & Patchin, 2016). Georgia enacted the first state antibullying law in 1999, which "required schools to implement character education programs that explicitly addressed bullying prevention" (Stuart-Cassell, Bell, & Springer, 2011). According to Stuart-Cassell, Bell, & Springer (2011), since Georgia passed its

antibullying law in 1999: “There has been a wave of new legislation at the state level to define acts of bullying in the school context and to establish school or district policies that prohibit bullying behavior.”

Between 1999 and 2010, state legislators enacted 120 bills to address bullying in schools (Stuart-Cassell, Bell, & Springer, 2011). By January 2016, all 50 states and the District of Columbia enacted antibullying laws and 49 states and the District of Columbia required schools to develop an antibullying policy (Hinduja & Patchin, 2016). Under state antibullying laws, school administrators had both the authority as well as the responsibility to discipline students for instances of bullying.

By 2016, the majority of state antibullying laws included the terms “online harassment” and/or “cyberbullying” (Hinduja & Patchin, 2016). Some states also included “off-campus behaviors” in their definition of bullying (Hinduja & Patchin, 2016). The inclusion of online harassment, cyberbullying, and off-campus behaviors was controversial, as it gave school administrators the authority and responsibility to discipline students for speech that occurred outside of school (Belnap, 2011; Hayward, 2011).

Inclusion of Cyberbullying in Antibullying Statutes

In response to high-profile cyberbullying cases, such as that of 13-year old Megan Meier in 2006 or 18-year old Rutgers University student Tyler Clementi, in which students died by suicide after being the victims of online bullying, the majority of states included the terms cyberbullying or electronic harassment in their antibullying laws that addressed K-12 public schools. According to the U.S. Department of Health and Human Services, (n.d.): “Cyberbullying is bullying that takes place using electronic technology. Electronic technology

includes devices and equipment such as cell phones, computers, and tablets as well as communication tools including social media sites, text messages, chat, and websites.

By January 2016, 23 states included the term "cyberbullying" or "cyber-bullying" in their antibullying law; 48 states and the District of Columbia included the term "electronic harassment" in their antibullying law; and 14 states and the District of Columbia included "off-campus behavior" in the antibullying law (Hinduja & Patchin, 2016).

State antibullying laws gave school administrators the latitude to discipline students for acts of bullying that occurred on or off campus. Just as school officials had the authority to discipline students for off-campus speech in *Morse v. Frederick* (2007), state antibullying laws gave school officials the authority to discipline students for instances of cyberbullying, which could occur off school grounds.

The inclusion of cyberbullying, electronic harassment, and off-campus behavior in state antibullying laws was controversial. Critics asserted that some antibullying laws that included cyberbullying were overbroad and developed as a knee-jerk reaction to national tragedies (King, 2010). Opponents asserted that the inclusion of cyberbullying, electronic harassment, and off-campus behavior was a violation of students' First Amendment rights (Hayward, 2011). Hayward (2011) declared that:

> Anticyberbullying laws are the greatest threat to student free speech because they seek to censor it everywhere and anytime it occurs, using "substantial disruption" of school activities as justification and often based only on mere suspicion of potential disruption. Although the school environment has special characteristics, they do not justify the regulation of vast areas of student speech unless a "substantial disruption" of school activities can be demonstrated.

Despite the potential harm to victims of cyberbullying, opponents of state antibullying legislation that regulated cyberbullying, electronic harassment, and off-campus behavior asserted that state legislation was too broad and gave school officials too much control over student speech. According to Belnap (2011), while there was a need to protect children from cyberbullying, state antibullying statutes that addressed cyberbullying and K-12 public schools infringed upon students' freedom of speech.

According to King (2010), although necessary, cyberbullying legislation "[treaded] on delicate constitutional territory. Policymakers needed to be mindful of First Amendment rights when designing antibullying laws to ensure that the laws did not infringe upon them (King, 2010).

Proponents of the inclusion of cyberbullying, electronic harassment, and "off-campus behavior in state antibullying laws argued that the laws were necessary to protect the educational process and school climate and that state antibullying laws were not a violation of students' First Amendment rights (Calvoz, Davis, & Gooden, 2013). While instances of cyberbullying may have occurred off campus, the prevalence of electronic devices made it possible for instances of cyberbullying to reach school grounds and disrupt the learning environment.

In a review of Supreme Court decisions involving students' speech, Calvoz, Davis, and Gooden (2013) found that school administrators had the authority to discipline students for speech that would have otherwise been protected under the First Amendment: "The Supreme Court has recognized that in dealing with school children, school administrators may prohibit and punish conduct that, in any other context done by any other citizen, would be afforded constitutional protection."

According to Sumrall (2015), because cyberbullying had the potential to be more harmful than traditional face-to-face bullying, there should be a federal law to criminalize cyberbullying. At the time of this study, the Supreme Court had not yet considered a case involving cyberbullying; cases involving cyberbullying and K-12 public schools had only made it as far as the appellate courts.

Prevalence of Cyberbullying in Schools

Cyberbullying was much like regular bullying, except that it occurred through electronic means. According to Mezzina & Stedrak (2015):

> Cyberbullying is much like regular bullying, except a cyberbully is able to bully a targeted person from a remote location. With technology, bullies are now able to reach their victims outside of the school building, across towns, counties, state lines, and even countries.

Due to the manner in which cyberbullying occurred, it could potentially cause more harm to its victims than regular bullying (Sumrall, 2015; Fenn, 2013; Hinduja & Patchin, 2011; King, 2010). Unlike regular bullying, cyberbullying had the potential to go viral and engage a much wider audience, which could make it even more devastating to victims (Fenn, 2013; Hinduja & Patchin, 2011; King, 2010). Furthermore, in cases of cyberbullying, bullies were able to mask their identities, hiding behind a screen name or email address (Hinduja & Patchin, 2011). Bullies might be meaner online than in person because "individuals have the habit of saying things online that they would not be comfortable saying offline (Sumrall, 2015). Also, in cases of regular bullying, victims could walk away from the situation; however, in instances of cyberbullying, the bully could reach the victim 24 hours a day, 365 days a year, from anywhere in the world (Sumrall, 2015; Mezzina & Stedrak, 2015; Fenn, 2013). Additionally, inflammatory

comments could remain online indefinitely, allowing victims to relive their torment (King, 2010).

Increased Access to Electronic Devices

Teenage use of electronic devices and social media was widespread, which led to the advancement of cyberbullying (Mezzina & Stedrak, 2015; Fenn, 2013). According to Lenhart et al. (2015) an online study conducted by the Pew Research Center, a nonpartisan think tank, found that 92% of teens ages 13–17 reported going online daily (Lenhart et al., 2015). In fact, 24% of teens ages 13–17 reported that they went online almost constantly throughout the day and 56% of teens reported going online multiple times a day (Lenhart et al., 2015). Approximately 73% of teens reported that they had access to a smartphone, 87% of teens had access to a desktop or laptop computer, and 58% of teens had access to a tablet (Lenhart et al., 2015). The study found that social media use is widespread among teenagers; 71% of teens ages 13–17 reported using Facebook, 52% used Instagram, 41% used Snapchat, 33% used Twitter, 33% used Google+, 24% used Vine, and 14% used Tumblr, and 11% reported using another social media network (Lenhart et al., 2015).

Not only did students have greater access to electronic devices, but many school districts provided students with electronic devices for use in school as well as at home. Project Tomorrow, a nonprofit research organization sponsored by educational software companies, conducted a survey of 39,986 teachers and school librarians as well as 4,530 school, district, and technology administrators to learn about technology use in schools (Project Tomorrow, 2013a). The results of the survey indicated that 31% of students in grades 3–5, 31% of students in grades 6–8, and 33% of students in grades 9–12 had access to a school-issued tablet or laptop. Of the students that were provided mobile devices, 75% of students in grades 3–5, 58% of students in

grades 6-8, and 64% of students in grades 9–12 were permitted to bring the device home. Furthermore, an increasing number of students were able to bring their own devices to school in 2013; 41% of principals surveyed indicated that they would allow students to use personal devices at school in 2013, as compared to just 22% of principals in 2010.

As a greater number of students had access to technology during the school day via personal or school-issued devices, school leaders had a greater responsibility to protect students from instances of cyberbullying (Mezzina & Stedrak, 2015). Despite the existence of antibullying laws that included the terms cyberbullying or electronic harassment, school administrators did not understand the extent of their authority to discipline students for instances of cyberbullying due to contradictory court decisions.

Contradictory Case Law

Increased technology use in school and contradictory court interpretations of students' freedom of speech created confusion among school administrators. According to Fenn (2013):

> While deciding how to discipline bullies has always been a tough task for educators, rapidly evolving technology has made these decisions even more difficult, as a student's actions off campus can increasingly affect activity on campus. A school administrator may choose to act aggressively to help the student being harassed electronically, in which case she risks being sued for impeding the harassing student's First Amendment rights. On the other hand, the school administrator may act cautiously in light of First Amendment concerns, in which case she may risk being sued by the victim or her parents for allowing further harm to occur.

As the Supreme Court refused to hear cases of cyberbullying, school administrators and appellate courts relied on prior appellate court decisions when handling cases of cyberbullying and schools Sumrall, 2015).

While the majority of states included cyberbullying, electronic harassment, and/or off-campus behavior in their antibullying laws, school leaders were still unsure of their authority to handle cases of cyberbullying (Mezzina & Stedrak, 2015; Fenn, 2013; Goodno, 2011). According to Fenn (2013), when considering cyberbullying cases:

> A school administrator may choose to act aggressively to help the student being harassed electronically, in which case she risks being sued for impeding the harassing student's First Amendment rights. On the other hand, the school administrator may act cautiously in light of First Amendment concerns, in which case she may risk being sued by the victim or her parents for allowing further harm to occur.

The language in state antibullying statutes was derived from the Supreme Court decision in Tinker v. Des Moines (1969) (Mezzina & Stedrak, 2015). While each state's definition of bullying varies, states define bullying as "substantially interfering" or a "substantial interference" in another child's education or in the school environment. As education is considered a states' issue, the United States Supreme Court refused to hear cases of cyberbullying (Hostetler, 2014); therefore, school officials, attorneys, and judges could only rely on the precedent of lower court decisions when considering cases of cyberbullying. The appellate courts had yet to agree upon what constituted a substantial interference in a school.

In Kowalski v. Berkeley County Schools (2011), the court explained the predicament that school leaders faced when determining how to address cases of cyberbullying in schools:

> Today, largely as a result of the Internet, school officials have much greater access to the out-of-school speech of students. This, in turn, has caused school officials to discipline students more frequently for off-campus, after-school speech that those officials dislike or of which they disapprove. The courts of appeals widely disagree about whether and when punishing that off-campus student speech is constitutionally permissible.

When considering cases of cyberbullying, appellate courts conducted a substantial-effects test, based upon the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District* (1969) to determine "whether or not the instance of cyberbullying…created a substantial interference in the orderly operation of the school and whether or not school officials could reasonably forecast a substantial interference." (Mezzina & Stedrak, 2015). Appellate courts had different interpretations of what constituted a substantial interference in the school, and not all courts considered the second aspect of *Tinker,* whether or not a substantial interference could be reasonably forecasted (Mezzina & Stedrak, 2015).

For example, in *Layshock ex rel. Layshock v. Hermitage School District* (2011), the appellate court ruled that school officials did not have the authority to discipline a student for creating a slanderous MySpace profile of a school principal because the student's use of the district's website did not "constitute entering the school" and the school district could not "punish his out of school expressive conduct" under the circumstances presented in the case. In *Kowalski v. Berkeley County Schools* (2011), the appellate court ruled that the school district acted within its authority to discipline a student for creating a MySpace page that alleged that another student had a sexually transmitted disease, because even though the student created the page off school grounds, it created "a reasonably foreseeable substantial disruption" in the school.

Layshock ex rel. Layshock v. Hermitage School District (2011) and *Kowalski v. Berkeley County Schools* (2011) were similar cases in that the school districts disciplined students for actions that occurred online and off school grounds. The appellate courts had different interpretations of what constituted a substantial interference in the school, as well as whether or not a substantial disruption was reasonably foreseeable. The varying interpretations of the substantial-effects test in cyberbullying cases were problematic because school administrators did not have a clear understanding of their authority to discipline students for student bullying that occurred via an electronic device.

Relevant Research

At the time of this study, there was a need for objective research that considered both appellate court decisions involving cyberbullying to determine whether both prongs of *Tinker* were considered when deciding the case and the extent to which school administrators could discipline students for instances of cyberbullying in K-12 antibullying statutes. Several legal comments analyzed either appellate court cases involving cyberbullying or the constitutionality of state antibullying legislation. A few comments attempted to analyze both appellate court cases involving cyberbullying and state antibullying laws; however, those articles only reviewed selected state antibullying laws. Some comments considered whether or not state antibullying laws were constitutional or whether or not there was a need for federal legislation. At the time of this study, there was no study that analyzed the language and requirements of current state antibullying laws and also reviewed appellate court cases involving cyberbullying through the *Tinker* lens.

In an opinion piece in a legal journal, Hayward (2011) reviewed state antibullying legislation and appellate court cases involving cyberbullying. According to Hayward (2011),

antibullying laws were both overbroad and a threat to students' First Amendment rights. According to Hayward (2011): "Anticyberbullying laws are the greatest threat to student free speech because they seek to censor it everywhere and anytime it occurs, using "substantial disruption" of school activities as justification and often based only on mere suspicion of substantial disruption.

Hayward (2011) included appellate court cases involving cyberbullying in the analysis but did not deliberate on whether or not both prongs of *Tinker* were considered in the appellate courts' decisions. Since the time of the legal comment, state antibullying laws have changed and appellate courts have considered more cases involving cyberbullying.

Much of the literature involving state antibullying laws became outdated as state antibullying legislation continued to change. For example, in a legal comment, King (2010) evaluated anticipated and enacted cyberbullying legislation at the state and national level. Since the time of the comment, more states enacted state antibullying laws; furthermore, since 2010, states have updated their antibullying legislation to include cyberbullying and off-campus behavior. In 2010, 45 states had antibullying legislation and 36 states included cyberbullying or electronic harassment in their definition of bullying, and 12 authorized school officials to discipline students for off-campus behavior (Stuart-Cassel, Bell, & Springer, 2011). At the time of this study, all 50 states had antibullying legislation in place, 48 states included cyberbullying or online harassment in their definition of bullying, and 14 states gave school officials the authority to discipline students for off-campus behavior (Hinduja & Patchin, 2016). King (2010) also reviewed appellate court decisions in antibullying cases that involved cyberbullying and schools; however, only four cyberbullying cases were considered.

In another legal journal, Waldman (2012) analyzed appellate court cases involving cyberbullying and briefly reviewed the language in harassment statutes. Waldman (2012) did not analyze and compare state antibullying laws. The comment did not compare state antibullying legislation. Waldman (2012) did not analyze each appellate court case to determine whether or not both prongs of the *Tinker* test were considered.

In another legal journal that was not peer-reviewed, Fenn (2013) defined bullying, summarized state antibullying legislation and compared "state legislatures expansive responses to cyberbullying to courts' somewhat restrictive treatment of off-campus speech." Fenn (2013) summarized the purpose and the key components of state antibullying legislation but did not analyze and compare the language in each state antibullying law. Furthermore, Fenn (2013) did not review each appellate court case involving cyberbullying to determine whether both prongs of the *Tinker* test were applied.

Conclusion

The First Amendment protected student expression and teacher expression in K-12 public schools; however, the rights of students and teachers were more limited in a school setting. Students did not have the right to bully fellow students; all 50 states created antibullying laws to protect students from bullying in K-12 public schools. Despite the existence of state antibullying laws, the extent to which a school administrator may discipline a student for online bullying remained unclear. Although cyberbullying and online harassment were included in 23 state antibullying laws, the term "off-campus behavior" was included in only 14 state antibullying statutes; therefore, it was unclear whether or not school leaders had the authority to discipline students for online behavior that occurred off school grounds. Furthermore, contradictory appellate court decisions in cases involving cyberbullying made it even more difficult for school

administrators to understand the extent of their authority to discipline students in cases of cyberbullying. As more students had increased access to technology during the school day, school administrators had a greater responsibility to protect students from instances of cyberbullying. A review of relevant literature revealed a need for a comprehensive analysis of state antibullying laws as well as analysis of appellate court cases involving cyberbullying to determine whether both prongs of *Tinker* were considered in the decisions. In the following chapter, I will discuss the purpose of the study and research questions as well as the design and significance of the study.

CHAPTER III

DESIGN OF THE STUDY

This public policy analysis reviewed case law involving cyberbullying in schools as well as antibullying legislation related to cyberbullying in order to illustrate the limitations of students' First Amendment rights in public schools related to cyberbullying. Case law was defined as "the entire body of reported cases forming all or part of the law in a particular jurisdiction" (Salem Press Encyclopedia, 2015). Case law was used to interpret laws and statutes, especially when parts of the law are ambiguous or open to interpretation (Salem Press Encyclopedia). By reviewing both state legislation and case law, this public policy analysis provided policy makers, researchers, and relevant stakeholders with an in-depth analysis of the extent and limitations of students' First Amendment rights in regard to cases of cyberbullying.

Purpose of the Study and Research Questions

The purpose of this study was to examine state laws directed at cyberbullying, as well as appellate court cases related to cyberbullying, to determine the court's interpretation of the First Amendment and the latitude and limitations that school administrators had when disciplining students. The overarching research question that guided this study was as follows:

To what extent did the First Amendment protect students' rights in cases of cyberbullying in schools?

I closely examined the following research questions throughout the course of this public policy analysis:

1. How have appellate courts interpreted the limitations of the First Amendment as applied to K-12 public schools, teachers, and students when considering cyberbullying cases?

2. Did the appellate courts consistently consider both prongs of the Tinker test when determining the outcome of cyberbullying cases?
3. How many states within all 50 states in the United States had an antibullying legislation in place between October 31, 2016, and December 31, 2016?
4. How many states within all 50 states in the United States included cyberbullying, electronic harassment, and/or off-campus behavior in the antibullying law at the time of the study?
5. How does state antibullying legislation compare among states that are under the jurisdiction of the same appellate court circuit?

Significance of the Study

The significance of this study was twofold. First, I analyzed appellate court cases to determine how appellate courts interpreted the First Amendment in cyberbullying cases as applied to students, teachers, and schools.

Second, I determined the status of antibullying legislation across the nation and how cyberbullying was addressed in state antibullying laws. At the time of the study, there was no federal law addressing cyberbullying. Additionally, at the time of this study, the United States Supreme Court had not heard a case involving cyberbullying.

Data and Methods

Public policy analysis enabled policy makers, politicians, and the public to closely examine public policy issues (Peters & Pierre, 2006). According to Peters & Pierre (2006), "public policy analysis emerged to both better understand the policy making process and to supply policy decision makers with reliable and policy-relevant knowledge about pressing economic and social problems" (p. xix).

Given the design of public policy analysis, Chapter 1 defined each clause of the First Amendment. Chapter 2 further defined the First Amendment as applied to public schools, teachers, and students. Four research questions guided the study to illustrate the latitude that school administrators have when disciplining students for cases of cyberbullying.

This study provided policy makers, researchers, and relevant stakeholders with two sets of critical data:

- An in-depth comparison of state antibullying legislation
- A review of appellate court decisions in antibullying cases

The two sets of data informed policy makers, researchers, and relevant stakeholders about the limitations of students' First Amendment rights in public schools in regard to cyberbullying.

The sources commonly used to extrapolate the data for this study were as follows:

- **Individual state statutes**. Each state statute regarding bullying was reviewed and analyzed to determine the states' definition of bullying as well as whether or not cyberbullying or electronic harassment was included in the state's definition of bullying. Each state's website was searched using the key terms bullying, cyberbullying, electronic harassment, online bullying, bullying, harass, stalk, and telecommunications.
- **Google Scholar.** Every subject was researched using the key terms cyberbullying, cyber bullying, electronic harassment, online bullying, bullying, First Amendment, freedom of speech, student, and school, along with each circuit of the United States Court of Appeals: first circuit appellate court, second circuit appellate court, third circuit appellate court, fourth circuit appellate court, fifth circuit appellate court, sixth circuit appellate court, seventh circuit appellate court, eighth circuit appellate court,

ninth circuit appellate court, tenth circuit appellate court, and eleventh circuit appellate court. Collectively, these terms determined what court cases dictated cyberbullying laws for a given state. The researcher reviewed each case to verify its appropriateness in answering the research questions.

- **LexisNexis.** Similar to Google Scholar, every subject was researched using the key terms cyberbullying, cyber bullying, electronic harassment, online bullying, bullying, First Amendment, freedom of speech, student, and school, along with each circuit of Court of Appeals: first circuit appellate court, second circuit appellate court, third circuit appellate court, fourth circuit appellate court, fifth circuit appellate court, sixth circuit appellate court, seventh circuit appellate court, eighth circuit appellate court, ninth circuit appellate court, tenth circuit appellate court, and eleventh circuit appellate court. Collectively, these terms determined what court cases dictated cyberbullying laws for a given state. The researcher reviewed each case to verify its appropriateness in answering the research questions.
- **Education Resources Information Center (ERIC).** Similar to Google Scholar and LexisNexis, every subject was researched using the key terms cyberbullying, cyber bullying, electronic harassment, online bullying, bullying, First Amendment, freedom of speech, student, and school, along with each circuit of Court of Appeals: first circuit appellate court, second circuit appellate court, third circuit appellate court, fourth circuit appellate court, fifth circuit appellate court, sixth circuit appellate court, seventh circuit appellate court, eighth circuit appellate court, ninth circuit appellate court, tenth circuit appellate court, and eleventh circuit appellate court. Collectively, these terms determined what court cases dictated cyberbullying laws for a given state.

The researcher reviewed each case to verify its appropriateness in answering the research questions.

The analysis for this study was conducted in a *post hoc* manner; the researcher examined antibullying laws that were already in place as well as the outcomes of appellate court cases related to cyberbullying. The constitutionality of state antibullying legislation was actively debated at the time of this study. For example, in June 2016, North Carolina's law that criminalized cyberbullying was ruled unconstitutional as it was determined to be overbroad and a violation of the First Amendment (WNCN Staff, 2016). In 2014, the Rutherford Institute challenged New Jersey's Anti-Bullying Law as unconstitutional on the grounds that it violated students' first amendment rights ("Rutherford Institute Asks Federal Court to Strike Down N.J. Anti-Bullying Law," 2014). Changes were made to New Jersey's Anti-Bullying law in 2012 after a state panel found that the law required an "undue financial burden on school districts" (Associated Press, 2012). All fifty states had antibullying legislation in effect at the time of this study (Cyberbullying Research Center, n.d.; Stopbullying.gov, n.d.). For the purposes of this public policy analysis, I reviewed the state antibullying legislation that was currently in effect between the dates of October 31, 2016, and December 31, 2016. This information was accessed via each state's website.

Each state's antibullying law was accessed via the individual state's website and reviewed to determine the key components of the state's antibullying law. The information was compiled in a chart as well as analyzed in greater detail. The Cyberbullying Research Center, an organization dedicated to providing information about cyberbullying, compared antibullying laws across the United States on its website and considered the following:

- whether or not the antibullying law contained the terms “cyberbullying” or “online harassment;”
- whether or not there was a criminal sanction in place for cyberbullying or online harassment;
- whether or not there was a school sanction in place for cyberbullying;
- whether or not the law required schools to have a policy to address bullying;
- whether or not the state law enabled administrators to discipline students for off-campus behavior, and
- when the law was last updated (Cyberbullying Research Center, n.d).

The Cyberbullying Research Center did not list the methods that were used to collect or update the information.

In order to give policy makers, school officials, and relevant stakeholders a comprehensive comparison of state antibullying laws, I compared in greater detail the key components of each state antibullying law. In addition to considering the following: whether or not cyberbullying or online harassment was included in the definition of bullying; whether or not the antibullying law included bullying that occurred off school grounds; whether or not the school was required to have an antibullying policy in place; and whether or not the state had a criminal sanction in place for cyberbullying, I also considered:

- whether or not bullying was defined as a repeated action,
- whether or not the substantial interference language from *Tinker* was included in the definition of bullying,
- whether or not there was a school sanction for bullying, and

- whether or not the state had a criminal sanction in place for face-to-face bullying at the time of this study.

Instead of considering whether the state had a school sanction in place for cyberbullying as the Cyberbullying Research Center did, I considered whether or not the state had a school sanction in place for bullying. If the definition of bullying included cyberbullying, then students could be sanctioned for cyberbullying. This detailed comparison of the status of state antibullying laws between October 31, 2016, and December 31, 2016, provided school officials, policymakers, and practitioners with greater insight into the language and key components of state antibullying laws among all 50 states in the United States. See Table 1..

Table 1.
Table structure used to compare state antibullying laws

State	**Antibullying Law**	**Cyberbullying included**	**One-time Event**	**Off-School Grounds**	**School Policy Required**	**Language – Tinker**	**School Sanction**	**Criminal Sanction – Bullying**	**Criminal Sanction - Cyberbullying**
Name of State	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

The state antibullying legislation was also reviewed and compared by the regional circuits of the United States Courts of Appeals to see how the courts interpreted the authority that school officials had to discipline students for bullying. The state antibullying legislation data for states whose district circuits were under the jurisdiction of the same court of appeals were compared in a table and summarized.

Each circuit of the United States Court of Appeals had jurisdiction over the 94 federal judicial districts in the United States. There were 13 appellate courts that sat below the Supreme

Court: First Circuit, Second Circuit, Third Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, Tenth Circuit, Eleventh Circuit, D.C. Circuit, and Federal Circuit (United States Courts, n.d.-a). Decisions made in one of the 94 district courts could be challenged in the appellate court. After an appellate court decided upon a case, it could be challenged in the United States Supreme Court. At the time of this study, the United States Supreme Court had not yet heard a case involving cyberbullying and K-12 public schools; however, five cases involving cyberbullying and K-12 public schools were heard by appellate court districts.

Limitations and Delimitations of the Study

Limitations of the study. At the time of the study, there was no federal law addressing bullying or cyberbullying. Additionally, at the time of the study, the United States Supreme Court had not heard a cyberbullying case.

Delimitations of the study. A delimitation of this study was that tort cases related to cyberbullying were not reviewed; for the purposes of this study, only appellate court cases related to cyberbullying were included. Another delimitation of the study was that appellate court cases related to cyberbullying were reviewed between October 31, 2016, and December 31, 2016. Additionally, state antibullying laws were reviewed between October 31, 2016, and December 31, 2016. Furthermore, this study only addressed cases of cyberbullying that occurred in K-12 public schools.

A comparison of specific school sanctions and criminal sanctions was not included in this study. Each appellate court case was reviewed to determine the facts of the case, outcome, and application of the Tinker test. The data for this study was reviewed between October 31, 2016, and December 31, 2016, for a total of 2 months. State legislators may have changed antibullying

legislation and additional cyberbullying cases may have happened after December 31, 2016; any changes to state legislation or appellate court cases after December 31, 2016, were not included in this study.

Need for Research

At the time of this study, there were no current studies that both analyzed appellate court cases involving cyberbullying to determine whether or not both aspects of *Tinker* were used to determine the outcome as well as compared state antibullying statutes. Most studies were articles or comments published in legal journals that were focused primarily on antibullying statutes or appellate court decisions. Some of the texts provided an in-depth review of appellate court decisions related to cyberbullying but only summarized state anticyberbullying statutes. For example, in a legal journal, King (2010) reviewed both anticyberbullying statutes and appellate court decisions related to cyberbullying; however, since the study, more cases involving K-12 public schools and cyberbullying have emerged. Furthermore, King (2010) discussed proposed and enacted cyberbullying legislation at the state and national level. The article was written in 2010, and the prevalence of state anticyberbullying statutes has increased exponentially since then. Furthermore, there have been a number of decisions in cyberbullying cases at the appellate court level since the time of the study.

Similarly, Waldman (2012) discussed the outcome of some appellate court cases related to cyberbullying and summarized state antibullying statutes, Waldman (2012) did not review all relevant appellate court cases related to cyberbullying and analyze their outcome. Furthermore, Waldman (2012) summarized the language used in harassment statutes but did not compare individual state antibullying statutes to find gaps in their definitions of bullying.

Similarly, Fenn (2013) reviewed appellate court decisions and state antibullying legislature in a legal journal. At the time of the comment, only nine states had antibullying legislation that included both cyberbullying and off-campus legislation (Fenn, 2013). Fenn (2013) did not analyze and compare each state antibullying legislation, but rather summarized the key components of existing antibullying legislation. Furthermore, Fenn (2013) did not analyze each appellate court case to determine whether and how both prongs of the *Tinker* test were applied.

At the time of this study, there was a need for research that focused on both the gaps in individual state anticyberbullying statutes as well as the gaps in appellate court decisions in cyberbullying cases.

Summary

This public policy analysis was designed to provide policymakers, researchers, school officials, and relevant stakeholders with a comprehensive analysis of the authority and limitations that school officials have when disciplining students for instances of cyberbullying. In order to determine the authority that school officials have when disciplining students in cyberbullying cases, both state antibullying laws as well as appellate court cases involving schools and cyberbullying were reviewed.

The following chapter will contain an analysis of appellate court cases involving cyberbullying and K-12 public schools. I searched for appellate court cases involving cyberbullying and K-12 public schools using Google Scholar, ERIC, and LexisNexis and the search terms cyberbullying, cyber bullying, electronic harassment, online bullying, bullying, First Amendment, freedom of speech, student, and school, along with each circuit of the Court of Appeals. I found five cases decided upon in the appellate courts that involved cyberbullying and

K-12 public schools: *Wisniewski v. Board of Education of Weedsport Central School District* (2007), *Layshock v. Hermitage School District* (2011), *J. S. v. Blue Mountain School District* (2011), *Kowalski v. Berkeley County Schools* (2011), and *Bell v. Itawamba County School Board* (2015). I will recapitulate each appellate court case and explain how the court applied the *Tinker* test when determining the outcome of the case. The cases will be reviewed and compared to determine if the appellate courts utilized the *Tinker* test in a consistent manner.

For example, in *Layshock v. Hermitage School District (2011)*, student Justin Layshock was suspended for creating a MySpace profile impersonating the principal. The parody MySpace profile contained answers to "tell me about yourself" questions such as: "Birthday: too drunk to remember;" "In the past month have you smoked: big blunt;" "In the past month have you gone Skinny Dipping: big lake, not big dick;" "Ever been called a Tease: big whore;" "Ever been Beaten up: big fag." The fake MySpace page inspired three other students to create offensive MySpace parody profiles for the principal as well. While the MySpace profile was created off school grounds, Layshock accessed the parody MySpace page during school to share it with classmates. Despite the fact that the parody MySpace profile was accessed by Layshock during school hours, incited other students to create similar parody Myspace profiles for the principal, contained offensive language, and insinuated that the principal used drugs, the Third Circuit Courtoverturned the suspension of Layshock. As the parody MySpace profile was created off school grounds, the court asserted that "the First Amendment prohibits the school from reaching beyond the schoolyard to impose what otherwise may be appropriate discipline" (*Layshock v. Hermitage School District*, 2011). Although the offensive MySpace page incited others to create similar parody pages for the principal, the court found that the page "did not result in substantial disruption" of the school. According to the court, "we have found no

authority that would support punishment for creating such a profile unless it results in foreseeable and substantial disruption of the school" (*Layshock v. Hermitage School District*, 2011).

In Layshock v. Hermitage School District (2011), the Third Circuit Court considered both prongs of Tinker, whether the action resulted in a foreseeable or substantial disruption of the school environment, and ultimately ruled that the action did not constitute a foreseeable or substantial disruption and therefore the school did not have the authority to discipline the student for his speech. In a similar case, *Kowalski v. Berkeley County Schools* (2011), student Kara Kowalski created a parody MySpace page alleging that another student had a sexually transmitted disease. Although the page was created off campus, the Fourth Circuit Court ruled that Kowalski's speech was not protected under the First Amendment, as "it was foreseeable in this case that Kowalski's conduct would reach the school via computers, smartphones, and other electronic devices." Additionally, the court ruled that the page did in fact create a reasonably foreseeable substantial disruption in the school environment (*Kowalski v. Berkeley County Schools*, 2011).

In both *Kowalski v. Berkeley County Schools* (2011) and *Layshock v. Hermitage School District* (2011), students created offensive MySpace profiles off school grounds; however, the courts interpreted substantial disruption and foreseeable disruption differently. The following chapter will further explore and compare the decisions in appellate court cases related to cyberbullying.

Additionally, in Chapter 4, I will compare the language in each individual state's antibullying legislation. The following aspects of the state antibullying statutes will be considered:

1. Whether or not the individual state had an antibullying law in effect between September 1, 2016 and December 31, 2016.
2. Whether or not the terms cyberbullying or online harassment were included in the state's definition of bullying.
3. Whether or not the cyberbullying or online harassment was defined as a one-time or repeated action.
4. Whether or not the state legislation required K-12 public school districts to develop a school policy addressing cyberbullying.
5. Whether or not the state legislation included language from the Supreme Court decision in Tinker.
6. Whether or not the state legislation imposed a school sanction for cyberbullying
7. Whether or not the state legislation imposed a criminal sanction for cyberbullying.

In addition to an in-depth comparison of state antibullying legislation, Chapter 4 of this public policy dissertation will contain both an in-depth analysis of appellate court cases as well as a comparison of state antibullying legislation. State antibullying legislation will be compared regionally, by the states that are included under the jurisdiction of each circuit of the United States Appellate Courts. In Chapter 5, I will make recommendations for K-12 school practitioners and state legislators based upon the findings.

Chapter 5 of this public policy dissertation will contain recommendations for school practitioners, lawyers, and state legislators in regard to state antibullying legislation and interpretation of *Tinker*.

CHAPTER IV

RESEARCH FINDINGS

This chapter contained two different data sets: appellate court decisions involving bullying, and state antibullying legislation. The first component of this chapter contained a review and comparison of appellate court cases that involve cyberbullying and K-12 public schools. There were five appellate court cases that involved cyberbullying and K-12 public schools that were determined before December 31, 2016: *Wisniewski v. Board of Education of Weedsport Central School District* (2007), *Layshock v. Hermitage* (2011), *J. S. v. Blue Mountain School District* (2011), *Kowalski v. Berkeley County Schools*, (2011), and *Bell v. Itawamba County School Board* (2015). Each appellate court case involving cyberbullying and K-12 public schools was examined to determine whether or not both prongs of the *Tinker* test were used in determining the outcome of the case.

The second section of this chapter reviewed and compared state antibullying legislation to determine whether or not cyberbullying was included in the legislation, as well as whether or not schools were required to adopt antibullying policies, whether or not school sanctions were in place for committing acts of bullying, whether or not language from the Supreme Court decision in *Tinker v. Des Moines Independent Community School District* (1969) was included in the antibullying legislation, and whether or not off-campus behavior was within the school district's disciplinary authority. This chapter also reviewed criminal statutes in place for harassment or cyber-harassment between October 31, 2016, and December 31, 2016. State antibullying data was grouped and compared by states that were under the jurisdiction of the same regional appellate court circuit.

Appellate Court Cases Involving Cyberbullying and K-12 Public Schools

Although 35 states included the "substantial interference" language from the Supreme Court decision in *Tinker* in their antibullying legislation, substantial interference remained undefined. At the time of this study, the Supreme Court had not yet determined a case involving cyberbullying and K-12 public schools; therefore, substantial interference was defined by appellate court decisions.

When determining the outcome of court cases involving cyberbullying and K-12 public schools, justices referred to the Supreme Court decision in *Tinker vs. Des Moines* (1969). There was a two-prong *Tinker* test that was used to determine whether or not school officials had the authority to discipline students for cyberbullying: (1) whether or not the cyberbullying caused a substantial interference in the school, and (2) whether or not a substantial interference could be reasonably forecasted. The *Tinker* test was not used consistently and court interpretations of substantial interference differed; in some cases only one prong of the *Tinker* test was considered, while in other cases, courts applied both prongs of the *Tinker* test. According to Mezzina and Stedrak (2015), "the conflicting applications of *Tinker* [made] it difficult for school administrators to know when students can be disciplined for their online speech."

In this section of the public policy dissertation, I will review all appellate court decisions involving cyberbullying and K-12 public schools that were determined by December 31, 2016, and examine how the *Tinker* test was applied, and how substantial interference was interpreted.

Wisniewski v. Board of Education of Weedsport Central School District (2007)

In *Wisniewski v.v. Board of Education of Weedsport Central School District* (2007), an eighth grade student in New York was suspended for creating and "sharing with friends via the Internet a small drawing crudely, but clearly, suggesting that a named teacher should be shot and

killed." In April 2001, student Aaron Wisniewski created a blood-spattered icon of his teacher with a gun firing at his head and the words "Kill Mr. Vandermolen" (*Wisniewski v. Board of Education of Weedsport Central School District*, 2007). Wisniewski shared the icon with his classmates via AOL instant messenger off school property for approximately three weeks (*Wisniewski v. Board of Education of Weedsport Central School District*, 2007). His teacher, Mr. Vandermolen, was made aware of the icon because a student printed it out and shared it with him (*Wisniewski v. Board of Education of Weedsport Central School District*, 2007).

The superintendent of Weedsport Central School District suspended Wisniewski for one semester and provided him with alternate education (*Wisniewski v. Board of Education of Weedsport Central School District*, 2007). The U.S. Court of Appeals for the Second Circuit upheld the suspension based upon the second prong of *Tinker;* the court found the transmission of the icon:

> [Crossed] the boundary of protected speech and [constituted] student conduct that [posed] a reasonably foreseeable risk that the icon would come to the attention of school authorities and that it would 'materially and substantially disrupt the work and discipline of the school." (*Wisniewski v. Board of Education of Weedsport Central School District*, 2007)

Even though Wisniewski created and shared the icon off school grounds, the court found that:

> It was reasonably foreseeable that the IM icon would come to the attention of school authorities and the teacher whom the icon depicted being shot. The potentially threatening content of the icon and the extensive distribution of it, which encompassed 15 recipients, including some of Aaron's classmates, during a three-week circulation period, made this risk at least foreseeable to a reasonable person, if not inevitable. And there can

> be no doubt that the icon, once made known to the teacher and other school officials, would foreseeably create a risk of substantial disruption within the school environment (*Wisniewski v. Board of Education of Weedsport Central School District*, 2007).

Using the second prong of the *Tinker* test, the United States Court of Appeals for the Second Circuit found that once in the hands of school staff and administrators, the disturbing image would "foreseeably create a risk of substantial disruption within the school environment" (*Wisniewski v. Board of Education of Weedsport Central School District*, 2007).

The United States Court of Appeals for the Second Circuit had jurisdiction over the district courts of Connecticut, New York, and Vermont (United States Courts, n.d.-a). In 2001, when Aaron Wisniewski shared the offensive icon of his teacher with classmates, Connecticut and New York did not have antibullying legislation in place (Stuart-Cassel, Bell, & Springer, 2011). Vermont was the only state whose district courts were under the jurisdiction of the United States Court of Appeals for the Second Circuit that had legislation in place that prohibited harassment in schools in 2001 (Stuart-Cassel, Bell, & Springer, 2011); in Vermont, harassment was defined as follows:

> Verbal or physical conduct based on a student's race, creed, color, national origin, marital status, sex, sexual orientation or disability and which has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive environment (An Act Relating to Harassment Policies in Schools, 1994).

Connecticut's first antibullying law was enacted in 2002 with An Act Concerning Bullying Behavior In Schools And Concerning The Pledge Of Allegiance. In 2002, Connecticut schools were required to develop an antibullying policy. Bullying was defined as follows:

> Any overt acts by a student or a group of students directed against another student with the intent to ridicule, humiliate or intimidate the other student while on school grounds or at a school-sponsored activity which acts are repeated against the same student over time." (An Act Concerning Bullying Behavior in Schools and Concerning the Pledge of Allegiance, 2002)

The antibullying legislation in Connecticut in 2002 addressed student-to-student bullying that occurred on school grounds or at school sponsored events.

In 2007, when the United States Court of Appeals for the Second Circuit decided upon the Wisniewski case there was no antibullying legislation in place in New York (Stuart-Cassel, Bell, & Springer, 2011). There was antibullying legislation in place in both Connecticut and Vermont in 2007 (Stuart-Cassel, Bell, & Springer, 2011).

Following the decision in *Wisniewski v. Board of Education of Weedsport* (2007), changes were made to antibullying legislation in New York, Connecticut, and Vermont. In 2008, New York Education Law § 814 required school districts to educate students in grades K–12 on proper and safe use of the InternetInternet. In 2010, New York instituted antibullying legislation with the Dignity for All Students Act (Stuart-Cassel, Bell, & Springer, 2011). The Dignity for All Students Act prohibited harassment or discrimination in New York Schools and included the substantial interference language from *Tinker* in the definition of harassment (Dignity for All Students, 2010). In 2011, New York passed legislation that prohibited bullying and cyberbullying in schools and gave school officials the authority to discipline students for off campus behavior (SB 7740, 2011).

In 2008, Connecticut's antibullying legislation was amended to require bullying training and professional development for teachers. In 2011, Connecticut's antibullying legislation was

amended to prohibit cyberbullying in schools and strengthen the definition of bullying (An Act Concerning the Strengthening of School Bullying Laws, 2011). Additionally, the antibullying legislation gave school officials the authority to discipline students for off-campus behavior and included the substantial interference language from *Tinker* (An Act Concerning the Strengthening of School Bullying Laws, 2011).

Prior to the decision in *Wisniewski v. Board of Education of Weedsport* (2007), Vermont passed antibullying legislation in 2004 that prohibited bullying in schools (Stuart-Cassel, Bell, & Springer, 2011). In 2012, Vermont antibullying legislation was amended to include electronic acts in its definition of bullying and the substantial interference language from *Tinker*. Additionally, in 2012, antibullying legislation in Vermont was amended to give school officials the authority to discipline students for off-campus behavior (An Act Relating To Making Miscellaneous Amendments To Education Laws, 2012).

Layshock v. Hermitage (2011)

In *Layshock v. Hermitage* (2011), the United States Court of Appeals for the Third Circuit affirmed a district court's decision to overturn the suspension of student Justin Layshock, who used MySpace to create a fake Internet profile for his high school principal, Eric Trosch. The Third Circuit Court of Appeals asserted that the "school district's response to Justin's conduct transcended the protection of free expression guaranteed by the First Amendment" (*Layshock v. Hermitage*, 2011). In 2005, Pennyslvania student Justin Layshock created the MySpace page outside of school, during nonschool hours, using his grandmother's computer. Layshock's parody MySpace page for Trosch contained the following responses to survey questions:

Birthday: too drunk to remember

Are you a health freak: big steroid freak

In the past month have you smoked: big blunt

In the past month have you been on pills: big pills

In the past month have you gone Skinny Dipping: big lake, not big dick

In the past month have you Stolen Anything: big keg

Ever been drunk: big number of times

Ever been called a Tease: big whore

Ever been Beaten up: big fag

Ever Shoplifted: big bag of kmart

Number of Drugs I have taken: big (Layshock v. Hermitage, 2011).

Additionally, Layshock listed "Transgender, Appreciators of Alcoholic Beverages" under the principal's interests and "Steroids International" as a club the principal belonged to (*Layshock v. Hermitage*, 2011). Layshock added students in the district as friends of the parody profile, and three students in the school district were inspired to create "more vulgar and more offensive" parody profiles for the principal (*Layshock v. Hermitage*, 2011).

Although Layshock's parody profile page spread like wildfire, and three students were inspired to create additional mock profiles for the principal, the school district did not challenge the district court's finding that Justin's conduct did not result in any substantial disruption. Moreover, when pressed at oral argument, counsel for the School District conceded that the District was relying solely on the fact that Justin created the profile of Trosch, and not arguing that it created any substantial disruption in the school (*Layshock v. Hermitage*, 2011).
The school district asserted Layshock as suspended because the student "admitted prior to the informal hearing that he created a profile about Mr. Trosch" (*Layshock v. Hermitage,* 2011).

The United States Court of Appeals for the Third Circuit "found no authority that would support punishment for creating such a profile unless it results in foreseeable and substantial disruption of school" (*Layshock v. Hermitage*, 2011). Furthermore, the court explained its decision to affirm the district court's decision as follows:

> The district court found that Justin's conduct did not disrupt the school, and the District does not appeal that finding. Thus, we need only hold that Justin's use of the District's web site does not constitute entering the school, and that the District is not empowered to punish his out of school expressive conduct under the circumstances here. (*Layshock v. Hermitage*, 2011)

Had the school district appealed to the district court's decision on the grounds that Layshock's conduct created a substantial interference or that a substantial disruption was foreseeable, the outcome of this case might have been different.

The United States Court of Appeals for the Third Circuit had jurisdiction over the district courts of Delaware, New Jersey, and Pennsylvania. In 2005, when Justin Layshock created the offensive MySpace profile, there was no antibullying legislation in place in Delaware, New Jersey, or Pennsylvania (Stuart-Cassel, Bell, & Springer, 2011); however, at the time the case was decided in 2011, Delaware, New Jersey, and Pennsylvania all had antibullying legislation in effect that prohibited bullying in schools (Stuart-Cassel, Bell, & Springer, 2011).

Pennsylvania's antibullying legislation was passed in 2008, which required all schools to adopt an antibullying policy (Stuart-Cassel, Bell, & Springer, 2011). Bullying was defined as an "intentional electronic, written, verbal or physical act" and substantial interference language from *Tinker* was included in the definition of bullying (House Bill No. 1067, 2008). In 2008,

school administrators in Pennsylvania had the authority to discipline students for instances of bullying that occurred off school grounds (House Bill No. 1067, 2008).

In Delaware, antibullying legislation was passed in 2007, which prohibited bullying and cyberbullying in schools (An Act To Amend Title 14 Of The Delaware Code To Establish The School Bullying Prevention Act, 2007). The antibullying legislation gave school officials the authority to discipline students for acts of bullying that occurred on school grounds or through use of a school computer or school computer network (An Act To Amend Title 14 Of The Delaware Code To Establish The School Bullying Prevention Act, 2007). Although school officials in Delaware had the authority to discipline students for cyberbullying, they did not have the authority to discipline students for acts of cyberbullying that occurred off school grounds through personal computer networks. The antibullying legislation did not include the substantial interference language from Tinker.

New Jersey's first antibullying legislation was enacted in 2007, which prohibited harassment, intimidation or bullying in schools; defined harassment, intimidation or bullying to include electronic acts; and required schools to develop antibullying policies (New Jersey Assembly Bill No. 3803, 2007). New Jersey's antibullying legislation in 2007 included language from Tinker in the definition of harassment, intimidation, and bullying, but only gave school officials the authority to discipline students for acts of bullying that occurred on school grounds, at school-sponsored events, or on a school bus (New Jersey Assembly Bill No. 3803, 2007). In 2011, the same year that the Layshock case was decided, New Jersey's Anti-Bullying Bill of Rights Act was passed, which gave school officials the authority to discipline students for acts of bullying that occurred off school grounds (Anti-Bullying Bill of Rights Act, 2011).

J. S. v. Blue Mountain School District (2011)

In a similar case, *J. S. v. Blue Mountain School District* (2011), a middle school student in Pennsylvania, J. S., created a MySpace profile making fun of her middle school principal, James McGonigle. J. S. created the parody profile at home using her parents' computer and a picture of McGonigle taken from the school district's website. The MySpace profile "was presented as a self-portrayal of a bisexual Alabama middle school principal named 'M-Hoe'" (J. S. v. Blue Mountain School District, 2011). The "about me" section of the parody MySpace profile read as follows:

> HELLO CHILDREN[.] yes. it's your oh so wonderful, hairy, expressionless, sex addict, fagass, put on this world with a small dick PRINCIPAL[.] I have come to myspace so i can pervert the minds of other principal's [sic] to be just like me. I know, I know, you're all thrilled[.] Another reason I came to myspace is because—I am keeping an eye on you students (who[m] I care for so much)[.] For those who want to be my friend, and aren't in my school[,] I love children, sex (any kind), dogs, long walks on the beach, tv, being a dick head, and last but not least my darling wife who looks like a man (who satisfies my needs) MY FRAINTRAIN. . . .(*J. S. v. Blue Mountain School District,* 2011).

The MySpace profile was initially public, and then was made private. Although there was some chatter among students about the profile, the United States Court of Appeals for the Third Circuit found that the MySpace profile did not cause a substantial disruption in the school.

The court also considered the decision in Bethel School Dist. No. 404 v. Fraser, (1986), in which the Supreme Court upheld the suspension of a student for making lewd, vulgar comments during a speech in front of the school, to determine whether or not it could be applied to *J. S. v Blue Mountain School District* (2011). The court ruled that the decision in Fraser could

not be applied to *J. S. v Blue Mountain School District* (2011) because J. S.'s speech occurred off school grounds. According to the Third Circuit Court of Appeals:

> To apply the Fraser standard to justify the School District's punishment of J. S.'s speech would be to adopt a rule that allows school officials to punish any speech by a student that takes place anywhere, at any time, as long as it is about the school or a school official, is brought to the attention of a school official, and is deemed "offensive" by the prevailing authority. Under this standard, two students can be punished for using a vulgar remark to speak about their teacher at a private party, if another student overhears the remark, reports it to the school authorities, and the school authorities find the remark "offensive." There is no principled way to distinguish this hypothetical from the facts of the instant case (*J. S. v. Blue Mountain School District*, 2011).

The United States Court of Appeals for the Third Circuit also considered the second prong of *Tinker*, whether or not J. S.'s actions constituted a foreseeable risk of substantial disruption in the school. The court found that "[t]he facts in this case [did] not support the conclusion that a forecast of substantial disruption was reasonable" because:

> J. S. created the profile as a joke, and she took steps to make it "private" so that access was limited to her and her friends. Although the profile contained McGonigle's picture from the school's website, the profile did not identify him by name, school, or location. Moreover, the profile, though indisputably vulgar, was so juvenile and nonsensical that no reasonable person could take its content seriously, and the record clearly demonstrates that no one did. Also, the School District's computers block access to MySpace, so no Blue Mountain student was ever able to view the profile from school. And, the only printout of the profile that was ever brought to school was one that was brought at

McGonigle's express request. Thus, beyond general rumblings, a few minutes of talking in class, and some officials rearranging their schedules to assist McGonigle in dealing with the profile, no disruptions occurred (*J. S. v. Blue Mountain School District*, 2011).

In this case, the U. S. Court of Appeals for the Third Circuit considered both prongs of the *Tinker* test when determining the outcome. The court concluded that the MySpace profile did not create a substantial disruption in the school and did not create a foreseeable risk of substantial disruption; therefore, the court found that the school violated J. S.'s First Amendment rights by suspending her for creating the MySpace profile. Together, Blue Mountain School District and Hermitage School District appealed the appellate court's decisions to the Supreme Court; however, the Supreme Court denied the case (*Blue Mountain School District v. J.S. ex rel Snyder*, 2012).

J.S. created the offensive MySpace profile in 2007. In 2007, Pennsylvania did not have antibullying legislation in place. In 2008, antibullying legislation was enacted in Pennsylvania which prohibited bullying and cyberbullying in schools, included the substantial interference language from *Tinker*, and enabled school officials to discipline students for bullying that occurred off school grounds (House Bill No. 1067, 2008).

Both Layshock v. Hermitage (2011) and *J. S. v. Blue Mountain School District* (2011) involved student-to-teacher cyberbullying in Pennsylvania and were decided on by the United States Court of Appeals for the Third Circuit, which had jurisdiction over the district courts of Pennsylvania, Delaware, and New Jersey. New Jersey's antibullying legislation was enacted in 2007, which defined bullying to include cyberbullying, included the substantial interference language from *Tinker,* but only gave school officials the authority to discipline students or instances of bullying that occurred on-school grounds (New Jersey Assembly Bill No. 3803,

2007). New Jersey's antibullying legislation was later amended to give school officials the authority to discipline students for off-campus behavior (Anti-Bullying Bill of Rights Act, 2011). Delaware's antibullying legislation was enacted in 2007, and gave school officials the authority to discipline students for acts of cyberbullying; however, school officials did not have the authority to discipline students for acts of bullying that occurred off school grounds (An Act To Amend Title 14 Of The Delaware Code To Establish The School Bullying Prevention Act, 2007).

Kowalski v. Berkeley County Schools (2011)

In *Layshock v. Hermitage* (2011) and *J. S. v. Blue Mountain School District* (2011), the United States Court of Appeals for the Third Circuit ruled that disciplining students for creating inflammatory MySpace profiles for their principals was a violation of students' First Amendment rights; however, the United States Court of Appeals for the Fourth Circuit upheld the suspension of a student that created a MySpace page that alleged that a fellow student had a sexually transmitted disease, in *Kowalski v. Berkeley County Schools* (2011). West Virginia high school senior Kara Kowalski created a MySpace page called S.A.S.H. in 2005 (*Kowalski v. Berkeley County Schools*, 2011). According to Kowalski, S.A.S.H. stood for "Students Against Sluts Herpes; however, Ray Parsons, a classmate of Kowalski's, asserted that S.A.S.H. stood for "Students Against Shay's Herpes (*Kowalski v. Berkeley County Schools*, 2011). The page, which was created off school grounds using Kowalski's home computer, primarily targeted a fellow student, Shay N. Kowalski, invited approximately 100 of her friends from MySpace to join the webpage, and approximately 24 students from her high school joined the page (Kowalski v. Berkeley County Schools, 2011). A classmate posted a picture of himself and another student holding a sign that read "Shay Has Herpes," to which Kowalski responded "Ray you are soo

funny!=)" and later commented on the site that the picture was "the best picture [I]'ve seen on myspace so far!!!! (Kowalski v. Berkeley County Schools, 2011). Parsons also posted a picture on the MySpace page of Shay N. that he edited to include red dots on her face and a sign over her pelvic region that read Warning: Enter at your own risk (Kowalski v. Berkeley County Schools, 2011). Classmates posted on the MySpace page praising Kowalski for creating the site (*Kowalski v. Berkeley County Schools*, 2011).

Shay N. and her parents reported the MySpace page to administration the following day and Shay N. did not report her classes because she felt "uncomfortable about sitting in class with students who had posted comments about her on the MySpace webpage" (*Kowalski v. Berkeley County Schools*, 2011). After an investigation, Kowalski was suspended for five days for creating the website and also received a 90-day social suspension which prohibited her from attending school events (*Kowalski v. Berkeley County Schools*, 2011). She was also not permitted to participate in cheerleading for the remainder of the year (*Kowalski v. Berkeley County Schools*, 2011).

The United States Court of Appeals for the Fourth Circuit noted that the school district's disciplinary policy defined "harassment, intimidation, and bullying" as follows:

> Any intentional gesture, or any intentional written, verbal or physical act that1. A reasonable person under the circumstances should know will have the effect of: a. Harming a student or staff member; ... 2. Is sufficiently inappropriate, severe, persistent, or pervasive that it creates an intimidating, threatening or abusive educational environment for a student (*Kowalski v. Berkeley County Schools*, 2011).

The court also noted that students were informed via the school handbook that students that violated the policy would be suspended (*Kowalski v. Berkeley County Schools*, 2011).

The United States Court of Appeals for the Fourth Circuit ruled that the school district did not violate Kowalski's First Amendment rights, asserting that "Tinker applies to off campus speech that is not directed at the school because of the speculative possibility—not supported by any record evidence—that it might cause "copycat" behavior on school grounds (Kowalski v. Berkeley County Schools, 2011)." The United States Court of Appeals referred to both prongs of Tinker in its decision, asserting that:

> Even though Kowalski was not physically at the school when she operated her computer to create the webpage and form the "S.A.S.H." MySpace group and to post comments there, other circuits have applied Tinker to such circumstances. To be sure, it was foreseeable in this case that Kowalski's conduct would reach the school via computers, smartphones, and other electronic devices, given that most of the "S.A.S.H." group's members and the target of the group's harassment were Musselman High School students. Indeed, the "S.A.S.H." webpage did make its way into the school and was accessed first by Musselman student Ray Parsons at 3:40 p.m., from a school computer during an after-hours class. Furthermore, as we have noted, it created a reasonably foreseeable substantial disruption there (*Kowalski v. Berkeley County Schools*, 2011).

The MySpace page both created a substantial disruption in the school, and the substantial disruption was reasonably foreseeable; therefore, the school district did not violate Kowalski's First Amendment rights by suspending her (*Kowalski v. Berkeley County Schools*, 2011). Kowalski appealed the decision; however, the United States Supreme Course refused to hear the case (*Kowalski v. Berkeley County Schools*, 2012)

The United States Court of Appeals for the Fourth Circuit had jurisdiction over the district courts of Maryland, North Carolina, South Carolina, Virginia, and West Virginia. At the

time that West Virginia student Kowalski created the MySpace page in 2005, West Virginia had legislation in place that prohibited harassment, intimidation or bullying in schools.

In 2001, harassment, intimidation or bullying in West Virginia was defined as "any intentional gesture, or any intentional written, verbal or physical act or threat …" (H.B. 3023, 2001). In 2011, West Virginia expanded the definition of harassment, intimidation or bullying to include cyberbullying; however, school officials only had the authority to discipline students for behavior that occurred on school grounds, at school-sponsored events, on a school bus, or at a school bus stop (H.B.3225, 2011). Substantial disruption language from *Tinker* was not included in the state legislation.

In Maryland, the first state antibullying legislation was passed in 2003 (Stuart-Cassel, Bell, & Springer, 2011), which declared that all students in Maryland schools had the right to educational environments that were "a. [s]afe, b. [a]ppropriate for academic achievement; and [f]ree from any form of harassment" (Code of Maryland State Board of Education Regulation §13A.01.04.03). In 2005, Maryland passed the "Safe Schools Reporting Act of 2005," which prohibited harassment and intimidation in schools. Harassment and intimidation was defined as "conduct, including verbal conduct" (Safe Schools Reporting Act of 2005, 2005); cyberbullying was not specifically included in the legislation. In 2008, antibullying legislation was passed in Maryland that prohibited cyberbullying in schools, gave school officials the authority to discipline students for off-campus behavior, and included the substantial interference language from *Tinker* (H.B. 199, 2008).

In 2004, North Carolina's State Board of Education enacted a policy that required school districts to develop and implement antibullying policies (State Board of Education, 2004). The School Violence Prevention Act was passed in 2009, which prohibited bullying and harassing

behavior in schools in North Carolina schools. Bullying was defined to include electronic harassment; however, school administrators were not given the authority to discipline students for off-campus behavior (School Violence Prevention Act, 2009). Substantial interference language from *Tinker* was included in the definition of bullying and harassing behavior (School Violence Prevention Act, 2009).

South Carolina did not have antibullying legislation in place at the time that Kowalski created the MySpace profile (Stuart-Cassel, Bell, & Springer, 2011). South Carolina passed its first antibullying legislation in 2006 with the Safe School Climate Act (Stuart-Cassel, Bell, & Springer, 2011). The Safe School Climate Act of 2006 prohibited harassment, intimidation or bullying in schools and included cyberbullying in the definition of harassment, intimidation or bullying. Substantial interference and substantial disruption language from *Tinker* was included in the Safe School Climate Act; however, school officials did not have the authority to discipline students for behavior that occurred off school grounds (Safe School Climate Act, 2006).

Virginia enacted its first antibullying legislation in 2005 that prohibited bullying, harassment, and intimidation in schools (Stuart-Cassel, Bell, & Springer, 2011; H.B. 2879, 2005). Cyberbullying was not included in the definition of bullying, harassment, and intimidation in 2005 (H.B. 2879, 2005). Substantial interference language from *Tinker* was not included in the legislation, and school officials were not given the authority to discipline students for off-campus behavior (H.B. 2879, 2005).

Bell v. Itawamba County School Board

In *Bell v. Itawamba County School Board* (2015), Taylor Bell, a high school student at Itawamba Agricultural High School in Itawamba County, Mississippi, posted a rap recording on Facebook and YouTube that contained threatening language against two high school

teachers/coaches. The recording, posted by Bell on January 5, 2011, named the two teachers and described violent acts to be carried out against them (*Bell v. Itawamba County School Board*, 2015). In addition to vulgar language, the recording contained four threats against the staff members, including threats involving firearms:

> 1. "betta watch your back/I'm a serve this nigga, like I serve the junkies with some crack"; 2. "Run up on T-Bizzle/I'm going to hit you with my rueger[1]"; 3. "you fucking with the wrong one/going to get a pistol down your mouth/Boww"; and 4. "middle fingers up if you want to cap that nigga/middle fingers up/he get no mercy nigga" (*Bell v. Itawamba County School Board*, 2015).

Bell was suspended from school and placed in an alternative school for the remaining six weeks of the semester (*Bell v. Itawamba County School Board*, 2015).

The United States Court of Appeals for the Fifth Circuit considered both prongs of the *Tinker* test to determine the outcome of this case. Ultimately, the court ruled that the suspension was not a violation of Bell's First Amendment rights because "a substantial disruption reasonably could have been forecast as a matter of law" (*Bell v. Itawamba County School Board*, 2015. The court noted that the speech in Bell's rap video "pertained directly to events occurring at school, identified the two teachers by name, and was understood by one to threaten his safety" (*Bell v. Itawamba County School Board*, 2015). The court also noted that the school district's discipline policy:

> "[listed] "[h]arassment, intimidation, or threatening other students and/or teachers" as a severe disruption.... the school-district's policy [demonstrated] an awareness of Tinker's substantial-disruption standard, and the policy's violation [could] be used as evidence

[1] Ruger was a firearm brand (www.ruger.com)

supporting the reasonable forecast of a future substantial disruption (*Bell v. Itawamba County School Board*, 2015).

Using the second prong of *Tinker,* the court determined that the "school board reasonably could have forecast a substantial disruption at school, based on the threatening, intimidating, and harassing language in Bell's rap recording" and therefore upheld the school's suspension of Bell. On February 29, 2016, the United States Supreme Court declined to review the *Bell v. Itawamba County School Board* case *(Bell v. Itawamba County School Board*, 2016).

At the time that Bell posted the rap video, Mississippi had antibullying legislation in place that authorized school officials to discipline students for cyberbullying; however, the antibullying legislation did not give school administrators the authority to discipline students' off-campus behavior. The definition of bullying or harassing behavior specified that school administrators only had the authority to discipline students for behavior "that takes place on school property, at any school-sponsored function, or on a school bus" (Miss. Code Ann. § 37-11-67). The antibullying legislation that was in place in Mississippi at the time that Bell posted the rap video is the same legislation that was in place between October 31, 2016, and December 31, 2016.

In addition to the district courts of Mississippi, the United States Court of Appeals for the Fifth Circuit also had jurisdiction over the district courts of Louisiana and Texas. In 2011, when Bell posted the rap video, both Texas and Louisiana had antibullying legislation in place; however, only Texas had legislation in place that prohibited cyberbullying. Texas had legislation in place that prohibited bullying and cyberbullying in schools in 2011 (H.B. 1942, 2011). Substantial interference language from *Tinker* was included in Texas's antibullying legislation; however, school officials did not have the authority to discipline students for

behavior that occurred off school grounds (H.B. 1942, 2011). At the time that *Bell v. Itawamba* was decided, Louisiana had antibullying legislation in effect that prohibited cyberbullying in schools and included the substantial interference language from *Tinker* (Louisiana Revised Statute §17: 416.13). Substantial interference language from *Tinker* was not included in the antibullying legislation, and school officials did not have the authority to discipline students for off-campus behavior (Louisiana Revised Statute §17: 416.13).

Summarized Findings of Appellate Court Decisions

The outcomes of cases involving K-12 public schools and cyberbullying differed; however, in four out of the five cases, the appellate courts applied the *Tinker* test to determine whether or not the cyberbullying constituted a substantial interference in the school or a foreseeable risk of a substantial interference in the school. The various appellate court circuits involved in determining the cases as well as the specific details of each case could account for the different outcomes. Each United States appellate court circuit had jurisdiction over a specific geographical region of the country; the differences in state laws at the time of the cases could account for the differences in outcomes.

Additionally, the parties involved in each case involving K-12 public schools and cyberbullying may have impacted the outcome of the case; in four out of the five cases, the victim of the cyberbullying was a school staff member; in only one case the victim of the bullying was a student.

In a case involving student-to-teacher cyberbullying, *Wisniewski v. Board of Education* of Weedsport Central School District (2007), the United States Court of Appeals for the Second Circuit ruled that the school district did not violate Wisniewski's First Amendment rights when they suspended him for creating and sharing a blood-spattered icon of his teacher off campus.

The United States Court of Appeals for the Second Circuit had jurisdiction over the United States District Courts of the following states: New York, Vermont, and Connecticut (United States Courts, n.d.-a). At the time of this study, New York, Vermont, and Connecticut had antibullying legislation in place that included cyberbullying in the definition of bullying, included the substantial interference language from *Tinker*, and enabled school officials to discipline students for off campus behavior. The United States Court of Appeals for the Second Circuit cited the second prong of *Tinker* in its decision, asserting that sharing the violent icon with classmates constituted a foreseeable risk of substantial disruption in the school (*Wisniewski v. Board of Education of Weedsport Central School District*, 2007).

In another case that involved student-to-teacher bullying, *Bell v. Itawamba County School Board* (2015), the United States Court of Appeals for the Fifth Circuit ruled that the inflammatory rap that a student posted on the Internet off school grounds about two staff members could have created a foreseeable disruption at school. The court ruled that the school district was in their authority to take disciplinary action against Bell, citing the second prong of *Tinker*. The United States Court of Appeals for the Fifth Circuit had jurisdiction over the District Courts of the following states: Texas, Louisiana, and Mississippi (United States Courts, n.d.-a). At the time of this study, Texas, Louisiana, and Missisippi had antibullying legislation in place that enabled school officials to discipline students for bullying and cyberbullying; however, the states' antibullying legislation did not permit school officials to discipline students for off-campus behavior.

In two cases involving student cyberbullying of school officials that did not involve direct threats of violence against staff members, *Layshock v. Hermitage* (2011) and *J. S. v. Blue Mountain School District* (2011), United States Court of Appeals for the Third Circuit ruled in

favor of the students and their first amendment rights. The United States Court of Appeals for the Third Circuit had jurisdiction over the United States District Courts of the following states: New Jersey, Pennsylvania, and Delaware (United States Courts, n.d.-a). At the time of this study, New Jersey, Pennsylvania, and Delaware had antibullying legislation in place that included cyberbullying in the definition of bullying. Both New Jersey and Pennsylvania included the substantial interference language from *Tinker* in the antibullying legislation and enabled school officials to discipline students for bullying that occurred off school grounds. Delaware did not include the substantial interference language from *Tinker* in its antibullying legislation and did not permit school officials to discipline students for instances of bullying that occurred off-school grounds.

In both *Layshock v. Hermitage* (2011) and *J. S. v. Blue Mountain School District* (2011), students created inflammatory websites about school administrators. Unlike *Bell v. Itawamaba* (2015) and *Wisniewski v. Board of Education of Weedsport* (2007), the websites in *J. S. v. Blue Mountain School District* (2011) and *Layshock v. Hermitage* (2011) did not include threats of violence. In *J. S. v. Blue Mountain School District* the United States Court of Appeals for the Second Circuit determined that the instances of cyberbullying did not cause a substantial or material disruption in the school or a foreseeable risk of a substantial disruption in the school. Additionally, in *Layshock v. Hermitage* (2011), the school district conceded that the instance of cyberbullying created a material or substantial disruption in the school and suspended the student solely based on the contents of the website, which the appellate court ruled was a violation of the student's first amendment rights. The court ruled that using a picture of the principal from the district's website to create the page was not a punishable offense. Had the school district argued

that the MySpace page created a substantial interference or that a substantial interference could be reasonably forecasted, the outcome may have been different.

In a case involving student-student cyberbullying, *Kowalski v. Berkeley County School District* (2011), the United States Court of Appeals for the Fourth Circuit found that the school acted within their jurisdiction when they suspended a student for creating an inflammatory MySpace page about a fellow classmate. Citing the second prong of *Tinker*, the United States Court of Appeals for the Fourth Circuit found that a substantial disruption was reasonably foreseeable (*Kowalski v. Berkeley County School District*, 2011). In both *Kowalski v. Berkeley County schools* (2011) and *Bell v. Itawamba County School Board* (2015), the court noted that students violated the district's antibullying policy which was had been publicized and shared with students. The United States Court of Appeals for the Fourth Circuit had jurisdiction over the United States District Courts of Maryland, West Virginia, Virginia, North Carolina, and South Carolina (United States Courts, n.d.-a). At the time of this study, Maryland, West Virginia, Virginia, North Carolina, and South Carolina all included cyberbullying in their state antibullying legislation; however, in West Virginia, North Carolina, and South Carolina, school officials were not given the authority to discipline students for off-campus behavior. Furthermore, West Virginia did not include the substantial interference language from *Tinker* in its antibullying legislation.

The MySpace profile created by the student in *Kowalski v. Berkeley County School District* (2011) was similar to the inflammatory pages created by the students in *J. S. v. Blue Mountain School District* (2011) and *Layshock v. Hermitage* (2011) in that they were created off campus with the intent to harass or bully a particular person in the school district. The appellate

courts applied the *Tinker* test in both *Kowalski v. Berkeley County Schools* (2011) and *J. S. v. Blue Mountain School District* (2011); however, the outcomes of the cases were different.

The outcomes of the cases involving K-12 public school and cyberbullying were different; in some cases, the appellate courts considered both prongs of the *Tinker* test, in others, the appellate court only applied one prong of the *Tinker* test. In one case, *Layshock v. Hermitage* (2011), the *Tinker* test was not applied at all because the school district did concede that the cyberbullying did not create a substantial interference in the school.

The outcomes of the five appellate cases involving cyberbullying and K-12 public schools varied. The appellate courts applied the *Tinker* test differently depending on the details of each of the five cases. In *Wisniewski v. Board of Education of Weedsport Central School District* (2007) and *Bell v. Itawamba County School Board* (2015), two cases involving student cyberbullying of teachers that included direct threats of violence, the appellate courts ruled in favor of the school districts. In *Layshock v. Hermitage* (2011) and *J. S v. Blue Mountain School District* (2011), two cases involving student cyberbullying of school officials that did not involve direct threats, the Third Circuit Court of Appeals ruled in favor of the students. In *Kowalski v. Berkeley County School District* (2011), a case of student-to-student cyberbullying, the appellate court upheld the suspension of the student.

State Antibullying Legislation

All 50 states within the United States had antibullying legislation in place; however, the language and content of state antibullying laws varied widely from state to state (Refer to Appendix A for a detailed analysis of each state's antibullying legislation). While 47 states defined bullying to include cyberbullying, 3 states did not. In 40 states, school officials had the authority to sanction students for one-time instances of bullying, while 8 states defined bullying

as repeated actions, and 2 states did not include a definition of bullying in their antibullying legislation. Thirty-five states included the substantial interference or substantial disruption language from *Tinker* in their definition of bullying. In 25 states, school officials had the authority to discipline students for bullying that occurred off school grounds. Forty-eight states required school districts to develop antibullying policies and 47 states required school sanctions for bullying. Forty-eight states had criminal sanctions in place for bullying and 44 states had criminal sanctions in place for cyberbullying. See Table 2.

Table 2

Comparison of State AntiBullying Legislation in the United States

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School policy required	Language - Tinker	School sanction	Criminal sanction - Bullying	Criminal sanction - Cyberbullying
Alabama	Y	Y	N	N	Y	Y	Y	Y	Y
Alaska	Y	N	Y	N	Y	Y	Y	Y	Y
Arizona	Y	Y	Unclear- no definition	N	Y	N	Y	Y	Y
Arkansas	Y	Y	Y	Y	Y	Y	Y	Y	Y
California	Y	Y	Y	Y	Y	Y	Y	Y	Y
Colorado	Y	Y	Y	N	Y	N	Y	Y	Y
Connecticut	Y	Y	N	Y	Y	Y	Y	Y	Y
Delaware	Y	Y	Y	N	Y	N	Y	Y	Y
Florida	Y	Y	Y	Y	Y	Y	Y	Y	Y
Georgia	Y	Y	Y	Y	Y	Y	Y	Y	Y
Hawaii	Y	Y	Y	Y	N	N	Y	Y	Y
Idaho	Y	Y	Y	N	Y	N	Y	Y	Y

Illinois	Y	Y	Y	Y	Y	Y	Y	Y	Y
Indiana	Y	Y	N	Y	Y	Y	Y	Y	Y
Iowa	Y	Y	Y	N	Y	Y	Y	Y	Y
Kansas	Y	Y	Y	N	Y	N	N	Y	Y
Kentucky	Y	N	Y	Y	Y	N	Y	Y	Y
Louisiana	Y	Y	N	N	Y	N	Y	Y	Y
Maine	Y	Y	Y	Y	Y	N	Y	Y	Y
Maryland	Y	Y	Y	Y	Y	Y	Y	N	Y
Massachusetts	Y	Y	N	Y	Y	Y	Y	Y	Y
Michigan	Y	Y	Y	Y	Y	Y	Y	Y	Y
Minnesota	Y	Y	Y	Y	Y	Y	Y	Y	Y
Mississippi	Y	Y	Y	N	Y	Y	Y	Y	Y
Missouri	Y	Y	Y	Y	Y	Y	Y	Y	Y
Montana	Y	Y	Y	N	N	Y	N	Y	Y
Nebraska	Y	Y	N	N	Y	N	Y	Y	N
New Hampshire	Y	Y	Y	Y	Y	Y	Y	Y	N
New Jersey	Y	Y	Y	Y	Y	Y	Y	Y	Y
New Mexico	Y	Y	N	N	Y	Y	Y	Y	N
New York	Y	Y	Y	Y	Y	Y	Y	Y	N
Nevada	Y	Y	Y	N	Y	Y	Y	Y	Y
North Carolina	Y	Y	Y	N	Y	Y	Y	Y	Y
North Dakota	Y	Y	Y	N	Y	Y	Y	Y	Y
Ohio	Y	Y	Y	N	Y	N	Y	Y	Y
Oklahoma	Y	Y	Y	Y	Y	N	Y	Y	Y
Oregon	Y	Y	Y	N	Y	Y	Y	Y	N
Pennsylvania	Y	Y	Y	Y	Y	Y	Y	Y	Y
Rhode Island	Y	Y	Y	Y	Y	Y	Y	Y	Y
South Carolina	Y	Y	Y	N	Y	Y	Y	Y	Y
South Dakota	Y	Y	N	Y	Y	Y	Y	Y	Y
Tennessee	Y	Y	Y	Y	Y	Y	Y	Y	Y
Texas	Y	Y	Y	N	Y	Y	Y	Y	N
Utah	Y	Y	Y	Y	Y	N	Y	Y	Y

Vermont	Y	Y	Y	Y	Y	Y	Y	Y	Y
Virginia	Y	Y	Y	N	Y	N	Y	N	Y
Washington	Y	Y	Y	N	Y	Y	Y	Y	Y
West Virginia	Y	Y	Y	N	Y	N	Y	Y	Y
Wisconsin	Y	N	Unclear- no definition	N	Y	N	N	Y	Y
Wyoming	Y	Y	Y	N	Y	Y	Y	Y	Y
Total	*50*	*47*	*40*	*25*	*48*	*34*	*47*	*48*	*44*

Inclusion of Cyberbullying

Forty-seven states included cyberbullying or electronic harassment in their antibullying legislation. The only states that did not include cyberbullying in their antibullying legislation were Alaska, Kentucky, and Wisconsin. Despite the inclusion of cyberbullying in the antibullying legislation of 47 states, only school officials in 25 states had the authority to discipline students for off-campus behavior. The following states authorized the discipline of students for off-campus behavior: Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, and Vermont. Virginia did not enable school officials to discipline students for instances of bullying that occurred off school grounds in its state antibullying legislation; however, off campus behavior was included in Virginia Department of Education's Model Policy, which schools were required to implement under the state antibullying legislation.

Definition of Bullying

The majority of states included a definition of bullying in their antibullying legislation. Two states did not include a definition of bullying in their antibullying laws: Arizona and Wisconsin. Forty states defined bullying as a one-time event, while 8 states defined bullying as a

pattern of behavior. The following states defined bullying as a repeated action or pattern of behavior: Alabama, Connecticut, Indiana, Louisiana, Massachusetts, Nebraska, New Mexico, and South Dakota.

Thirty-four states included the substantial interference language from the decision in Tinker in the definition of bullying: Alabama, Alaska, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Washington, and Wyoming. Virginia did not include language from *Tinker* in its antibullying legislation; however, language from *Tinker* was included in the Virginia Department of Education's model policy, which school districts in Virginia were required to adopt.

In New Jersey, substantial interference was the threshold for determining whether or not any action could be classified as harassment, intimidation, or bullying. According to New Jersey Statutes Annotated § 18A:37-14, in order for an action to be classified as harassment, bullying, or intimidation, it had to "substantially [disrupt] or [interfere] with the orderly operation of the school or the rights of other students" (New Jersey Statutes Annotated § 18A:37-14).

In other states, substantial interference was included in the antibullying legislation, but not the threshold for determining whether or not an incident should be considered bullying. For example, according to New York Education Law § 13, behavior could be considered bullying if it:

> (a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or

> physical well-being; or (b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or (c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or (d) occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeably that the conduct, threats, and intimidation or abuse might reach school property.

In New York, behavior that substantially interfered with the rights of others was considered bullying; however, it was not the key factor used to determine whether or not an incident would be considered bullying, as it was in New Jersey.

Off-school Grounds

Twenty-five states had antibullying legislation in place that gave school officials the authority to discipline students for bullying or cyberbullying that occurred off school grounds: Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, and Vermont. Antibullying legislation in Virginia did not enable school officials to discipline students for off-campus behavior; however, bullying was defined to include off-campus behavior in the Virginia Department of Education's model policy, which schools in Virginia were required to adopt.

The majority of states that included off-campus behavior in their antibullying legislation also included the substantial interference language from *Tinker* in the antibullying legislation as well. Of the states that extended school official's authority to behavior that occurred off-school grounds, only Hawaii, Kentucky, Maine, Ohio, and Utah did not include the substantial interference language from *Tinker*. In the 21 states that included both language from *Tinker* and

off-campus behavior in the antibullying legislation, substantial interference served as a threshold for determining whether or not the action was considered bullying. For example, according to Massachusetts General Laws Chapter § 71 Section 370, bullying was prohibited on school grounds, in school vehicles, and at school-sponsored events and activities as well as:

> At a location, activity, function, or program that is not-school related, or through the use of a technology or an electronic device that is not owned, leased, or used by a school district or school, if the bullying creates a hostile environment at school for the victim, infringes on the rights of the victim at school or materially and substantially disrupts the education process or the orderly operation of a school. (Massachusetts G.L. Chapter § 71 Section 370)

The inclusion of the substantial interference language limited school official's authority to discipline students for instances of cyberbullying in the 21 states that included both off school grounds and language from *Tinker* in their antibullying legislation. School officials did not have the authority to discipline students for egregious behavior that occurred off school grounds that did not substantially interfere with the school environment in those 21 states.

School Policy Requirement

Forty-eight states had legislation in place that required school districts to implement a school policy to prohibit bullying. Only two states, Hawaii and Montana, did not have a school policy requirement in their antibullying legislation. Despite the inclusion of the school policy requirement, school policy requirements varied significantly from state to state. Some state laws included specific requirements that school policies needed to have such as naming antibullying specialists, specific timelines and procedures for investigating instances of bullying, timelines for notifying parents, procedures for publicizing the school policy, and education for staff and

students. Some states merely had a school policy requirement included in their antibullying legislation but did not include specific requirements about the school policy in their antibullying legislation.

School Sanction

Forty-three states had antibullying legislation in place that included a school sanction for bullying. Only three states did not have a school sanction requirement for bullying: Kansas, Montana, and Wisconsin. Although there was state legislation in place to ban bullying in K-12 public schools in Kansas, Montana, and Wisconsin, the antibullying legislation did not impose a school sanction for bullying or cyberbullying. Although there was no school sanction required in Kansas, Montana, and Wisconsin for bullying or cyberbullying, there were criminal sanctions in place in Kansas, Montana, and Wisconsin for bullying and cyberbullying.

Criminal Sanctions for Bullying and Cyberbullying

The majority of states had criminal laws in place that prohibited face-to-face bullying and cyberbullying. Most of the criminal laws that addressed face-to-face bullying were labeled as stalking or harassment; however, the laws had definitions that were similar to the definition of bullying as found in the state antibullying legislation. Forty-eight states had legislation in place that prohibited face-to-face bullying; only two states did not have legislation in place that prohibited face-to-face bullying: Maryland and Virginia.

Forty-four states had legislation in place that prohibited cyberbullying. Cyberbullying was often given the term *cyberstalking*. Often, cyberbullying was included in the states' stalking or harassment laws. Only six states did not have legislation in place to criminalize electronic harassment or cyberbullying: Nebraska, New Hampshire, New Mexico, New York, Oregon, and Texas.

Comparison of State Laws via Each Circuit Court of Appeals

In this section, state antibullying legislation data was grouped and compared by regional circuit of the United States Court of Appeals. Grouping the data by regional appellate court circuit enabled practitioners and lawmakers to see if similarities existed among states in the same appellate court region. By December 2016, the United States Court of Appeals for the Second Circuit, The United States Court of Appeals for the Third Circuit, The United States Court of Appeals for the Fourth Circuit, and the United States Court of Appeals for the Fifth Circuit had all heard cases that involved cyberbullying and K-12 public schools.

United States Court of Appeals for the First Circuit. The United States Court of Appeals for the First Circuit had jurisdiction over Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island (Geographic Boundaries, n.d.). As Puerto Rico was not a state, information about antibullying legislation in Puerto Rico was not included in this study.

All four states under the jurisdiction of the United States Court of Appeals for the First Circuit included cyberbullying in their antibullying legislation, enabled school administrators to discipline students for off-campus behavior, required a school antibullying policy, and had a criminal sanction in place for bullying (Maine Revised Stat 20-A § 6554; Massachusetts General Laws Chapter § 71 Section 370; New Hampshire Revised Statutes Ann. § 193-F:4; Rhode Island General Laws § 16-21-34); however, there were significant differences in each state's antibullying legislation. New Hampshire was the only state under the jurisdiction of the United States Court of Appeals for the First Circuit that did not have legislation in place that criminalized cyberbullying. See Table 3.

Table 3

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the First Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Maine	Y	Y	Y	Y	Y	N	Y	Y	Y
Massachusetts	Y	Y	N	Y	Y	Y	Y	Y	Y
New Hampshire	Y	Y	Y	Y	Y	Y	Y	Y	N
Rhode Island	Y	Y	Y	Y	Y	Y	Y	Y	Y

According to antibullying legislation in Massachusetts, bullying was a repeated action. According to Massachusetts General Laws Chapter § 71 Section 370, bullying was the "repeated use…of a written, verbal or electronic expression or a physical act or gesture or any combination thereof…." In Maine, New Hampshire, and Rhode Island, single events could be deemed bullying. For example, in New Hampshire, bullying was defined as "a single significant incident or a pattern of incidents" (New Hampshire Revised Statutes Ann. § 193-F:4).

The only state under the jurisdiction of the United States Court of Appeals for the First Circuit that did not include language from *Tinker* in its antibullying legislation was Maine; Massachusetts, New Hampshire, and Rhode Island all included language from *Tinker* in their antibullying legislation. For example, in Rhode Island, written, verbal, electronic, or physical behavior that materially and substantially disrupts the education process or the orderly operation of a school was considered bullying (Rhode Island General Laws § 16-21-34).

United States Court of Appeals for the Second Circuit. The United States Court of Appeals for the Second Circuit had jurisdiction over the district courts of Connecticut, New York, and Vermont ("Geographic Boundaries," n.d.). All three states under the jurisdiction of the United States Court of Appeals for the Second Circuit had antibullying legislation in place that included cyberbullying, enabled administrators to discipline students for behavior that occurred off-school grounds, required a school antibullying policy, included language from *Tinker* in the definition of bullying, required a school sanction for bullying, and had legislation in place that criminalized bullying. See Table 4.

Table 4

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Second Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Connecticut	Y	Y	N	Y	Y	Y	Y	Y	Y
New York	Y	Y	Y	Y	Y	Y	Y	Y	N
Vermont	Y	Y	Y	Y	Y	Y	Y	Y	Y

Although the antibullying legislation among the three states under the jurisdiction of the United States Court of Appeals for the Second Circuit was similar, it was not uniform. New York did not have legislation in place that criminalized cyberbullying. According to antibullying legislation in Connecticut, bullying was a repeated action; however, in New York and Vermont, one-time events could be considered bullying. According to Connecticut General Statutes § 10-222d, bullying was defined as "the repeated use… of a written, verbal or electronic

communication or a physical act or gesture ….” According to New York Education Law § 11, bullying was “the creation of a hostile environment by conduct or by threats, intimidation, or abuse, including cyberbullying …. According to Vermont’s antibullying legislation, harassment was “an incident or incidents of verbal, written, visual, or physical conduct (16 v.S.A. § 11) and bullying was defined as “any overt act or combination of acts” (16 v.S.A. § 11).

Antibullying legislation was strengthened in Vermont in 2004, following the tragic suicide of 13-year old Ryan Patrick Halligan in 2003 (Hoff, 2014). Halligan was a victim of cyberbullying, and his father, John Halligan, worked with his state representative to pass Act 117 (Hoff, 2014). Act 117 prohibited face-to-face bullying that occurred “during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity” (Act 117). The antibullying legislation was later strengthened to include electronic acts of bullying and prohibit bullying that did “not occur during the school day on school property, on a school bus, or at a school-sponsored activity and can be shown to pose a clear and substantial interference with another student's right to access educational programs” (16 v.S.A. § 11). Additionally, Halligan wrote Act 114, An Act Relating To Teaching About Signs Of And Responses To Depression And Risk Of Suicide In Public Schools, which was passed in 2006 (Ryan’s Story, n.d.). Act 114 required school districts to include instruction about the signs of depression and risk of suicide in health education (Ryan’s Story, n.d.)

United States Court of Appeals for the Third Circuit. The United States Court of Appeals for the Third Circuit had jurisdiction over Delaware, New Jersey, Pennsylvania, and the

United States Virgin Islands (Geographic Boundaries, n.d.). As the United States Virgin Islands was not a state, information about antibullying legislation in the United States Virgin Islands was not included in this study.

All three states whose district courts were under the jurisdiction of the United States Court of Appeals for the Third Circuit had antibullying legislation in place that included cyberbullying, defined bullying as a one-time event, required a school antibullying policy, had a school sanction in place for bullying, and had a criminal sanctions in place for bullying and cyberbullying. Delaware did not enable administrators to discipline students for behavior that occurred off-school grounds and did not include language from *Tinker* in its antibullying legislation. See Table 5.

Table 5

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Third Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Delaware	Y	Y	Y	N	Y	N	Y	Y	Y
New Jersey	Y	Y	Y	Y	Y	Y	Y	Y	Y
Pennsylvania	Y	Y	Y	Y	Y	Y	Y	Y	Y

New Jersey and Pennsylvania included language from *Tinker* in their antibullying legislation. New Jersey's antibullying legislation was strengthened in 2011 in response to 18-year old Rutgers University student Tyler Clementi's death by suicide. Clementi was a victim of cyberbullying during his freshman year at Rutgers University; following his death, antibullying

legislation in New Jersey was modified to require schools to adopt antibullying policies, develop a school safety team, and adhere to a timeline and procedure for investigating cases of harassment, intimidation, or bullying (Hu, 2011). In New Jersey, substantial disruption or interference was the threshold for determining whether or not an incident should be considered bullying. According to New Jersey Statutes Annotated § 18A:37-14, harassment, intimidation, or bullying was defined as "any gesture, any written, verbal, or physical act, or any electronic communication … that substantially disrupts or interferes with the orderly operation of the school or the rights of other students …." In order for an action to be considered harassment, intimidation, or bullying in New Jersey, school officials had to consider whether or not the action caused a substantial disruption or interference in the school or the rights of others.

Antibullying legislation in Pennsylvania also included the substantial interference language from *Tinker* in the definition of bullying; however, the substantial disruption or interference was one possible characteristic used to determine whether or not an incident would be considered bullying, not a requirement. For example, according to Pennsylvania Consolidated Statute 24 § 13-1303.1-A, bullying was defined as:

> An intentional electronic, written, verbal or physical act, or a series of acts … that has the effect of doing any of the following: (i) substantially interfering with a student's education; (ii) creating a threatening environment; or (iii) substantially disrupting the orderly operation of the school.

In Pennsylvania, behavior that created a threatening environment but did not substantially interfere with a student's education or disrupt the orderly operation of the school could be considered bullying.

United States Court of Appeals for the Fourth Circuit. The United States Court of Appeals for the Fourth Circuit had jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia (Geographic Boundaries, n.d.). All five states that were under the jurisdiction of the United States Court of Appeals for the Fourth Circuit had antibullying legislation in effect that included cyberbullying, defined bullying as a one-time event, required schools to implement an antibullying policy, required a school sanction for bullying, and criminalized cyberbullying. See Table 6.

Table 6

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Fourth Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Maryland	Y	Y	Y	Y	Y	Y	Y	N	Y
North Carolina	Y	Y	Y	N	Y	Y	Y	Y	Y
South Carolina	Y	Y	Y	N	Y	Y	Y	Y	Y
Virginia	Y	Y	Y	N	Y	N	Y	N	Y
West Virginia	Y	Y	Y	N	Y	N	Y	Y	Y

Despite the similarities that existed among antibullying legislation in Maryland, North Carolina, South Carolina, Virginia, and West Virginia, the antibullying legislation in those five states was not uniform. In Maryland and Virginia, school officials had the authority to discipline students for off-campus behavior; in North Carolina, South Carolina, and West Virginia school officials did not have the authority to discipline students for behavior that occurred off school

grounds. Maryland, North Carolina, South Carolina, and Virginia included language from *Tinker* in the antibullying legislation; West Virginia did not include the substantial interference language from *Tinker* in the definition of bullying. Furthermore, Maryland and Virginia did not have legislation in place that criminalized face-to-face bullying; North Carolina, South Carolina, and West Virginia all had legislation in place that criminalized face-to-face bullying.

According to antibullying legislation in North Carolina, South Carolina, and West Virginia, school officials did not have the authority to discipline students for off-campus behavior (North Carolina General Statute § 115C-407.15; South Carolina Code Annotated § 59-63-120; West Virginia Code § 18-2C-3). For example, according to West Virginia Code § 18-2C-3, school districts were required to implement antibullying policies that prohibited harassment, intimidation, or bullying "on school property, a school bus stop or at school sponsored events." In Maryland and Virginia, school officials had the authority to discipline students for instances of bullying that occurred off school grounds. According to Maryland Code § 7-424.1, school officials had the authority to discipline students for "bullying, harassment, or intimidation," that "1. Occurs on school property, at a school activity or event, or on a school bus; or 2. Substantially disrupts the orderly operation of a school." The inclusion of substantial disruption in Maryland Code § 7-424.1 gave school officials the authority to discipline students for cyberbullying or acts of bullying that occurred outside of school, but had a substantial interference in the school.

Although language from *Tinker* and the location of bullying was not specifically included in Virginia's antibullying legislation, the substantial disruption language from *Tinker* and off-school grounds behavior was included in the Department of Education's model policy, which all schools in Virginia were required to adopt in accordance with Virginia Code Annotated § 22.1-

279.6. According to the Department of Education of Virginia's Model Policy, bullying "in any community setting where the behavior or interaction of students extended beyond the school environment but [had] a negative impact on the academic setting" was prohibited (Model Policy: to Address Bullying in Virginia's Public Schools, 2013). Additionally, school officials had the authority to discipline students for incidents of bullying that occurred "through a communication device, computer system, or computer network in a school or off campus which poses a reasonable forecast of substantial disruption of school activities" (Model Policy: to Address Bullying in Virginia's Public Schools, 2013).

United States Court of Appeals for the Fifth Circuit. The United States Court of Appeals for the Fifth Circuit had jurisdiction over Louisiana, Mississippi, and Texas (Geographic Boundaries, n.d.). Louisiana, Mississippi, and Texas had legislation in place that prohibited both bullying and cyberbullying in schools; however, the state antibullying legislation did not give school officials the authority to discipline students for off-campus behavior. For example, in Louisiana, school officials could only discipline students for bullying that occurred:

While on school property, at a school-sponsored or school-related function or activity, in any school bus or van, at any designated school bus stop, in any other school or private vehicle used to transport students to and from schools, or any school-sponsored activity or event (LA Revised Stat: 17 § 416.13).

Although school officials in Louisiana had the authority to discipline students for off-campus events that were school-sponsored, such as incidents that occurred while on a field trip or at a school dance, school officials did not have the authority to discipline students for cyberbullying that happened online while students were at home. Antibullying legislation in Louisiana,

Missisippi, and Texas required schools to implement antibullying policies, included school sanctions for bullying, and criminalized face-to-face bullying.

Although similarities existed among the three states under the jurisdiction of the United States Court of Appeals for the Fifth Circuit, there were differences as well. In Louisiana, one-time incidents were not considered bullying; in Mississippi and Texas, one-time offences could constitute bullying. Louisiana antibullying legislation did not include language from *Tinker*; substantial interference language from *Tinker* was included in the antibullying legislation in Mississippi and Texas. In Louisiana and Mississippi there was legislation in place that criminalized cyberbullying; in Texas there was no criminal sanction in place for cyberbullying. See Table 7.

Table 7

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Fifth Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Louisiana	Y	Y	N	N	Y	N	Y	Y	Y
Mississippi	Y	Y	Y	N	Y	Y	Y	Y	Y
Texas	Y	Y	Y	N	Y	Y	Y	Y	N

United States Court of Appeals for the Sixth Circuit. The United States Court of Appeals for the Sixth Circuit had jurisdiction over Kentucky, Michigan, Ohio, and Tennessee (Geographic Boundaries, n.d.). Kentucky, Michigan, Ohio, and Tennessee all had antibullying legislation in place that prohibited bullying in schools, required schools to implement

antibullying policies, criminalized face-to-face bullying, and criminalized cyberbullying; however, distinct differences existed among the antibullying legislation that was in place in those four states. For example, cyberbullying was included in antibullying legislation in Michigan, Ohio and Tennessee; however, cyberbullying was not included in Kentucky's antibullying legislation. Neither Kentucky nor Ohio included language from *Tinker* in their antibullying legislation; however, both Michigan and Tennessee did include language from *Tinker* in their state antibullying laws. See Table 8.

Table 8

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Sixth Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Kentucky	Y	N	Y	Y	Y	N	Y	Y	Y
Michigan	Y	Y	Y	Y	Y	Y	Y	Y	Y
Ohio	Y	Y	Y	N	Y	N	Y	Y	Y
Tennessee	Y	Y	Y	Y	Y	Y	Y	Y	Y

According to Kentucky Code § 158.148, bullying was defined as "any unwanted verbal, physical or social behavior that involves a real or perceived power imbalance and is repeated or has the potential to be repeated […]." Neither "electronic harassment" nor "cyberbullying" were included in the definition of bullying; therefore, school administrators only had the authority to discipline students for face-to-face bullying. Substantial interference or disruption language from *Tinker* was not included in the definition of bullying; however, school officials had the

authority to discipline students for bullying that occurred on campus, at school-sponsored events, or on school transportation, or bullying "that disrupts the education process" (Kentucky Code § 158.148).

In Ohio, school officials had the authority to discipline students for cyberbullying; however, school officials did not have the authority to discipline students for off-campus behavior. School officials in Ohio only had the authority to discipline students for acts of harassment, intimidation, and bullying that occurred "on school property, on a school bus, or at school-sponsored events" (Ohio Revised Cod Annotated § 3313.666). School officials did not have the authority to discipline students for online bullying that occurred off school grounds. Substantial interference language from *Tinker* was not included in Ohio's antibullying legislation. Ohio's antibullying legislation did not include language from *Tinker* or enable school administrators to discipline students for acts of bullying that occurred off school grounds; however, in 2012, the law was strengthened to require school districts to make changes to their antibullying policies to prevent bullying on school buses and prohibit cyberbullying (The Impact of House Bill 116 on your School District, 2012). "The Jessica Logan Act," House Bill 116, was written in memory of Jessica Logan, a student that died by suicide after being bullied electronically (The Impact of House Bill 116 on your School District, 2012).

United States Court of Appeals for the Seventh Circuit. The United States Court of Appeals for the Seventh Circuit had jurisdiction over Illinois, Indiana, and Wisconsin (Geographic Boundaries, n.d.). All three states that had district courts under the jurisdiction of the United States Court of Appeals for the Seventh Circuit had legislation in place that prohibited bullying in schools, required schools to implement an antibullying policy, and had legislation in place that criminalized both bullying and cyberbullying. While Illinois and Indiana both included

cyberbullying in their antibullying legislation, Wisconsin did not. Furthermore, Wisconsin did not include a definition for bullying in its antibullying legislation.

Both Illinois and Indiana included cyberbullying in their antibullying legislation, enabled school officials to discipline students for instances of bullying that occurred off-school grounds, included language from *Tinker* in their antibullying legislation, and included a school sanction for bullying. According to 105 Illinois Compiled Statutes § 27-23.7, "any severe or pervasive physical or verbal act or conduct" could be considered bullying; however, according to Indiana Code Annotated § 20-333-9, bullying was "overt, unwanted, repeated acts or gestures." In Illinois, one-time actions could be considered bullying; however, in Indiana, only repeated incidents could be considered bullying.

Wisconsin did not include a definition for bullying in its antibullying legislation and did not give school officials the authority to discipline students for instances of bullying that include cyberbullying in its antibullying legislation, did not enable school officials to discipline for off-school behavior, did not include language from *Tinker* in its antibullying legislation, and did not require a school sanction for bullying. Wisconsin's Department of Instruction's Model Bullying Policy defined bullying as "deliberate or intentional behavior using words or actions, intended to cause fear, intimidation, or harm" (Model Bullying Policy, n.d.). Cyberbullying was included in the definition of bullying in Wisconsin's Model Bullying Policy; however, school districts were not required to implement the model policy (Model Bullying Policy, n.d.). See Table 9.

Table 9

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Seventh Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Illinois	Y	Y	Y	Y	Y	Y	Y	Y	Y
Indiana	Y	Y	N	Y	Y	Y	Y	Y	Y
Wisconsin	Y	N	Unclear-no definition	N	Y	N	N	Y	Y

United States Court of Appeals for the Eighth Circuit. The United States Court of Appeals for the Eighth Circuit had jurisdiction over the district courts of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota (Geographic Boundaries, n.d.). Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota all had antibullying legislation in place that prohibited bullying in schools, prohibited cyberbullying in schools, required schools to implement an antibullying policy, imposed a school sanction for bullying, and also had a criminal sanction in place for face-to-face bullying. In Nebraska and South Dakota, one-time-events were not considered bullying; in Arkansas, Iowa, Minnesota, Missouri, and North Dakota, one-time events could be considered bullying. Nebraska was the only state with district courts that were under the jurisdiction of the United States Court of Appeals for the Eighth Circuit that did not include language from *Tinker* in the antibullying legislation. Additionally, Nebraska was the only state in the eighth circuit that did not have a criminal sanction in place for cyberbullying. See Table 10.

Table 10

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Eighth Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Arkansas	Y	Y	Y	Y	Y	Y	Y	Y	Y
Iowa	Y	Y	Y	N	Y	Y	Y	Y	Y
Minnesota	Y	Y	Y	Y	Y	Y	Y	Y	Y
Missouri	Y	Y	Y	Y	Y	Y	Y	Y	Y
Nebraska	Y	Y	N	N	Y	N	Y	Y	N
North Dakota	Y	Y	Y	N	Y	Y	Y	Y	Y
South Dakota	Y	Y	N	Y	Y	Y	Y	Y	Y

Iowa, Nebraska, and North Dakota did not give school officials the authority to discipline students for instances of bullying that occurred off school grounds. In Iowa, although cyberbullying was included in the definition of bullying, school officials could only discipline students for instances of bullying that occurred "in school, on school property, or at any school function or school-sponsored activity" (Iowa Administrative Code § 281-12.3). In Arkansas, Minnesota, and Missouri, school officials had the authority to discipline students for acts of bullying that occurred off school grounds. For example, according to Arkansas' antibullying legislation, school officials had the authority to discipline students for electronic acts of bullying regardless of "whether or not the electronic act originated on school property or with school equipment" (Arkansas Code Annotated § 6-18-514).

In 2008, Senate Bills 818 and 715 were passed, which made harassment, including cyberbullying, a class D felony if "committed by a person twenty-one years of age or older against a person seventeen years of age or younger" (Senate Bills 818 & 715, 2008). Additionally, school districts were required to report acts of harassment and stalking to local law enforcement (Senate Bills 818 & 715, 2008). The harassment legislation was strengthened, in part, due to the efforts of Tina Meier, whose 13-year old daughter, Megan Meier, died by suicide after being bullied online by an adult in the neighborhood (Phillips, 2013; ABC News, 2007).

United States Court of Appeals for the Ninth Circuit. The United States Court of Appeals for the Ninth Circuit had jurisdiction over the district courts of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington (Geographic Boundaries, n.d.). Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington all had antibullying legislation in place that prohibited bullying in schools. Additionally, each of the nine states had a criminal sanction in place for face-to-face bullying. Montana was the last state in the United States to implement antibullying legislation; in 2015, Montana passed antibullying legislation after more than 10 years of proposals (Baumann, 2015).

Numerous differences existed among antibullying legislation in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. For example, only in California and Hawaii did school officials have the authority to discipline students for off-campus behavior. Arizona's antibullying legislation did not include a definition of bullying; in Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, bullying was defined as a one-time event. State antibullying legislation required school districts to implement a school antibullying policy in Alaska, Arizona, California, Idaho, Nevada, Oregon, and Washington; however, schools in Hawaii and Montana were not required to implement an

antibullying policy. Eight out of the nine states under the jurisdiction of the US Court of Appeals for the Ninth Circuit criminalized cyberbullying; Oregon did not have a criminal sanction in place for cyberbullying. See Table 11.

Table 11

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Ninth Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Alaska	Y	N	Y	N	Y	Y	Y	Y	Y
Arizona	Y	Y	Unclear-no definition	N	Y	N	Y	Y	Y
California	Y	Y	Y	Y	Y	Y	Y	Y	Y
Hawaii	Y	Y	Y	Y	N	N	Y	Y	Y
Idaho	Y	Y	Y	N	Y	N	Y	Y	Y
Montana	Y	Y	Y	N	N	Y	N	Y	Y
Nevada	Y	Y	Y	N	Y	Y	Y	Y	Y
Oregon	Y	Y	Y	N	Y	Y	Y	Y	N
Washington	Y	Y	Y	N	Y	Y	Y	Y	Y

Of the nine states whose district courts were under the jurisdiction of the United States Court of Appeals for the Ninth Circuit, only one did not include cyberbullying in its antibullying legislation; Alaska's antibullying legislation did not give school officials the authority to discipline students for cyberbullying. According to Alaska Statute § 14.33.250, "harassment, intimidation, and bullying" was defined as "an intentional, written, oral, or physical act;"

electronic acts were not included in the definition of bullying. Although Alaska did not include cyberbullying in its definition of bullying, there was a criminal sanction in place for cyberbullying in Alaska. According to Alaska Senator Kevin Meyer, the criminal sanction for cyberbullying would "give parents and schools more power to stop these bullies and protect our children from this cycle of aggression that can be so harmful and affects so many Alaskans families" (as cited in Cyberbullying Now Criminalized in Alaska, 2014). Senator Meyer was motivated to introduce the law to criminalize cyberbullying by the "horribly sad situation …in the Lower 48, where at least a dozen teen suicides have been directly linked to Facebook, e-mails and text messages sent from electronic devices" (as cited in Cyberbullying Now Criminalized in Alaska, 2014).

In 2011 the definition of electronic act in California's antibullying legislation was amended to include "a post on a social network Internet website (AB 746, 2011). The change in definition was made to address an increase in student cyberbullying (Roscorla, 2011). According to California Assembly member Nora Campos:

> Given the recent rise in cyberbullying and the tragic impact it has had and continued to have on the lives of students, … it was necessary to specifically include… social networking sites into the existing education code. (as cited in Roscorla, 2011)

According to Campos (2011), as technology changed, antibullying legislation needed to change as well (as cited in Rosocorla, 2011).

In Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington school officials did not explicitly have the authority to discipline students for instances of bullying that occurred off school grounds. In Montana, there was no mention of the location of the bullying; therefore, it was not clear whether or not school administrators had the authority to discipline students for

behavior that occurred off school grounds. In Washington, the definition of "harassment, intimidation, or bullying" did not specify whether or not school officials had the authority to discipline students for bullying that occurred off school grounds (RCW § 28A.300.285). Bullying that had "the effect of substantially disrupting the orderly operation of the school (RCW § 28A.300.285)" was a punishable offense; therefore, school officials might consider disciplining students for acts of cyberbullying that occurred off school grounds if it substantially interfered with the school.

Nevada's antibullying legislation did not specify where the bullying had to occur; however, according to Nevada Revised Statutes § 388.132, "no form of bullying or cyber-bullying will be tolerated within the system of public education in [Nevada]." It did not appear that school officials had the authority to discipline students for instances of bullying that occurred off school grounds. According to Oregon Revised Statutes § 339.351, school officials had the authority to discipline students for bullying that took place "on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop."

In California, Hawaii, and Washington, school officials had the authority to discipline students for instances of bullying that occurred off school grounds. For example, according to Hawaii Administrative Code § 8-19-2, cyberbullying was defined as "electronically transmitted acts" that occurred:

> (1) On campus or other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property; (2) Through a department of education data system without department of education authorized communication; or (3) Through an off-campus computer network

> that is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student or school personnel, or both.

In Hawaii, school officials had the authority to discipline students for instances of cyberbullying that occurred off campus through a computer network; however, the definition did not include other electronic means of communication, such as through off-campus use of cellular network. In California's antibullying legislation, "electronic acts" was defined as "the creation and transmission originated on or off the schoolsite, by means of an electronic device" (AB-256, 2013); therefore, school officials had the authority to discipline students for acts of cyberbullying that occurred on or off school grounds.

United States Court of Appeals for the Tenth Circuit. The United States Court of Appeals for the Tenth Circuit had jurisdiction over the district courts of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming (Geographic Boundaries, n.d.). Colorado, Kansas, New Mexico, Oklahoma, and Utah all had antibullying legislation in place that prohibited bullying and cyberbullying in schools, required school districts to implement an antibullying policy, and imposed a criminal sanction for bullying.

There were a number of differences that existed among the state antibullying legislation in Colorado, Kansas, New Mexico, Oklahoma, and Utah. New Mexico's antibullying legislation did not define bullying as a one-time action; in Colorado, Kansas, Oklahoma, Utah, and Wyoming, bullying was defined as a one-time event. School officials had the authority to discipline students for off-campus behavior in Oklahoma and Utah; however, school officials did not have the authority to discipline students for off-campus behavior in Colorado, Kansas, New Mexico, or Wyoming. Substantial interference or disruption language from *Tinker* was included

in New Mexico and Wyoming's antibullying legislation; language from *Tinker* was not included in the antibullying legislation in Colorado, Kansas, Oklahoma, or Utah. In Kansas, the antibullying legislation did not require a school sanction for bullying; in Colorado, New Mexico, Oklahoma, Utah, and Wyoming there was a school sanction in place for bullying. Finally, there was no criminal sanction in place for cyberbullying in New Mexico; Colorado, Kansas, Oklahoma, Utah and Wyoming all had antibullying legislation in place that criminalized cyberbullying. See Table 12.

Table 12

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Tenth Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction –	Criminal Sanction -
Colorado	Y	Y	Y	N	Y	N	Y	Y	Y
Kansas	Y	Y	Y	N	Y	N	N	Y	Y
New Mexico	Y	Y	N	N	Y	Y	Y	Y	N
Oklahoma	Y	Y	Y	Y	Y	N	Y	Y	Y
Utah	Y	Y	Y	Y	Y	N	Y	Y	Y
Wyoming	Y	Y	Y	N	Y	Y	Y	Y	Y

According to New Mexico Administrative Code § 6.12.7.7, bullying was defined as "any repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof;" therefore, bullying was defined as habitual or repeated actions, as opposed to one-time actions. In Colorado, bullying was defined as "any written or verbal expression, or

physical or electronic act or gesture, or a pattern thereof;" therefore, school officials had the authority to discipline students for one-time acts of bullying.

In Colorado, Kansas, New Mexico, and Wyoming, school officials did not have the authority to discipline students for off-campus behavior. For example, in Kansas, school officials only had the authority to discipline students for acts of bullying that occurred "on school property, in a school vehicle, or at a school-sponsored activity or event (Kansas Code § 72-8256). School officials did not have the authority to discipline students for acts of cyberbullying that occurred online, after school. In Oklahoma and Utah, school officials had the authority to discipline students for bullying behavior that occurred off school grounds. For example, in Oklahoma, school officials had the authority to discipline students for acts of cyberbullying that occurred on or off school grounds, provided that the communication was "specifically directed at students or school personnel and [concerned] harassment, intimidation, or bullying at school" (Oklahoma Statute § 70-24-100.4).

United States Court of Appeals for the Eleventh Circuit. The United States Court of Appeals for the Eleventh Circuit had jurisdiction over the district courts of Alabama, Florida, and Georgia (Geographic Boundaries, n.d.). Alabama, Florida, and Georgia all had antibullying legislation in place that prohibited bullying and cyberbullying in schools, included language from *Tinker*, required school districts to implement antibullying policies, and imposed a school sanction for bullying. In Alabama, Florida, and Georgia, bullying and cyberbullying were criminal offenses. See Table 13.

Table 13

State Antibullying Legislation of States Under the Jurisdiction of the US Court of Appeals for the Eleventh Circuit

State	AntiBullying Law	Cyberbullying Included	One-Time Event	Off-School Grounds	School Policy Required	Language – Tinker	School Sanction	Criminal Sanction – Bullying	Criminal Sanction - Cyberbullying
Alabama	Y	Y	N	N	Y	Y	Y	Y	Y
Florida	Y	Y	Y	Y	Y	Y	Y	Y	Y
Georgia	Y	Y	Y	Y	Y	Y	Y	Y	Y

Alabama's antibullying legislation differed significantly from Florida and Georgia's antibullying legislation as it did not define bullying as a one-time event and did not enable school officials to discipline students for acts of bullying that occurred off-school grounds. Antibullying legislation in Florida and Georgia defined bullying as one-time acts and enabled school officials to discipline students for off-campus behavior. In Alabama, bullying was defined as "a continuous pattern of intentional behavior" (Alabama Code § 16-28B-4); therefore, school officials only had the authority to discipline students for chronic or repeated behavior.

Florida's antibullying legislation was strengthened in 2008 through the Jeffrey Johnson Stand Up for All Students Act, which was written following the tragic suicide of 15-year old Jeffery Johnson, a victim of cyberbullying (Chang, Owens, and Brady, 2008). The Jeffery Johnson Stand Up for All Students Act prohibited bullying and cyberbullying in Florida schools (Chang, Owens, and Brady, 2008). In Florida bullying was defined as "systematically and chronically inflicting physical hurt or psychological distress on one or more students" (Florida Statutes Annotated § 1006.147), and harassment was defined as "any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal, or physical conduct"

(Florida Statutes Annotated § 1006.147). Bullying was defined as a repeated action according to Florida Statutes § 1006.147; however, harassment was defined as a one-time act. School administrators had the authority to discipline students for one-time acts in Florida.

In Alabama, school officials only had the authority to discipline students for acts of bullying that took place "on school property, on a school bus, or at a school-sponsored function" (Alabama Code § 16-28 B-3). In Florida and Georgia, school officials had the authority to discipline students for off-campus behavior. For example, according to Georgia Code Annotated § 20-2-751.4, school officials had the authority to discipline students for acts of cyberbullying "which occur through the use of electronic communication, whether or not such electronic act originated on school property or with school equipment" (Georgia Code Annotated § 20-2-751.4).

Summarized Findings of State Antibullying Legislation

At the time of this study, all 50 states had antibullying legislation in place. 47 states included cyberbullying in their antibullying legislation; Alaska, Kentucky, and Wisconsin did not include electronic harassment or cyberbullying in their state antibullying legislation. 25 states included off-campus behavior in the antibullying legislation, giving school officials the authority to discipline students for behavior that occurred off school grounds. At the time of this study, 48 states required school districts to adopt an antibullying policy; only Hawaii and Montana did not include a school policy requirement in their antibullying legislation. Forty states classified bullying as a one-time event or act, while 10 states defined bullying as a pattern of behavior. Thirty-four states included "substantial interference" or "substantial disruption" language from the Supreme Court decision in *Tinker* in their antibullying legislation. At the time of this study, 47 states imposed a school sanction for bullying, 48 states imposed a criminal

sanction for face-to-face verbal harassment or bullying; and only Virginia and Maryland did not have legislation in place that criminalized face-to-face verbal harassment or bullying. At the time of this study, 44 states imposed a criminal sanction for electronic harassment or cyberbullying.

There were commonalities that existed among the state antibullying legislations in states that were under the jurisdiction of the same circuit court of appeals. For example, the states under the jurisdiction of the United States Court of Appeals for the First Circuit all included cyberbullying in their antibullying legislation, authorized school officials to discipline student for instances of bullying that occurred off school grounds, implemented a school sanction for bullying, and criminalized face-to-face bullying. All but one of the states that were under the jurisdiction of the Fourth Circuit Court of Appeals did not allow school officials to discipline students for bullying that occurred off school grounds. Four out of the six states that were under the jurisdiction of the United States Court of Appeals for the Tenth Circuit did not give school officials the authority to discipline students for bullying behavior that occurred off school grounds either. Additionally, four out of the six states that were under the jurisdiction of the United States Court of Appeals for the Tenth Circuit did not include language from *Tinker* in their antibullying legislation.

Antibullying laws were written in response to the massacre at Columbine High School in 1999 as well as to high-profile cases involving bullying and student suicides (Christensen, 2015). In several states, antibullying legislation was written or strengthened in response to tragedies that occurred within the state, such as the suicide of Megan Meier of Missouri, the suicide of Tyler Clementi of New Jersey, the suicide of Ryan Patrick Halligan of Vermont, and the suicide of Jeffrey Johnson in Florida. The families of Megan Meier, Tyler Clementi, Ryan Patrick

Halligan, and Jeffery Johnson worked with legislators in their states to strengthen or create antibullying legislation.

The outcomes of appellate court decisions in cases involving K-12 public schools and cyberbullying appeared to have had an impact on antibullying legislation as well. The inclusion of the substantial interference language from *Tinker* in antibullying legislation may be due to the fact that appellate courts consistently used the language from *Tinker* in determining the outcomes of cases involving cyberbullying and students. For example, following Wisniewski v. Board of Education of Weedsport (2007), in which the United States Court of Appeals for the Second Circuit upheld the suspension of a student for creating and distributing a disturbing image of his teacher online, cyberbullying was added to state antibullying legislation in Connecticut in 2011 and Vermont in 2012. Additionally, New York passed state antibullying legislation in 2010 that included cyberbullying in the definition of bullying. All three states under the jurisdiction of the United States Court of Appeals for the Second Circuit had legislation in place that prohibited bullying that occurred on or off school grounds following the decision in Wisniewski v. Board of Education of Weedsport (2007). Additionally, New York, Connecticut, and Vermont all included language from *Tinker* in their antibullying legislation as of December 2016.

Appellate court decisions in cases involving cyberbullying in K-12 public schools did not inspire all states under the same appellate court jurisdiction to make changes to antibullying legislation. For example, in J. S. v. Blue Mountain School District (2011), the United States Court of Appeals for the Third Circuit ruled that the offensive MySpace profile that J. S. created about the principal did not create a substantial disruption in the school and that the page did not constitute a reasonable forecast of substantial disruption. Although the Third Circuit Court of Appeals, which had jurisdiction over Delaware, New Jersey, and Pennsylvania, utilized *Tinker* in

determining the outcome of the case, Delaware did not update its antibullying legislation to include language from *Tinker*. Unlike New Jersey and Pennsylvania, Delaware did not give school administrators the authority to discipline students for off-campus behavior.

In *Kowalski v. Berkeley County Schools* (2011), the United States Court of Appeals for the Fourth Circuit upheld the suspension of a West Virginia student that created an offensive MySpace page off school grounds about another student. The United States Court of Appeals for the Fourth Circuit had jurisdiction over the district courts of Maryland, North Carolina, South Carolina, Virginia, and West Virginia. State antibullying legislation among states under the jurisdiction of the Fourth Circuit was not uniform as of December 2016. Although all states under the jurisdiction of the Fourth Circuit had antibullying legislation in place that prohibited cyberbullying, Maryland was the only state that included off-school grounds in its antibullying legislation. Only Maryland, North Carolina, and South Carolina included language from *Tinker* in its antibullying legislation; Virginia and West Virginia did not.

In *Bell v. Itawamba County School Board* (2015), the United States Court of Appeals for the Fifth Circuit to upheld the suspension of a student that bullied a teacher on social media, off-school grounds. Despite the outcome of *Bell v. Itawaba County School Board* (2015), the three states under the jurisdiction of the Fifth Circuit—Louisiana, Mississippi, and Texas—did not update antibullying legislation to give school officials the authority to discipline students for off-campus behavior as of December 2016.

The following chapter will make recommendations for practitioners and legislators in regard to antibullying laws as well as clarifying the authority that school officials have to discipline students for acts of cyberbullying that occur off school grounds.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Through an examination of appellate court decisions involving cyberbullying and K-12 public schools and state antibullying legislation, this public policy analysis explored the extent that the First Amendment protects students' rights in cases of cyberbullying in K-12 public schools. The following research questions were examined throughout the course of this study:

1. How have appellate courts interpreted the limitations of the First Amendment as applied to K-12 public schools, teachers, and students when considering cyberbullying cases?
2. Did the appellate courts consistently consider both prongs of the Tinker-test when determining the outcome of cyberbullying cases?
3. How many states within all 50 states in the United States have an antibullying legislation in place between October 31, 2016 and December 31, 2016?
4. How many states within all 50 states in the United States include cyberbullying, electronic harassment, and/or off-campus behavior in the antibullying law at the time of the study?
5. How does state antibullying legislation compare among states that are under the jurisdiction of the same appellate court circuit?

Significance of the Study

This public policy analysis contained a comparison the language and major components of state antibullying laws. The definition of bullying in each state's antibullying law was examined to determine if"cyberbullying or electronic harassment were included in the definition of bullying. The following major components of each state's antibullying law were examined as

well: whether or not school officials had the authority to discipline students for off-campus bullying, whether or not a school sanction for bullying was required, whether or not schools were required to implement an antibullying policy, as well as whether or not the definition of bullying included the substantial interference language from the Supreme Court decision in *Tinker.* The study also examined whether or not criminal sanctions were in place in each state for cyberbullying and face-to-face bullying. Additionally, appellate court cases involving cyberbullying and K-12 public schools were reviewed to determine how each court applied the two-prong *Tinker* test.

Implications of the Study

This study exposed the extent and limitations of students' First Amendment rights as related to cyberbullying through both a comparison of state antibullying laws as well as a comparison of appellate court cases related to cyberbullying. Commonalities existed among state antibullying legislation for states that were under the jurisdiction of the same regional court of appeals.

Through a thorough examination of antibullying legislation and appellate court cases involving cyberbullying and K-12 public schools, this study illustrated the extent and limitations of school officials' authority to sanction students for instances of cyberbullying that occurred on or off school grounds. These findings provided school officials with insight as to how to develop their school policies to address on and off campus bullying, as well as how the *Tinker* test was applied to cases involving student-to-student cyberbullying and student-to-teacher or school official cyberbullying.

Appellate Court Cases Involving Cyberbullying and K-12 Public Schools

There were five appellate court cases involving cyberbullying and K-12 public schools: *Wisniewski v. Board of Education of Weedsport Central School District* (2007), *J. S. v. Blue Mountain School District* (2011), *Layshock v. Hermitage* (2011), *Kowalski v. Berkeley County School District* (2011), and *Bell v. Itawamba County School Board* (2015). In four of the cases, the appellate court used the decision in *Tinker* to determine the outcome of the case. The appellate courts did not consider existing state antibullying legislation when determining the outcome of the cases; in each of the five cases, the appellate courts considered whether or not the suspension of the student was a violation of the student's First Amendment rights.

In only one case, *Layshock v. Hermitage* (2011), the United States Court of Appeals for the Third Circuit referred to *Tinker* but did not use the *Tinker* test when determining the outcome of the case because the school district did not suspend the student on the grounds the creation of the MySpace page created a substantial interference in the school or that it was foreseeable that it would create a substantial interference in the school. In *Layshock v. Hermitage* (2011), the school district suspended the student only because of the content and language on the Myspace page. Had the school district suspended the student on the basis of the substantial interference in the school or the foreseeable risk of substantial interference, the appellate court would have considered the case differently and the outcome may have been different.

Utilization of the Tinker test

When determining the outcome of cases involving cyberbullying and K-12 public schools appellate courts looked to the decision in *Tinker*; however, application of the decision in *Tinker* were inconsistent. In some cases, the appellate courts considered both prongs of the *Tinker* test, whether the instance of cyberbullying caused a substantial interference in the school, and

whether or not a substantial interference could be reasonably forecasted; however, in other cases only one aspect of the *Tinker* test was considered. Additionally, the appellate courts did not agree upon what constituted a "substantial interference" in K-12 public schools.

In *Wisniewski v. Board of Education of Weedsport Central School District* (2007) and Bell v. Itawamba (2015), the cases were decided based upon the second prong of the *Tinker* test, whether or not a substantial interference could be reasonably forecasted. In *J. S. v. Blue Mountain School District* (2011) and *Kowaslski v. Berkeley County Schools*, both prongs of the *Tinker* test were utilized in determining the outcome of the cases.

Substantial Disruption

In *Wisniewski v. Board of Education of Weedsport Central School District* (2007), *J.S. v. Blue Mountain School District* (2011), *Kowalski v. Berkeley County Schools* (2011), and *Bell v. Itawamba* (2015), the appellate courts considered whether or not the act of cyberbullying created or would create a substantial disruption in the school. The appellate courts had different views about what constituted a substantial disruption in K-12 public schools.

In *Wisniewski v. Board of Education of Weedsport Central School District* (2007), the United States Court of Appeals for the Second Circuit ruled that it was foreseeable a student's creation of a blood-spattered icon with the words "Kill Mr. Vandermolen" would create a substantial disruption in the school. In another case involving a student-to-teacher cyberbullying, *J. S. v. Blue Mountain School District* (2011) the United States Court of Appeals for the Third Circuit ruled that the inflammatory MySpace profile that the student created about the principal did not create a substantial disruption in the school and that the page did not constitute a reasonable forecast of substantial disruption.

In *Kowalski v. Berkeley County Schools* (2011), a case involving student-to-student cyberbullying, the United States Court of Appeals for the Fourth Circuit determined that school officials acted within their authority to discipline a student for creating an offensive MySpace page about another student because the page both created a substantial disruption in the school, and the substantial disruption was reasonably foreseeable.

In *Bell v. Itawamba* (2015), a case involving student-to-teacher cyberbullying, the United States Court of Appeals for the Fifth Circuit ruled that an offensive and threatening rap posted about teachers on social media constituted a foreseeable risk of a substantial disruption at school; therefore, school officials acted in their authority when disciplining the student.

Appellate Court Decisions and Antibullying Legislation

Four appellate courts determined the outcomes of the five cases involving cyberbullying and K-12 public schools: United States Court of Appeals for the Second Circuit, United States Court of Appeals for the Third Circuit, the United States Court of Appeals for the Fourth Circuit, and the United States Court of Appeals for the Fifth Circuit. In determining the outcome of each case, the appellate courts did not take into consideration whether or not the state had antibullying legislation in effect and whether or not school officials had the authority to discipline students for off-campus behavior.

In *Wisniewski v. Board of Education of Weedsport Central School District* (2007), Wisniewski, a student in New York, shared a violent icon of his teacher with classmates in 2001. In 2001, there was no antibullying legislation in effect in New York; in fact, antibullying legislation was not passed in New York until 2008. The United States Court of Appeals for the Second Circuit ruled in favor of the school district and upheld the suspension of Wisniewski based upon the second prong of the *Tinker* test, that a substantial disruption in school was

foreseeable. Vermont was the only state under the jurisdiction of the United States Court of Appeals for the Second Circuit that had antibullying legislation in effect at the time that Wisniewski shared the icon; however, cyberbullying was not included in Vermont's legislation. It was not until after *Wisniewski v. Board of Education Weedsport Central School District* (2007) was decided that Connecticut, New York, and Vermont passed legislation that prohibited cyberbullying in schools and enabled school officials to discipline students for off campus behavior.

In *Kowalski v. Berkeley County Schools* (2011), the United States Court of Appeals for the Fourth Circuit also ruled in favor of the school district and upheld the suspension Kowalski, a West Virginia student, for creating an inflammatory MySpace page about another student. Kowalski created the offensive MySpace page in 2005, and at that time antibullying legislation in West Virginia only gave school officials the authority to discipline students for face-to-face harassment, intimidation, or bullying. Despite the fact that school officials did not have the authority to discipline students for off-campus behavior in West Virginia, the appellate court ruled that the school district did not violate the student's First Amendment rights. In 2011, West Virginia expanded its definition of "harassment, intimidation or bullying" to include electronic harassment; however, school officials still did not have the authority to discipline student for off-campus behavior (H.B. 3225, 2011).

In Pennsylvania, there was no antibullying legislation in effect in 2005, during the time that school officials at Hermitage School District in Pennsylvania suspended student Justin Layshock for creating an offensive MySpace profile about the school principal. Pennyslvania's first antibullying legislation was passed in 2008, which gave school officials the authority to discipline students for cyberbullying that occurred off school grounds. In *Layshock v. Hermitage*

(2011), the United States Court of Appeals for the Third Circuit ruled that the school district had violated Layshock's First Amendment rights by suspending him for his online speech. Also in 2011, the United States Court of Appeals for the Third Circuit ruled that the suspension of middle school student, J. S., was also unconstitutional. In *J. S. v. Blue Mountain School District* (2011), J. S., a Pennsylvania student created an offensive MySpace profile about the principal. Despite the antibullying legislation that was in effect in Pennsylvania at the time the cases were decided, the United States Court of Appeals for the Third Circuit ruled that the suspensions of Layshock and J. S. were unconstitutional, as the students' online behavior did not create a substantial interference in their schools.

In *Bell v. Itawamba County School Board* (2015), the United States Court of Appeals for the Fifth Circuit upheld the suspension of a Mississippi student who posted a violent rap video online. The rap video, which threatened a teacher, was posted in 2011. In 2011, Mississippi had antibullying legislation in place that authorized school officials to discipline students for bullying and cyberbullying; however, school administrators did not have the authority to discipline students for off-campus behavior.

In four out of the five cases, the appellate courts applied the *Tinker* test to determine the outcome of the case. In *Layshock v. Hermitage* (2011), the United States Court of Appeals for the Third Circuit did not apply the *Tinker* test because the school district did not argue that the student's conduct constituted a substantial interference in the school environment; however, the court referenced the *Tinker* case in its decision. Ultimately, the *Tinker* test was the deciding factor in the outcome of each appellate court case involving cyberbullying and K-12 public schools.

State Antibullying Laws

As a result of this study, school officials, educators, and practitioners had greater understanding of state antibullying legislation that was in place at the time of this study as well as how it varied from state to state. All 50 states had antibullying legislation in place at the time of this study. The language and content of state antibullying laws varied widely from state to state. Some states defined bullying to include cyberbullying and gave school officials the authority to sanction students for one time instances of bullying as well as bullying that occurred off school grounds, while other states prohibited bullying but did not include a definition of bullying in their antibullying legislation.

New Jersey had one of the most extensive antibullying policies, which contained a detailed definition of bullying that included cyberbullying. Not only did New Jersey include the substantial interference language from *Tinker* in its antibullying legislation, but it also made substantial interference the key factor in determining whether or not an action was considered harassment, intimidation, or bullying. New Jersey's antibullying legislation also required school districts to implement a comprehensive antibullying policy and provide education for staff and students about bullying. School officials in New Jersey were authorized to discipline students for instances of bullying and cyberbullying that occurred off school grounds if the bullying or cyberbullying created a substantial interference in the school. New Jersey also had legislation in place that criminalized both bullying as well as cyberbullying.

Wisconsin, on the other hand, had antibullying legislation in place that prohibited bullying in schools but did not include a definition of bullying, did not include cyberbullying, and did not impose a school sanction for bullying. School districts were required to implement an antibullying policy and a model policy was available on the department of education's

website. School officials did not have the authority to discipline students for instances of bullying or cyberbullying that occurred off school grounds. Cyberbullying was not included in Wisconsin's antibullying legislation for K-12 public schools. Wisconsin had legislation in place that criminalized both bullying as well as cyberbullying.

There was wide variety in the state antibullying laws among states in the same appellate court circuits; however, there were some commonalities between states that were under the jurisdiction of the same appellate court circuit as well.

Off-School Grounds

When antibullying legislation included off school grounds behavior, school administrators were responsible for investigating instances of harassment, intimidation, and bullying that occurred online or off-campus. Antibullying legislation that included off school grounds required school administrators to investigate instances of bullying that occurred off school grounds if the bullying was deemed to create a substantial interference in the school environment. School administrators should review antibullying legislation to determine if they are required to investigate instances of bullying that occurred off school grounds or over the summer. For example, bullying that occurs in August may have had the potential to create a substantial interference in the school in September. Case law indicated that school administrators had the authority to discipline students for behavior that occurred outside of school if it had the potential to create a substantial interference in the school.

Inclusion of Language from the Tinker Case

The inclusion of the substantial interference language in *Tinker* in the definition of bullying established a threshold for determining whether or not an incident should be considered bullying or not. The language included in bullying legislation was the first prong of the *Tinker*

test, whether or not the behavior created a substantial interference in the school environment; however, case law indicated that school officials had the authority to discipline students if there was a foreseeable risk of substantial interference in the school environment.

School officials should revise school antibullying policies to include the substantial interference language from *Tinker* in their antibullying legislation.

Although antibullying legislation was largely passed in response to the Columbine massacre and high-profile cases involving student suicides and bullying, changes may have been made to state antibullying legislation as a result of appellate court decisions involving K-12 public schools and cyberbullying. The inclusion of the substantial interference language from *Tinker* as well as the inclusion of off campus behavior in the definition of bullying may have been in response to appellate court decisions. In four out of the five cases involving cyberbullying and K-12 public schools, the appellate courts referenced the decision in *Tinker* in determining the outcome of the cases.

For example, changes were made to antibullying legislation in New York, Vermont, and Connecticut following the decision of the United States Court of Appeals in *Wisniewski v. Board of Education of Weedsport* (2007) to uphold the suspension of a student for bullying a teacher online. Cyberbullying was added to antibullying legislation in Connecticut and Vermont following the decision. Additionally, antibullying legislation was implemented in New York in 2010, which included cyberbullying in the definition of bullying. Language from *Tinker* was present in the antibullying legislation of Connecticut, New York, and Vermont as of December 2016.

Recommendations for School Administrators

School administrators need to understand their state antibullying legislation and stay abreast of any changes or amendments to the antibullying legislation. All school administrators must establish school policies that at a minimum reflect their state legislation. If the state does not have specific school policy requirements in place, such as procedures for investigating bullying, timelines for investigating bullying, and the establishment of a school safety team, school administrators should establish their own school policy requirements for staff and students to standardize investigations of bullying. Additionally, school administrators should include the substantial interference language from *Tinker,* since the appellate courts have continued to use the *Tinker* test when determining the outcomes of cases involving cyberbullying and K-12 public schools.

School administrators must have a standardized procedure for investigating instances of bullying and cyberbullying. The procedure for investigating bullying should include taking written statements from the victim, accused, and witnesses as well as a checklist or rubric to help determine whether or not the behavior should be classified as bullying in accordance with the state antibullying legislation. For example, in New Jersey, the definition of harassment, intimidation, and bullying required administrators to look for three distinct components when investigating possible cases of harassment, intimidation, or bullying. School administrators in New Jersey had to determine (1) whether the act or series of acts was

> reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, or by any other distinguishing characteristic. (New Jersey Statutes Annotated § 18A:37-14)

School administrators in New Jersey also had to determine (2) if the action "substantially [disrupted] or [interfered] with the orderly operation of the school or the rights of other students" (New Jersey Statutes Annotated § 18A:37-14). Finally, school administrators needed to determine (3) if:

> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property; b. has the effect of insulting or demeaning any student or group of students; or c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student. (New Jersey Statutes Annotated § 18A:37-14)

School administrators in New Jersey should have a three-part checklist to help identify cases of harassment, intimidation, and bullying based upon the three required components listed in the definition of harassment, intimidation, of bullying. School administrators in other states should carefully read their antibullying legislation and establish a checklist or rubric for determining cases of bullying based upon the definition of bullying in their state's antibullying legislation.

Due to the nature of cyberbullying and bullying, school districts need to include a timeline in their antibullying policies that require teachers and school staff members to promptly report instances of bullying and cyberbullying that they are aware of. Additionally, the timeline should require school administrators to investigate the report of bullying or cyberbullying promptly. In New Jersey, prompt investigation was a requirement of the state antibullying legislation. According to New Jersey Statutes Annotated § 18A:37-15, school officials were

required to begin investigations of harassment, intimidation or bullying within one day of receiving a report, and conclude the investigation within 10 school days of receiving the report.

Whether or not the state antibullying legislation requires it, school administrators should train all teachers, staff, and parents in the state antibullying legislation and school policy. Additionally, school administrators should provide training on the state legislation and school's antibullying policy to adults that are in regular contact with students but are not members of the school staff, such as food-service vendors, bus drivers, parent volunteers, coaches, and substitute teachers. Training all students, school staff members, volunteers, and adults that are in contact with students regularly will help everyone to understand the potential harm of bullying and cyberbullying. Additionally, providing training will help all stakeholders understand the procedure for bullying investigations as well as the supports available within the school to help the victims of bullying and cyberbullying.

An increasing number of students have access to mobile devices at home and during the school day; therefore, school officials have a responsibility to educate students, staff, and parents about cyberbullying and its consequences. School administrators also need to have resources in place to help students cope with the negative emotional impact of cyberbullying; counseling should be available in schools for both victims and perpetrators of cyberbullying. In New Jersey, school districts were required to provide character education and antibullying education for staff and students (New Jersey Statutes Ann § 18A:37-17; New Jersey Statutes Ann. § 18A:37-29). Regardless of whether or not it is mandated by the state antibullying legislation, school administrators in all states need to educate the school community about bullying and cyberbullying as well as their school district's antibullying policy.

Recommendations for State Legislators

State antibullying legislation varied from state to state; each state developed its own definition of bullying. Thirty-four states included language from *Tinker* in their antibullying legislation, and 25 states gave school officials the authority to discipline students for off-campus behavior. The majority of states that enabled school officials to discipline students for off-campus behavior included language from *Tinker* in their antibullying legislation. The inclusion of the substantial interference or substantial disruption language from *Tinker* imposed a limit on the authority of school officials to discipline students for acts of bullying that occurred off school grounds. In New Jersey, substantial interference served as a threshold for determining whether or not an act could be considered harassment, intimidation, or bullying.

All states should include language from *Tinker* in the antibullying legislation. The outcome of four out of the five appellate court cases involving cyberbullying and K-12 public schools were determined through use of the *Tinker* test. Only the outcome of one of the appellate court cases involving cyberbullying and K-12 public schools, *Layshock v. Hermitage* (2011), was not determined via use of the *Tinker* test because the school district did not argue that the student's conduct created a substantial interference. It is imperative that state laws include the substantial interference or substantial disruption language from *Tinker* as that is the threshold that appellate courts are using to determine the outcomes of cases involving cyberbullying and K-12 public schools. Substantial interference or substantial disruption should be the threshold used to determine whether or not behavior constitutes bullying.

Additionally, all states need to require schools to institute antibullying policies. Legislators should update existing school policy requirements in their state to require a specific procedure for reporting, investigating, and informing all parties involved about bullying

investigations. Additionally, states should require all stakeholder groups in the school—parents, students, staff, and board members—to be educated about the harmful effects of bullying as well as the school's antibullying policy.

Topics for Further Research

A study that compared rulings in tort cases involving cyberbullying and students and state antibullying legislation to determine how the law is interpreted at the civil level would advance research in K-12 antibullying legislation. At the time of this study, there were only five cases involving cyberbullying and K-12 public schools that had reached the appellate court level; it would be useful to conduct a study that compares the cases involving cyberbullying and K-12 public schools at the civil level.

Another study that would advance research in bullying and K-12 public schools is one that compares the specific requirements of K-12 school policies as well as the types of school sanctions imposed for acts of bullying. This study only compared whether or not state laws required school districts to implement a school sanction in cases involving bullying, but did not compare the types of sanctions that were required such as detention, suspension, or expulsion. A comparison of school sanctions for K-12 public schools and bullying in each state would help to further research in K-12 antibullying legislation as well.

Another research topic that would help to further research in K-12 antibullying legislation is one that examines how the antibullying legislation is applied to students with special needs that are protected under the Individuals with Disabilities Education Act. Students with special needs are disciplined differently in public schools; administrators must make a manifest determination when disciplining students with special needs to determine if the behavior is a

manifestation of their disability. Bullying cases may be handled differently in K-12 public schools when they involve students with special needs.

Additionally, more research is needed to compare state criminal laws involving bullying and cyberbullying. Research is needed to show how cyberbullying and face-to-face bullying is handled in schools as well as how cases are handled criminally. A comparison of criminal sanctions for bullying and cyberbullying across the nation would be a useful study. Additionally, a study that examines how often criminal charges are sought out in cases involving K-12 public schools and bullying would be useful.

Conclusion

Students had increased access to technology during the school day, and an increasing number of school districts were providing students with mobile devices to be used during the school day as well as at home. As student use of technology increased during the school day, and students were expected to complete assignments and connect with teachers and students online, state laws and school policies needed to change in order to protect students and teachers from instances of cyberbullying. All states should develop detailed definitions for bullying that include cyberbullying as well as the substantial interference language from the decision in *Tinker*. Additionally, school administrators need the authority to discipline students for acts of cyberbullying that occur off school grounds. Due to the potential for instances of cyberbullying to go viral, school officials need the authority to discipline students for instances of cyberbullying that are repeated or one-time events.

School districts should include the substantial interference language from *Tinker* in their antibullying policies. When considering disciplining students for instances of cyberbullying, school officials should utilize both prongs of the *Tinker* test. Until the Supreme Court rules on a

case involving cyberbullying and K-12 public schools, appellate courts will continue to interpret the extent of school officials' authority to discipline students for instances of cyberbullying. It is imperative that school officials stay abreast of changes to state antibullying legislation as well as court decisions involving cyberbullying and K-12 public schools.

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APPENDIX A

State Antibullying Legislation

State antibullying legislation from all 50 states in the United States was reviewed and summarized.

Alabama

At the time of this study, Alabama had legislation in place to prevent "harassment, intimidation, violence, or threats of violence on school property, on a school bus, or at any school-sponsored function" (Alabama § Code 16-28B-4). Alabama Code § 16-28B-3 defined "harassment," which was defined as follows:

> A continuous pattern of intentional behavior that takes place on school property, on a school bus, or at a school-sponsored function including, but not limited to, written, electronic, verbal, or physical acts that are reasonably perceived as being motivated by any characteristic of a student, or by the association of a student with an individual who has a particular characteristic, if the characteristic falls into one of the categories of personal characteristics contained in the model policy adopted by the department or by a local board. To constitute harassment, a pattern of behavior may do any of the following: a. Place a student in reasonable fear of harm to his or her person or damage to his or her property. b. Have the effect of substantially interfering with the educational performance, opportunities, or benefits of a student. c. Have the effect of substantially disrupting or interfering with the orderly operation of the school. d. Have the effect of creating a hostile environment in the school, on school property, on a school bus, or at a school-sponsored function. e. Have the effect of being sufficiently severe, persistent, or

pervasive enough to create an intimidating, threatening, or abusive educational environment for a student. (Alabama Code § 16-28B-3)

The terms intimidation, violence, or threats of violence were not defined. Electronic acts were included in the definition of harassment. Since the Alabama statute did not include off-campus behavior, school administrators did not have the authority to discipline students for online or electronic behavior that took place off school grounds. The definition of harassment echoed the court decision in *Tinker*; harassment was a punishable offense if it "substantially [disrupted] or interfered] with the orderly operation of the school" (Alabama Code § 16-28B-3). Given harassment was defined as "a continuous pattern of intentional behavior" (Alabama Code § 16-28B-3), one-time egregious acts were not considered harassment.

Each school district was required to develop a policy consistent with Alabama Code § 16-28B (Alabama Code § 16-28B-9). Under Alabama Code § 16-28B-5, the department of education was required to develop a model policy that contained a statement prohibiting harassment, intimidation, violence, and threats of violence, as well as definitions of each term. Additionally, the policy had to include a series of graduated consequences for committing acts of intimidation, harassment, violence, or threats of violence that were consistent with applicable federal and state disability, antidiscrimination, and education laws and school discipline policies (Alabama Code § 16-28B-5). The policy also had to include procedures for reporting and investigating instances of intimidation, harassment, violence, or threats of violence as well as a procedure for publicizing local school policies (Alabama Code § 16-28B-5). Finally, the state department's model policy had to include "a procedure for the development of a nonexhaustive list of the specific personal characteristics of a student which may often lead to harassment" (Alabama Code § 16-28B-5).

At the time of this study, there was a criminal sanction in place for harassment, including "harassing communications." The crime of harassment under Alabama Code § 13A-11-8 was defined as when a person:

> Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact. b. Directs abusive or obscene language or makes an obscene gesture toward another person. (2) For purposes of this section, harassment shall include a threat, verbal or nonverbal, made with the intent to carry out the threat, that would cause a reasonable person who is the target of the threat to fear for his or her safety.

Additionally, harassing communications was illegal in Alabama under Alabama Code § 13A-11-8. Harassing communications was defined as follows:

> A person commits the crime of harassing communications if, with intent to harass or alarm another person, he or she does any of the following: a. Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm. b. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication. c. Telephones another person and addresses to or about such other person any lewd or obscene words or language.

Cyberbullying and face-to-face harassment were criminal offenses in Alabama at the time of this study.

Alaska

At the time of this study, harassment, intimidation, and bullying were prohibited in schools in Alaska. Under Alaska Statute § 14.33.200, school districts were required to adopt

policies to prohibit harassment, intimidation, and bullying. Alaska's policy defined harassment, intimidation, and bullying as follows:

> An intentional written, oral, or physical act, when the act is undertaken with the intent of threatening, intimidating, harassing, or frightening the student, and a. physically harms the student or damages the student's property; b. has the effect of substantially interfering with the student's education; c. is so severe, persistent, or pervasive, that it creates an intimidating or threatening educational environment; or d. has the effect of substantially disrupting the orderly operation of the school. (Alaska Statute § 14.33.250)

Under Alaska's policy, one-time acts were considered bullying and school officials had the authority to discipline students for acts of bullying (Alaska Statute § 14.33.250). Alaska Statute § 14.33.250 did not address the location of where the harassment, intimidation, or bullying occurred in the definition of bullying; however, under Alaska Statute § 14.33.210, school districts were required to report "all incidents resulting in suspension or expulsion for harassment, intimidation, or bullying on school premises or on transportation systems used by schools" to the department of education. At the time of this study, school officials did not have the authority to discipline students for bullying that occurred off school grounds. The definition of bullying included language from *Tinker*, that an action may be considered bullying if it "has the effect of substantially disrupting the orderly operation of the school" (Alaska Statute § 14.33.250).

School districts were required to adopt policies to prohibit harassment, intimidation, or bullying that included disciplinary consequences, "including expulsion and reporting of criminal activity to local law enforcement authorities" (Alaska Statute § 14.33.200).

While cyberbullying was not included in Alaska Statute § 14.33.250, Alaska had a criminal sanction in place for harassment, including electronic harassment, at the time of this study (Alaska Statute § 11.61.120). Under Alaska Statute § 11.61.120, the crime of harassment was defined as follows:

> (a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person (1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response; (2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls; (3) makes repeated telephone calls at extremely inconvenient hours; (4) makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact; or (5) subjects another person to offensive physical contact. (6) publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act.

Harassment, including electronic harassment, was a punishable offense if it was likely to provoke violence, involved lewd images or films, involved physical contact, or threatened physical injury.

Arizona

Under Arizona Revised Statutes § 15-341, "General powers and duties; immunity; delegation," school districts were required to develop a policy to prohibit students from

> harassing, intimidating, and bullying other pupils on school grounds, on school property, on school buses, at school bus stops and, at school sponsored events and activities and

> through the use of electronic technology or electronic communication on school computers, networks, forums and mailing lists.

There was no definition of harassment, intimidation, and bullying included in Arizona Revised Statutes § 15-341; therefore, it was up to school districts to define it in their school policies. Since the school district's policy had to include "through the use of electronic technology or electronic communication," cyberbullying was prohibited in Arizona schools (Arizona Revised Statutes § 15-341). School officials had the authority to discipline students for bullying that occurred on school grounds or through use of school computers.

School districts were required to implement policies that had a procedure for reporting and investigating instances of harassment, intimidation, and bullying as well as consequences for school staff who fail to report instances of harassment, intimidation, and bullying that they were aware of (Arizona Revised Statutes § 15-341). School districts also needed to include consequences for engaging in harassment, intimidation, and bullying and procedures for documenting instances of harassment, intimidation, and bullying in their policies (Arizona Revised Statutes § 15-341).

At the time of this study, harassment, including electronic harassment, was a criminal offense in Arizona. Harassment was defined as when an individual:

> Anonymously or otherwise contacts, communicates, or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses. 2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist. 3. Repeatedly commits an act or acts that harass another person. 4. Surveils or causes another person to surveil a person for no legitimate purpose. 5. On more than one occasion makes a false report to a law

> enforcement, credit or social service agency. 6. Interferes with the delivery of any public or regulated utility to a person (Arizona Revised Statutes § 13-2921).

Since harassment was defined as behaving "in a manner that harasses" and "harasses" was not clearly defined, the definition of harassment could be left up to interpretation (Arizona Revised Statutes § 13-2921).

Arkansas

Arkansas's state law included a detailed definition of bullying and required school districts to develop policies to prevent bullying, including bullying that occurred off-campus through electronic means (A.C.A. § 6-18-514). Bullying was defined as:

> The intentional harassment, intimidation, humiliation, ridicule, defamation, or threat or incitement of violence by a student against another student or public school employee by a written, verbal, electronic, or physical act that causes or creates a clear and present danger of: (i) Physical harm to a public school employee or student or damage to the public school employee's or student's property; (ii) Substantial interference with a student's education or with a public school employee's role in education; (iii) A hostile educational environment for one (1) or more students or public school employees due to the severity, persistence, or pervasiveness of the act; or (iv) Substantial disruption of the orderly operation of the school or educational environment (A.C.A. § 6-18-514).

The definition of bullying echoed the language used in the *Tinker* decision; bullying was a punishable offense if it created a substantial interference in education of a student or in the school employee's role in education (A.C.A. § 6-18-514). Since bullying was not defined as a "repeated action" or "pattern of behavior," one-time offenses could be considered bullying.

Arkansas Code Annotated § 6-18-514 required schools to develop bullying policies that included consequences for engaging in bullying, an explanation of behavior that was considered bullying, and a requirement for staff members to report acts of bullying that they were aware of. The statute required school districts to address electronic acts of bullying that occurred "in school, on school equipment or property, in school vehicles, on school buses, at designated school bus stops, at school-sponsored activities, at school-sanctioned events" as well as for electronic acts of bullying regardless of "whether or not the electronic act originated on school property or with school equipment" (Arkansas Code Annotated § 6-18-514). School districts had to publicize the policy to parents, students, and staff (Arkansas Code Annotated § 6-18-514).

At the time of this study, there were criminal sanctions in place for harassment, stalking, and cyberbullying. Arkansas Code Annotated § 5-71-208, criminalized harassment, which was defined as follows:

> With purpose to harass, annoy, or alarm another person, without good cause, he or she: (1) Strikes, shoves, kicks, or otherwise touches a person, subjects that person to offensive physical contact or attempts or threatens to do so; (2) In a public place, directs obscene language or makes an obscene gesture to or at another person in a manner likely to provoke a violent or disorderly response; (3) Follows a person in or about a public place; (4) In a public place repeatedly insults, taunts, or challenges another person in a manner likely to provoke a violent or disorderly response; (5) Engages in conduct or repeatedly commits an act that alarms or seriously annoys another person and that serves no legitimate purpose; or (6) Places a person under surveillance by remaining present outside that person's school, place of employment, vehicle, other place occupied by that

person, or residence, other than the residence of the defendant, for no purpose other than to harass, alarm, or annoy.

Arkansas Code Annotated § 5-71-208 criminalized face-to-face harassment, and addressed much of the face-to-face behavior that was defined as bullying under Arkansas Code Annotated § 6-18-514. Additionally, there was a statute in place that criminalized stalking, which also included some of the behavior identified as bullying under Arkansas Code Annotated § 6-18-514. Under Arkansas Code § 5-71-229, stalking was defined as "purposely [engaging] in a course of conduct that harasses another person .... with the intent of placing that person in imminent fear of death or serious bodily injury."

Neither Arkansas Code Annotated § 5-71-229 or Arkansas Code Annotated § 5-71-208 included electronic forms of stalking or harassment; however, there was a statute in place that specifically addressed cyberbullying at the time of this study. Under Arkansas Code Annotated § 5-71-217, cyberbullying was a criminal offense. Cyberbullying was defined as when a person "transmits, sends, or posts a communication by electronic means with the purpose to frighten, coerce, intimidate, threaten, abuse, harass, or alarm another person."

California

Under California's Assembly Bill No. 256 (2013), "Pupils: grounds for suspension and expulsion: bullying," the definition of bullying encompassed one-time acts as well as electronic communications. Under the state law, bullying was defined as follows:

> Any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils... directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following: (A)

> Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property. (B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health. (C) Causing a reasonable pupil to experience substantial interference with his or her academic performance. (D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school (AB-256, 2013).

In Assembly Bill 256 (2013), "electronic acts" was defined as "the creation and transmission originated on or off the school site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, as specified;" therefore, school officials had the authority to discipline students for acts of cyberbullying that occurred off school grounds. The phrase "substantial interference," language used in the Tinker decision, was included in the definition of bullying (AB-256, 2013).

According to Assembly Bill 9, "Pupil Rights: Bullying," (2011), the state department of education was required to develop a policy to "prohibit discrimination, harassment, intimidation, and bullying" that would be adopted by local education associations. The policy had to include a process for receiving and investigating instances of discrimination, harassment, as well as a timeline for the investigation process (AB-9, 2011).

At the time of this study, there were criminal sanctions in place for face-to-face and electronic harassment. California Penal Code § 646.9 criminalized face-to-face and electronic harassment. Under California Penal Code § 646.9:

> Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

"Credible threat" was defined to include threats "performed through the use of an electronic communication device;" therefore, electronic threats were criminalized.

While California Penal Code § 646.9 criminalized face-to-face and electronic harassment, California Penal Code § 653.2 specifically addressed electronic harassment. Under California Penal Code § 653.2:

> Every person who, with intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action, is guilty of a misdemeanor punishable by up to one year in a county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

California Penal Code § 653.2 criminalized electronic harassment while California Penal Code § 646.9 criminalized both face-to-face harassment as well as electronic harassment.

Colorado

At the time of this study, bullying was prohibited in schools in Colorado. Colorado House Bill 11-1254 (2011) required school districts to develop an antibullying policy that included a code of conduct, development of an antibullying team, and disciplinary consequences for bullying. Bullying was defined as follows: "Any written or verbal expression, or physical or electronic act or gesture, or a pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student" (H.B. 11-1254, 2011).

One-time actions and electronic harassment were considered bullying under House Bill 11-1254. Although the location of bullying was not included in the policy requirements or definition of bullying, the school districts were required to annually report "behavior on school property that is detrimental to the welfare or safety of other students or of school personnel, including but not limited to incidents of bullying" (H.B. 11-1254, 2011). It did not appear that school officials had the authority to discipline students for off-campus bullying at the time of this study.

At the time of this study, harassment, including electronic harassment, was a criminal offense. Under Colorado Revised Statutes § 18-3-601:

> A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she: (a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or (b) In a public place directs obscene language or makes an obscene gesture to or at another person; or (c) Follows a person in or about a public place; or ... (e) Directly or indirectly initiates communication with a person or directs language toward another person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium in a manner intended to harass or threaten bodily

> injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system, or other interactive electronic medium that is obscene; or (f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or (g) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or (h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

At the time of this study, under Colorado Revised Statutes § 18-3-601, bullying and cyberbullying was illegal.

Connecticut

At the time of this study, Connecticut had a state antibullying legislation in place that prohibited bullying in schools. Under Connecticut General Statutes § 10-222d, bullying was defined as follows:

> The repeated use by one or more students of a written, verbal or electronic communication or a physical act or gesture directed at another student that: (A) Causes physical or emotional harm to another student or damage to another student's property, (B) places another student in reasonable fear of harm to himself or herself, or of damage to his or her property, (C) creates a hostile environment at school for another student, (D) infringes on the rights of another student at school, or (E) substantially disrupts the education process or the orderly operation of a school, and includes cyberbullying....

The definition of bullying included electronic communication, as well as the substantial disruption language from the decision in *Tinker*. Under Connecticut General Statutes § 10-222d, bullying was defined as a repeated action, not a one-time event.

School districts were required to implement a "safe school climate plan to address the existence of bullying and teen dating violence in its schools" under Connecticut General Statutes § 10-222d. Schools were required to appoint a "safe school environment team specialist" and develop a "safe school environment team" responsible for reviewing incidents of bullying, looking for patterns, and making recommendations for changes to the school's antibullying policy (Connecticut General Statutes § 10-222d). School employees were required to notify the school safety specialist of a bullying incident within one day of being made aware of the incident (Connecticut General Statutes § 10-222d). The school policy had to include interventions for bullying such as disciplinary consequences and counseling plans (Connecticut General Statutes § 10-222d). The "safe school climate plan" had to specify that bullying was prohibited:

> (A) on school grounds, at a school-sponsored or school-related activity, function or program whether on or off school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by a local or regional board of education, or through the use of an electronic device or an electronic mobile device owned, leased or used by the local or regional board of education, and (B) outside of the school setting if such bullying (i) creates a hostile environment at school for the student against whom such bullying was directed, or (ii) infringes on the rights of the student against whom such bullying was directed at school, or (iii) substantially disrupts the education process or the orderly operation of a school (Connecticut General Statutes § 10-222d).

School officials had the authority to discipline students for off-campus behavior if the bullying interfered with the rights of students, educational process, or the orderly operation of the school.

At the time of this study, harassment, including electronic harassment, was criminalized in Connecticut. Under Connecticut General Statutes § 53a-182b and Connecticut General Statutes § 53a-183, harassment in the first and second degrees were punishable offenses. Harassment was in the first degree involved a verbal or electronic threat to kill another person (Connecticut General Statutes § 53a-182b), while a person was guilty of harassment in the second degree when:

> (1) By telephone, he addresses another in or uses indecent or obscene language; or (2) with intent to harass, annoy or alarm another person, he communicates with a person by telegraph or mail, by electronically transmitting a facsimile through connection with a telephone network, by computer network, as defined in section 53a-250, or by any other form of written communication, in a manner likely to cause annoyance or alarm; or (3) with intent to harass, annoy or alarm another person, he makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm (Connecticut General Statutes § 53a-183).

Included in the definition of harassment was use of telephone or computer network; therefore, electronic harassment was a criminal offense (Connecticut General Statutes § 53a-183).

Although school officials only had the authority to sanction students for repeated acts of bullying under Connecticut General Statutes § 10-222d, one-time acts of harassment were criminal offenses under Connecticut General Statutes §53a-182b and Connecticut General Statutes § 53a-183.

Delaware

At the time of this study, school districts in Delaware were required to develop policies to prohibit bullying in school (Delaware Code Annotated Title 14 § 4112D). Under Delaware Code Annotated Title 14 § 4112D, bullying was defined as follows:

> Any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damages to his or her property; or (2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or (3)Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee (Delaware Code Annotated Title 14 § 4112D).

School officials had the authority to discipline students for cyberbullying. Bullying was defined as a one-time act, not a repeated action.

School officials did not have the authority to sanction students for behavior that occurred off school grounds; in fact, punishable acts of bullying were limited to acts that occurred on school property, at school functions, or through "data or computer software that [was] accessed through a computer, computer system, computer network or other electronic technology of a

school district or charter school from grades kindergarten through grade twelve" (Delaware Code Annotated Title 14 § 4112D).

Delaware Code Annotated Title 14 § 4112D required school districts to develop an antibullying policy that included the definition of bullying, consequences for bullying, the development of a school-wide antibullying program, as well as the development of an antibullying committee. School policies had to include a procedure for the prompt investigation of reports of bullying and school staff were required to report incidents of bullying when aware of them (Delaware Code Annotated Title 14 § 4112D). School districts were required to publish the antibullying policy in student and staff handbooks (Delaware Code Annotated Title 14 § 4112D).

There was a criminal sanction in place for harassment and electronic harassment at the time of this study (Delaware Code Title 11 § 1311). A person was guilty of harassment when:

> With intent to harass, annoy or alarm another person: (1) That person insults, taunts or challenges another person or engages in any other course of alarming or distressing conduct which serves no legitimate purpose and is in a manner which the person knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress; (2) Communicates with a person by telephone, telegraph, mail or any other form of written or electronic communication in a manner which the person knows is likely to cause annoyance or alarm including, but not limited to, intrastate telephone calls initiated by vendors for the purpose of selling goods or services; (3) Knowingly permits any telephone under that person's control to be used for a purpose prohibited by this section; (4) In the course of a telephone call that person uses obscene language or language suggesting that the recipient of the call engage with that person or

> another person in sexual relations of any sort, knowing that the person is thereby likely to cause annoyance or alarm to the recipient of the call; or (5) Makes repeated or anonymous telephone calls to another person whether or not conversation ensues, knowing that person is thereby likely to cause annoyance or alarm. (Delaware Code Title 11 § 1311)

In effect, Delaware Code Title 11 § 1311 criminalized bullying and cyberbullying at the time of this study.

Florida

In Florida, bullying or harassment of any student or employee of a public K-12 educational institution was prohibited at the time of this study (Florida Statutes Annotated §1006.147). Bullying was defined as follows:

> Bullying includes cyberbullying and means systematically and chronically inflicting physical hurt or psychological distress on one or more students and may involve: 1. Teasing; 2. Social exclusion; 3. Threat; 4. Intimidation; 5. Stalking; 6. Physical violence; 7. Theft; 8. Sexual, religious, or racial harassment; 9. Public or private humiliation; or 10. Destruction of property (Florida Statutes Annotated §1006.147).

The definition of bullying involved systematic and chronic actions; therefore, one-time acts were not considered bullying. Cyberbullying was included in the definition of bullying. Cyberbullying was defined as follows:

> Bullying through the use of technology or any electronic communication, which includes, but is not limited to, any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic system, photoelectronic system, or photooptical system, including, but not limited to,

> electronic mail, Internet communications, instant messages, or facsimile communications. Cyberbullying includes the creation of a webpage or weblog in which the creator assumes the identity of another person, or the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions enumerated in the definition of bullying. Cyberbullying also includes the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions enumerated in the definition of bullying (Florida Statutes Annotated §1006.147).

Harassment was also prohibited in Florida schools. Harassment was defined as follows:

> 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: Places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property; Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; Has the effect of substantially disrupting the orderly operation of a school (Florida Statutes Annotated §1006.147).

According to Florida state law, the school district could discipline students for committing one-time acts of harassment. "Substantial interference" and "substantial disruption" language from the decision in *Tinker* was included in the definition of harassment.

> School officials had the authority to discipline students for bullying that occurred: (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; (c) Through the use of data or

> computer software that is accessed through a computer, computer system, or computer network within the scope of a public K-12 educational institution; or (d) Through the use of data or computer software that is accessed at a nonschool-related location, activity, function, or program or through the use of technology or an electronic device that is not owned, leased, or used by a school district or school, if the bullying substantially interferes with or limits the victim's ability to participate in or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school (Florida Statutes Annotated §1006.147).

School officials had the authority to discipline students for acts of cyberbullying that were committed off school grounds.

Florida Statutes Annotated §1006.147 required school districts to develop policies that prohibited harassment and bullying. The policies had to define harassment and bullying as well as list consequences for students or staff members that have engaged in harassment or bullying or falsely accused others of engaging in harassment or bullying (Florida Statutes Annotated §1006.147). Additionally, the school policy had to include procedures for reporting and investigating acts of bullying and harassment as well as procedures for notifying parents of perpetrators and victims of bullying or harassment (Florida Statutes Annotated §1006.147). There also had to be a procedure for reporting acts of bullying and harassment to the state and for publicizing the school's policy (Florida Statutes Annotated §1006.147).

Florida Statutes Annotated §784.048 established a criminal sanction for stalking, which included cyberstalking. Under Florida Statutes Annotated §784.048:

> Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks

another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury of the person, or the person's child, sibling, spouse, parent, or dependent, commits the offense of aggravated stalking.

Cyberstalking was defined as 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" (Florida Statutes Annotated §784.048). Florida Statutes Annotated §784.048 made harassment and cyberbullying criminal offenses.

Georgia

Bullying and cyberbullying were prohibited in Georgia schools. Georgia's definition of bullying included one-time incidents and cyberbullying incidents that happened on or off school grounds. According to Georgia Code Annotated. § 20-2-751.4, bullying was defined as follows:

> (1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so; (2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm; or (3) Any intentional written, verbal, or physical act which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that: (A) Causes another person substantial physical harm within the meaning of Code Section 16-5-23.1 or visible bodily harm as such term is defined in Code Section 16-5-23.1; (B) Has the effect of substantially interfering with a student's education; (C) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or (D) Has the effect of substantially disrupting the orderly operation of the school. The term applies to acts which occur on school property, on school vehicles, at designated school

> bus stops, or at school-related functions or activities or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system. The term also applies to acts of cyberbullying which occur through the use of electronic communication, whether or not such electronic act originated on school property or with school equipment, if the electronic communication (1) is directed specifically at students or school personnel, (2) is maliciously intended for the purpose of threatening the safety of those specified or substantially disrupting the orderly operation of the school, and (3) creates a reasonable fear of harm to the students' or school personnel's person or property or has a high likelihood of succeeding in that purpose. For purposes of this Code section, electronic communication includes but is not limited to any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system.

The "substantial interference" and "substantial disruption" language from the decision in *Tinker* was included in the definition of bullying. School officials had the authority to discipline students for one-time acts of bullying, including cyberbullying that occurred on or off school grounds.

Georgia Code Annotated. § 20-2-751.4 required school districts to adopt a policy to prohibit bullying. School districts were required to include a procedure to notify parents of victims and perpetrators of acts of bullying in the policy. School districts were also required to include a statement in the policy indicating that "a student in grades six through 12 has committed the offense of bullying for the third time in a school year, such student shall be assigned to an alternative school" (Georgia Code Annotated § 20-2-751.4). School districts were

required to notify parents and students of the antibullying policy Georgia Code Annotated. § 20-2-751.4.

There were two laws in place that criminalized bullying and cyberbullying in Georgia: Georgia Code Annotated § 16-5-90 and Georgia Code Annotated § 16-11-39.1. According to Georgia Code Annotated § 16-5-90, stalking was a criminal offense. A person was guilty of stalking if they "[follow], [place] under surveillance, or [contact] another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person" (Georgia Code Annotated § 16-5-90). The term "contact" was defined to include communication through electronic devices such as computers and telephones.

Georgia Code Annotated § 16-11-39.1 criminalized "harassing communications." A person was guilty of "harassing communications" if the person:

> Contacts another person repeatedly via telecommunication, e-mail, text messaging, or any other form of electronic communication for the purpose of harassing, molesting, threatening, or intimidating such person or the family of such person; (2) Threatens bodily harm via telecommunication, e-mail, text messaging, or any other form of electronic communication; (3) Telephones another person and intentionally fails to hang up or disengage the connection; or (4) Knowingly permits any device used for telecommunication, e-mail, text messaging, or any other form of electronic communication under such person's control to be used for any purpose prohibited by this subsection.

Collectively, Georgia Code Annotated § 16-5-90 and Georgia Code Annotated § 16-11-39.1 criminalized bullying and cyberbullying in Georgia.

Hawaii

In Hawaii, bullying and cyberbullying were prohibited conduct in public schools under Hawaii Administrative Code §8-19-6. According to Hawaii Administrative Code § §8-19-2, bullying was defined as:

> Any written, verbal, graphic, or physical act that a student or group of students exhibits toward other particular student(s) and the behavior causes mental or physical harm to the other student(s); and is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student(s).

School officials in Hawaii had the authority to discipline students for one-time acts of bullying. Cyberbullying was defined as follows:

> Electronically transmitted acts, i.e., Internet, cell phone, personal digital assistance (PDA), or wireless hand-held device that a student has exhibited toward another student or employee of the department which causes mental or physical harm to the other student(s) or school personnel and is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening, or abusive educational environment: (1) On campus, or other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property; (2) Through a department of education data system without department of education authorized communication; or (3) Through an off campus computer network that is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student or school personnel, or both (Hawaii Administrative Code §8-19-2).

School officials had the authority to discipline students for bullying that occurred "through an off campus computer network" (Hawaii Administrative Code §8-19-2). Based on the definition of cyberbullying, it was unclear whether school officials had the authority to discipline students for bullying that occurred through use of the cellular network off campus. Although bullying and

cyberbullying were punishable offenses, there was no law requiring schools to have a policy specifically to address bullying and cyberbullying.

Hawaii Revised Statute §711-1106a criminalized harassment, which included electronic harassment. Under Hawaii Revised Statute, harassment was defined as follows:

> (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person: (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact; (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another; (c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication; (d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour; (e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

The inclusion of "electronic communication" made cyberbullying a criminal offense in Hawaii.

Idaho

Idaho had antibullying legislation in place that required school districts to have a policy to address harassment, intimidation and bullying and imposed a criminal sanction for acts of

harassment, intimidation, and bullying. Cyberbullying was included in the definition of harassment, intimidation and bullying; however, school officials could not discipline students for acts of bullying that occurred off school grounds. According to Idaho state law, "Harassment, intimidation, and bullying," was defined as:

> Any intentional gesture, or any intentional written, verbal or physical act or threat by a student that: (a) A reasonable person under the circumstances should know will have the effect of: (i) Harming a student; or (ii) Damaging a student's property; or (iii) Placing a student in reasonable fear of harm to his or her person; or (iv) Placing a student in reasonable fear of damage to his or her property; or (b) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student. An act of harassment, intimidation, or bullying may also be committed through the use of a landline, car phone or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network (Idaho Code §18-917A).

The terms "off campus" or "off school grounds" were not included in the definition of bullying. In fact, the law specified that "[n]o student or minor present on school property or at school activities shall intentionally commit, or conspire to commit, an act of harassment, intimidation or bullying against another student" (Idaho Code §18-917A); therefore, school officials did not have the authority to discipline students for off-campus behavior.

School districts were required to develop a policy to prohibit harassment, intimidation, and bullying and establish consequences for engaging in harassment, intimidation, and bullying, but they were also required to provide information about harassment, intimidation, and bullying to parents, staff, and students (Idaho Code § 33-1631). School districts were required to provide

professional development opportunities for staff members as well to "build skills of all school staff members to prevent, identify and respond to harassment, intimidation and bullying" (Idaho Code §33-1631).

Illinois

According to 105 Illinois Compiled Statutes §27-23.7, school officials had the authority to discipline students for one-time acts of bullying including one-time acts of cyberbullying that occurred on or off school grounds. School districts were required to develop an antibullying policy that included measures to report, investigate and address bullying (105 Illinois Compiled Statutes §27-23.7). Bullying was defined as follows:

> Any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to have the effect of one or more of the following: (1) placing the student or students in reasonable fear of harm to the student's or students' person or property; (2) causing a substantially detrimental effect on the student's or students' physical or mental health; (3) substantially interfering with the student's or students' academic performance; or (4) substantially interfering with the student's or students' ability to participate in or benefit from the services, activities, or privileges provided by a school (105 Illinois Compiled Statutes §27-23.7).

The "substantial interference" language from the decision in *Tinker* was included in the definition of bullying.

Under 105 Illinois Compiled Statutes §27-23.7, school officials were permitted to discipline students for acts of bullying that occurred off campus. School officials had the authority to discipline students for electronic acts of bullying transmitted "from a computer that

is accessed at a nonschool-related location, activity, function, or program from the use of technology or an electronic device that is not owned, leased, or used by a school district or school," provided that the incident caused "a substantial disruption to the education process or orderly operation of a school" (105 Illinois Compiled Statutes §27-23.7).

At the time of this study there was a statute that criminalized stalking in Illinois. Under 720 Illinois Compiled Statutes § 12-7.3, stalking was defined as when a person

> knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that the course of conduct would cause a reasonable person to: (1) fear for his or her safety or the safety of a third person; or (2) suffer other emotional distress.

"Course of conduct" was defined to include electronic communication.

At the time of this study, there was a statute in place that specifically addressed cyberbullying. Under 720 Illinois Compiled Statutes § 26.5-3 "harassment through electronic communications" was a criminal offense. "Harassment through electronic communications" was defined as follows:

> (1) Making any comment, request, suggestion or proposal which is obscene with an intent to offend; (2) Interrupting, with the intent to harass, the telephone service or the electronic communication service of any person; (3) Transmitting to any person, with the intent to harass and regardless of whether the communication is read in its entirety at all, any file, document, or other communication which prevents that person from using his or her telephone service or electronic communications device (4) Transmitting an electronic communication or knowingly inducing a person to transmit an electronic communication for the purpose of harassing another person who is under 13 years of age, regardless of

whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense; or (5) Threatening injury to the person or to the property of the person to whom an electronic communication is directed or to any of his or her family or household members; or (6) Knowingly permitting any electronic communications device to be used for any of the purposes mentioned above.

Collectively, 20 Illinois Compiled Statutes § 12-7.3 and 720 Illinois Compiled Statutes § 26.5-3 criminalized harassment and cyberbullying in Illinois.

Indiana

Indiana had legislation in place that required school districts to develop antibullying policies to address bullying (Indiana Code Annotated§20-33-8). The definition of bullying included electronic acts of bullying; however, bullying was defined as repeated acts, as opposed to one-time incidents. Under Indiana Code Annotated § 20-33-8, bullying was defined as follows:

> Overt, unwanted, repeated acts or gestures, including verbal or written communications or images transmitted in any manner (including digitally or electronically), physical acts committed, aggression, or any other behaviors, that are committed by a student or group of students against another student with the intent to harass, ridicule, humiliate, intimidate, or harm the targeted student and create for the targeted student an objectively hostile school environment that: (1) places the targeted student in reasonable fear of harm to the targeted student's person or property; (2) has a substantially detrimental effect on the targeted student's physical or mental health; (3) has the effect of substantially interfering with the targeted student's academic performance; or (4) has the effect of

substantially interfering with the targeted student's ability to participate in or benefit from the services, activities, and privileges provided by the school (§20-33-8).

The "substantial interference" language from the decision in *Tinker* was present in the antibullying definition.

School officials had the authority to discipline students for acts of bullying that occurred on or off school grounds. According to Indiana Code §20-33-8, school officials could discipline students for acts of bullying "regardless of the physical location in which the bullying behavior occurred" if the individual committing the act of bullying and the intended targets of the bullying are members of a school and "disciplinary action is reasonably necessary to avoid substantial interference with school discipline or prevent an unreasonable threat to the rights of others to a safe and peaceful learning environment."

School districts were required to implement discipline rules prohibiting bullying under Indiana Code § 20-33-8-13.5. The school district had to establish procedures for reporting, investigating, and addressing instances of bullying (Indiana Code § 20-33-8-13.5). The policy also had to include timetables for reporting and investigating instances of bullying (Indiana Code § 20-33-8-13.5). Under Indiana Code § 20-33-8-13.5 disciplinary consequences needed to be in place for students that committed acts of bullying as well as for "teachers, school staff, or school administrators who fail to initiate or conduct an investigation of a bullying incident."

There were two Indiana Codes that criminalized bullying: Indiana Code § 35-45-2-1 criminalized intimidation and threats while Indiana Code § 35-45-2-2 criminalized harassment. Both intimidation and harassment that occurred in person or through electronic communication were criminal offenses under Indiana Code § 35-45-2-1 and Indiana Code § 35-45-2-2.

Iowa

According to Iowa Administrative Code § 281-12.3, school districts were required to develop a policy to address harassment and bullying that occurred "in school, on school property, or at any school function or school-sponsored activity." Schools were required to develop policies that included procedures for reporting, investigating, and addressing bullying (Iowa Administrative Code § 281-12.3). Electronic harassment was included in the definition of bullying. Harassment and bullying was defined as follows:

> Any electronic, written, verbal, or physical act or conduct toward a student which is based on the student's actual or perceived age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status, and which creates an objectively hostile school environment that meets one or more of the following conditions: (1) Places the student in reasonable fear of harm to the student's person or property. (2) Has a substantially detrimental effect on the student's physical or mental health. (3) Has the effect of substantially interfering with a student's academic performance. (4) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

The "substantial interference" language from *Tinker* was included in the definition of harassment and bullying. Under Iowa Administrative Code § 281-12.3, school officials had the authority to discipline students for one-time acts of bullying that occurred on school grounds or at school sponsored functions. Off-campus behavior was not included in the definition of bullying.

There was legislation in place that criminalized face-to-face verbal harassment and electronic harassment. Iowa Code § 18-7902 criminalized "malicious harassment," defined as follows:

> Maliciously and with the specific intent to intimidate or harass another person because of that person's race, color, religion, ancestry, or national origin, to: (a) Cause physical injury to another person; or (b) Damage, destroy, or deface any real or personal property of another person; or (c) Threaten, by word or act, to do the acts prohibited if there is reasonable cause to believe that any of the acts described in subsections (a) and (b) of this section will occur.

Electronic harassment was not specifically included in the definition of "malicious harassment." Iowa Code § 18-7906 criminalized stalking, which was defined as when a person

> Knowingly and maliciously (a) Engages in a course of conduct that seriously alarms, annoys or harasses the victim and is such as would cause a reasonable person substantial emotional distress; or (b) Engages in a course of conduct such as would cause a reasonable person to be in fear of death or physical injury, or in fear of the death or physical injury of a family or household member.

Iowa Code § 18-7906 listed "electronic communications" as well as "contacting the victim by telephone" as means of stalking.

Together, Iowa Code § 18-7906 and Iowa Code § 18-7902 criminalized cyberbullying and harassment.

Kansas

Kansas had legislation in place that prohibited acts of bullying, including acts of cyberbullying, that occurred "on school property, in a school vehicle or at a school-sponsored

activity or event" (Kansas Code § 72-8256). School officials did not have the authority to discipline students for off-campus behavior. According to Kansas Code § 72-8256 bullying was defined as:

> (A) Any intentional gesture or any intentional written, verbal, electronic or physical act or threat that is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student or staff member that a reasonable person, under the circumstances, knows or should know will have the effect of: (i) Harming a student or staff member, whether physically or mentally; (ii) damaging a student's or staff member's property; (iii) placing a student or staff member in reasonable fear of harm to the student or staff member; or (iv) placing a student or staff member in reasonable fear of damage to the student's or staff member's property; (B) cyberbullying; or (C) any other form of intimidation or harassment prohibited by the board of education of the school district in policies concerning bullying adopted pursuant to this section or subsection (e) of K.S.A. 72-8205, and amendments thereto.

Cyberbullying was defined as "bullying by use of any electronic communication device through means including, but not limited to, e-mail, instant messaging, text messages, blogs, mobile phones, pagers, online games and websites (Kansas Code § 72-8256). One-time incidents of bullying were considered bullying under Kansas Code § 72-8256.

Under Kansas Code § 72-8256, school districts were required to develop policies to address bullying; however, there were not specific requirements for procedures to report or investigate instances of bullying. There was no requirement for disciplinary consequences under Kansas Code § 72-8256.

Kansas has two statutes that criminalized stalking and electronic harassment. According to the Article 31a - Protection from Stalking Act, stalking was defined as follows:

> An intentional harassment of another person that places the other person in reasonable fear for that person's safety. (b) "Harassment" means a knowing and intentional course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose (Protection from Stalking Act, 2012).

In addition to the Article 31a - Protection from Stalking Act, Kansas had another statute in place to address electronic harassment. Article 62 - Crimes Against the Public Peace criminalized "harassment by telecommunication device." The definition of telecommunication device included any electronic device including by not limited to cell phones, telephones, and fax machines (Article 62- Crimes Against the Public Peace, 2012).

Kentucky

According to Kentucky Code § 158.148, bullying was defined as "verbal, physical, or social behavior." The term "electronic harassment" or "cyberbullying" was not included in the definition of bullying. The definition of bullying was as follows:

> Any unwanted verbal, physical, or social behavior among students that involves a real or perceived power imbalance and is repeated or has the potential to be repeated: 1. That occurs on school premises, on school-sponsored transportation, or at a school-sponsored event; or 2. That disrupts the education process.

Although Kentucky Code § 158.148 did not specifically include "off campus" in the definition of bullying, because "or 2. that disrupts the learning process" was included, school officials did

have the authority to discipline students for off-site behavior. School officials also had the authority to discipline students for one-time incidents of bullying.

Kentucky Code § 158.148 required school districts to develop a school policy to address bullying which included a procedure to identify, investigate, and report incidents of bullying as well as consequences for bullying.

At the time of this study, there were statutes in place in Kentucky that criminalized both harassment as well as electronic harassment. Kentucky Code § 525.070 criminalized physical, verbal, and nonverbal harassment specifically including incidents of bullying that occurred on school grounds. The definition of harassment as related to students in Kentucky Code § 525.070 was as follows:

> (f) Being enrolled as a student in a local school district, and while on school premises, on school-sponsored transportation, or at a school-sponsored event: 1. Damages or commits a theft of the property of another student; 2. Substantially disrupts the operation of the school; or 3. Creates a hostile environment by means of any gestures, written communications, oral statements, or physical acts that a reasonable person under the circumstances should know would cause another student to suffer fear of physical harm, intimidation, humiliation, or embarrassment.

Additionally, Kentucky Code § 525.080 criminalized electronic harassment. Under Kentucky Code § 525.080, "harassing communications" was defined as communication "with intent to intimidate, harass, annoy, or alarm another person" through "telephone, telegraph, mail, or any other form of electronic or written communication." The statute also specifically addressed harassing communications among students. Part c of the definition of "harassing communications" was as follows:

> Communicates, while enrolled as a student in a local school district, with or about another school student, anonymously or otherwise, by telephone, the Internet, telegraph, mail, or any other form of electronic or written communication in a manner which a reasonable person under the circumstances should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication. (Kentucky Code § 525.080)

Although electronic communication was criminalized in Kentucky under Kentucky Code § 525.080, schools were not authorized to sanction students for instances of electronic harassment under Kentucky Code § 525.070.

Louisiana

According to Louisiana Revised Statute § 17:416.13, school districts were required to adopt an antibullying policy and school officials had the authority to sanction students for acts of bullying. Bullying was defined as a repeated action and electronic harassment was included in the definition (LA Revised Stat: 17:§ 416.13). The definition of bullying read as follows:

> (1) A pattern of any one or more of the following: (a) Gestures, including but not limited to obscene gestures and making faces. (b) Written, electronic, or verbal communications, including but not limited to calling names, threatening harm, taunting, malicious teasing, or spreading untrue rumors. Electronic communication includes but is not limited to a communication or image transmitted by email, instant message, text message, blog, or social networking website through the use of a telephone, mobile phone, pager, computer, or other electronic device. (c) Physical acts, including but not limited to hitting, kicking, pushing, tripping, choking, damaging personal property, or unauthorized use of personal property. (d) Repeatedly and purposefully shunning or excluding from activities. (2) (a)

> Where the pattern of behavior as provided in Paragraph (1) of this Subsection is exhibited toward a student, more than once, by another student or group of students and occurs, or is received by, a student while on school property, at a school-sponsored or school-related function or activity, in any school bus or van, at any designated school bus stop, in any other school or private vehicle used to transport students to and from schools, or any school-sponsored activity or event. (b) The pattern of behavior as provided in Paragraph (1) of this Subsection must have the effect of physically harming a student, placing the student in reasonable fear of physical harm, damaging a student's property, placing the student in reasonable fear of damage to the student's property, or must be sufficiently severe, persistent, and pervasive enough to either create an intimidating or threatening educational environment, have the effect of substantially interfering with a student's performance in school, or have the effect of substantially disrupting the orderly operation of the school. (LA Revised Stat § 17:416.13)

Since bullying was defined as a pattern of behavior, school officials did not have the authority to discipline students for singular acts. Although the definition of bullying included electronic harassment, school officials did not have the authority to discipline students for acts of cyberbullying that occurred off school grounds.

School districts were required to develop and implement a school policy to report, identify, and investigate instances of bullying under (LA Revised Stat § 17:416.13). Additionally, schools were required to begin investigating reports of bullying within one business day and conclude the investigation within 10 business days (LA Revised Stat § 17:416.13). School officials were required to notify parents of reported incidents of bullying (LA Revised Stat § 17:416.13).

There were two state statutes in place that addressed harassment and telephone harassment. Louisiana Revised Statute § 14:40.2 criminalized stalking, which was defined as follows:

> The intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.

Under Louisiana Revised Statute § 14:40.2 citizens could be criminally sanctioned for verbal threats or harassment.

Cyberstalking was a criminal offense under Louisiana Revised Statute § 14:40.3. Cyberstalking was defined as the following actions:

> Use in electronic mail or electronic communication of any words or language threatening to inflict bodily harm to any person or to such person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person. (2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing any person. (3) 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. (LA Revised Stat § 17:416.13)

Louisiana had statutes in place to impose both school sanctions and criminal sanctions on harassment and electronic harassment at the time of this study. School officials did not have the authority to sanction students for electronic harassment that occurred off school grounds; however, there was still a criminal sanction in place to address electronic harassment. Although school officials did not have the authority to discipline students for off-campus communication, students could still be criminally sanctioned for their behavior.

Maine

Maine had a statute in place that required schools to develop and implement antibullying policies. The definition of bullying included cyberbullying as well as incidents of cyberbullying that occurred off school grounds. The definition of bullying read as follows:

> Bullying includes, but is not limited to, a written, oral or electronic expression or a physical act or gesture or any combination thereof directed at a student or students that: (1) Has, or a reasonable person would expect it to have, the effect of: (a) Physically harming a student or damaging a student's property; or (b) Placing a student in reasonable fear of physical harm or damage to the student's property; (2) Interferes with the rights of a student by: (a) Creating an intimidating or hostile educational environment for the student; or (b) Interfering with the student's academic performance or ability to participate in or benefit from the services, activities or privileges provided by a school; or (3) Is based on a student's actual or perceived characteristics identified in Title 5, section 4602 or 4684-A, or is based on a student's association with a person with one or more of these actual or perceived characteristics or any other distinguishing characteristics and

that has the effect described in subparagraph (1) or (2). "Bullying" includes cyberbullying. (Maine Revised Stat 20-A § 6554)

Bullying was defined as a one-time incident, not a repeated action. Additionally, school officials could discipline students for acts of bullying and cyberbullying that occurred off school grounds if "but only if the bullying also infringes on the rights of the student at school" (Maine Revised Stat 20-A § 6554).

School districts were required to develop comprehensive antibullying policies that included procedures for reporting, investigating, and addressing instances of bullying as well as for notifying parents (Maine Revised Stat 20-A § 6554). Additionally, school districts were required to train staff members on the antibullying policy (Maine Revised Stat 20-A § 6554).

There were criminal sanctions in place for harassment and electronic harassment at the time of this study. Title 17-A § 506 imposed a criminal sanction for harassment by telephone or by electronic communication device while Title 17-A § 506-A criminalized harassment.

Maryland

Under Maryland Code § 7–424.1, school districts were required to implement a policy to address "bullying, harassment, or intimidation." Electronic communication was included in the definition of bullying, harassment, or intimidation. Furthermore, school officials had the authority to discipline students for one time acts of bullying, harassment, or intimidation. The definition of bullying, harassment, or intimidation was as follows:

> Intentional conduct, including verbal, physical, or written conduct, or an intentional electronic communication, that: (i) Creates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities, or performance, or with a student's physical or psychological well–being and is: 1.

> Motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attribute, socioeconomic status, familial status, or physical or mental ability or disability; or 2. Threatening or seriously intimidating; and (ii) 1. Occurs on school property, at a school activity or event, or on a school bus; or 2. Substantially disrupts the orderly operation of a school. (3) (i) "Electronic communication" means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, or pager. (ii) "Electronic communication" includes a social media communication. (Maryland Code § 7–424.1)

Although off-campus acts of bullying were not specifically included in the definition of bullying, the inclusion of "or 2. Substantially disrupts the orderly operation of a school (Maryland Code § 7–424.1)" gave school officials the authority to discipline students for incidents of harassment, intimidation, or bullying that occurred off school grounds. The phrase "substantially disrupts" echoed the language in the *Tinker* decision.

There were two additional state statutes in place that addressed bullying in schools: Maryland code §7–424 and Maryland Code § 7–424.3. Maryland Code §7–424 outlined the manner in which county school boards were required to report instances of harassment, intimidation, and bullying. Maryland Code § 7–424.3 required nonpublic schools to develop antibullying policies.

There was a criminal sanction in place for cyberbullying. Under Maryland Code §3–805, a person may not

> maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another: (i) with the intent to harass, alarm, or annoy the

other; (ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and (iii) without a legal purpose.

While there was a statute in place that criminalized stalking, the definition of stalking did not criminalize "harassment, intimidation, and bullying" as defined in Maryland Code §7–424.1. Stalking involved "approaching or pursuing" another under Maryland Code §3–802; Maryland Code § 3–802 did not criminalize verbal threats.

Massachusetts

Massachusetts General Laws Chapter § 71 Section 370 required school districts to develop antibullying policies to prohibit "bullying, cyberbullying and retaliation." Bullying was defined as follows:

> The repeated use by one or more students or by a member of a school staff...of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. For the purposes of this section, bullying shall include cyber-bullying. (Massachusetts G.L. Chapter § 71 Section 370)

Since bullying was defined as a repeated action, school officials could not discipline students for bullying for one-time offensive acts. The "substantial disruption" language from *Tinker* was present in the definition of bullying.

Under Massachusetts General Laws Chapter § 71 Section 370, bullying was prohibited on school grounds, in school vehicles, and at school-sponsored events and activities as well as:

> At a location, activity, function or program that is not school-related, or through the use of technology or an electronic device that is not owned, leased or used by a school district or school, if the bullying creates a hostile environment at school for the victim, infringes on the rights of the victim at school or materially and substantially disrupts the education process or the orderly operation of a school. (Massachusetts G.L. Chapter § 71 Section 370)

According to Massachusetts General Laws Chapter 71 Section 370, school officials had the authority to discipline students for instances of bullying that occurred off school grounds. School districts were required to develop policies that clearly defined bullying and included procedures for reporting, investigating, and addressing all instances of bullying, including cyberbullying (Massachusetts G.L. Chapter § 71 Section 370).

There was a criminal sanction in place for harassment, including online harassment. Under Maryland General Laws Chapter § 265 Section 43A, harassment was defined as "a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress." Included in definition of harassment was "conduct or acts conducted by mail or by use of a telephonic or telecommunication device or electronic communication device" (Maryland G.L. Chapter § 265 Section 43A). Like the definition of bullying, harassment was defined as a pattern of behavior or repeated actions.

Michigan

According to Michigan Compiled Laws § 380.1310b, school districts were required to develop a policy prohibiting bullying at school. The "substantial disruption" and "substantial interference" language from the decision in *Tinker* was included in the definition of bullying. Bullying was defined as follows:

> Any written, verbal, or physical act, or any electronic communication, including, but not limited to, cyberbullying, that is intended or that a reasonable person would know is likely to harm 1 or more pupils either directly or indirectly by doing any of the following: (i) Substantially interfering with educational opportunities, benefits, or programs of 1 or more pupils. (ii) Adversely affecting the ability of a pupil to participate in or benefit from the school district's or public school's educational programs or activities by placing the pupil in reasonable fear of physical harm or by causing substantial emotional distress. (iii) Having an actual and substantial detrimental effect on a pupil's physical or mental health. (iv) Causing substantial disruption in, or substantial interference with, the orderly operation of the school.

According to Michigan Compiled Laws § 380.1310b, one-time acts were considered bullying and cyberbullying was included in the statute. Off-campus behavior was included in the state statute; however, only electronic communication that occurred off campus "if the telecommunications access device or the telecommunications service provider is owned by or under the control of the school district or public school academy" (Michigan C.L. § 380.1310b). School officials had the authority to sanction students for acts of bullying that occurred off school grounds through a school provided device or service provider.

Harassment, including electronic harassment, was a criminal offense under Michigan Compiled Laws §750.411h and Michigan Compiled Laws § 750.411i. Harassment was defined

as “repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress (Michigan C.L. § 750.411h);” therefore, one-time offenses would not be considered harassment.

Minnesota

Minnesota Statutes § 121A.031 required school districts to develop an antibullying policy to address instances of bullying, including bullying that occurred on school grounds or off school grounds through electronic communication (Minnesota Statutes §121A.031). Bullying was defined as:

> Intimidating, threatening, abusive, or harming conduct that is objectively offensive and: (1) there is an actual or perceived imbalance of power between the student engaging in prohibited conduct and the target of the behavior and the conduct is repeated or forms a pattern; or (2) materially and substantially interferes with a student's educational opportunities or performance or ability to participate in school functions or activities or receive school benefits, services, or privileges. (Minnesota Statutes §121A.031)

Bullying was not defined as a one-time or repeated action; therefore, school officials could discipline students for one-time acts. The “substantial interference” language from *Tinker* was present in the definition of bullying. Under Minnesota Statutes § 121A.031, in addition to bullying, cyberbullying was also prohibited in public schools. Cyberbullying was defined as follows:

> Using technology or other electronic communication, including but not limited to a transfer of a sign, signal, writing, image, sound, or data, including a post on a social

network Internet Web site or forum, transmitted through a computer, cell phone, or other electronic device (Minnesota Statutes § 121A.031).

School officials had the authority to discipline students for electronic communication that occurred on or off campus. Under Minnesota Statutes § 121A.031, school officials had the authority to discipline students for use of electronic communication "off the school premises to the extent such use substantially and materially disrupts student learning or the school environment (Minnesota Statutes § 121A.031).

School districts were required to develop a comprehensive policy for reporting, investigating, and addressing instances of bullying (Minnesota Statutes § 121A.031). Additionally, schools were required to provide ongoing professional development to help staff identify students at risk for bullying, understand the nature of bullying and cyberbullying, and learn how to "identify, prevent, and prohibit" bullying and cyberbullying (Minnesota Statutes §121A.031).

Stalking was a criminal offense in Minnesota. Minnesota Statutes § 609.749 addressed stalking which was defined as "conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim." Conduct was further defined to include "electronic communication."

Additionally, Minnesota Statutes § 609.748 addressed face-to-face harassment. Harassment was defined as follows:

A single incident of physical or sexual assault, a single incident of stalking under section 609.749, subdivision 2, clause (8), a single incident of nonconsensual

> dissemination of private sexual images under section 617.261, or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target. (Minnesota Statutes §609.748)

Electronic harassment or cyberbullying was not included in Minnesota Statutes § 609.748.

Mississippi

Bullying or harassing behavior was prohibited in Mississippi schools. The "substantial interference" language from the decision in *Tinker* was included in the definition of bullying or harassing behavior. According to Mississippi Code Ann. § 37-11-67, Bullying or harassing behavior was defined as follows:

> Any pattern of gestures or written, electronic or verbal communications, or any physical act or any threatening communication, or any act reasonably perceived as being motivated by any actual or perceived differentiating characteristic, that takes place on school property, at any school-sponsored function, or on a school bus, and that: (a) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or (b) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior (Miss. Code Ann. § 37-11-67).

Under Mississippi Code Ann. § 37-11-67 bullying was defined as a repeated act or one-time act "motivated by any actual or perceived differentiating characteristic;" therefore, school officials had the authority to discipline students for singular acts of bullying. Additionally, school officials had the authority to discipline students for acts of cyberbullying; "electronic communication" was included in the definition of bullying (Miss. Code Ann § 37-11-67). School officials only had the authority to discipline students for acts of bullying and cyberbullying that occurred on school grounds, at school-sponsored events, or on a school bus; school officials could not discipline students for off-campus bullying (Miss. Code Ann § 37-11-67).

School districts were required to develop policies for "reporting, investigating, and addressing" acts of bullying or harassing behavior (Miss. Code Ann. § 37-11-69). Specific requirements for the antibullying policies were not included in Mississippi Senate Bill number 2015 (2010); therefore, school districts had the autonomy to create and implement their own policies.

Mississippi had a statute in place that criminalized cyberstalking. According to Mississippi Code Ann. § 97-45-15, it was illegal to "electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying or harassing any person."

Additionally, Mississippi Code Ann. § 97-3-107 imposed a criminal sanction on the crime of stalking. Stalking was defined as engaging in two or more acts that would "cause a reasonable person to fear for his or her own safety, to fear for the safety of another person, or to fear damage or destruction of his or her property." Although not all of the harassing and bullying behaviors covered under Mississippi Code Ann. § 37-11-67 were criminalized under Mississippi

Code Ann. § 97-3-107, verbal and electronic threats to safety and destruction of personal property were illegal.

Missouri

Missouri Revised Statutes § 160.775 mandated school districts to adopt antibullying policies which included a statement prohibiting bullying, a requirement for staff members to report instances of bullying, procedures for reporting and investigating reports of bullying, and education for students regarding bullying. Bullying was defined as follows:

> Intimidation, unwanted aggressive behavior, or harassment that is repetitive or is substantially likely to be repeated and causes a reasonable student to fear for his or her physical safety or property; substantially interferes with the educational performance, opportunities, or benefits of any student without exception; or substantially disrupts the orderly operation of the school. Bullying may consist of physical actions, including gestures, or oral, cyberbullying, electronic, or written communication, and any threat of retaliation for reporting of such acts. Bullying of students is prohibited on school property, at any school function, or on a school bus. "Cyberbullying" means bullying as defined in this subsection through the transmission of a communication including, but not limited to, a message, text, sound, or image by means of an electronic device including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager. (Missouri Revised Statutes § 160.775)

The substantial disruption language from the *Tinker* decision was included in the definition of bullying. Under Missouri's definition of bullying, one-time acts could be considered bullying if they were "likely to be repeated" (Missouri Revised Statutes § 160.775). The inclusion of "likely to be repeated" in the definition of bullying was problematic because it was unclear;

administrators had to determine whether or not an event was likely to be repeated when disciplining students for one time actions.

Cyberbullying was included in the definition of bullying and school officials had the authority to discipline students for off-campus behavior. Under Missouri Revised Statutes § 160.775, school officials had the authority to discipline students for instances of cyberbullying that occurred "on a school's campus or at a district activity if the electronic communication was made using the school's technological resources, if there is a sufficient nexus to the educational environment, or if the electronic communication was made on the school's campus or at a district activity using the student's own personal technological resources (Missouri Revised Statutes § 160.775). The inclusion of "sufficient nexus to the educational environment" indicated that school officials could sanction students for off campus behavior. Sufficient nexus was not defined.

Missouri had a statute in place to criminalize harassment, including electronic harassment. According to Missouri Revised Statutes § 565.090, harassment such as communicating a threat, using offensive language or "knowingly [frightening], [intimidating], or [causing] emotional distress to another person by anonymously making a telephone call or any electronic communication" was a criminal offense.

Montana

Montana had antibullying legislation in place to prohibit bullying and cyberbullying in K-12 public schools (Montana Code Ann. § 20-5-209). Bullying was defined as follows:

> "Bullying" means any harassment, intimidation, hazing, or threatening, insulting, or demeaning gesture or physical contact, including any intentional written, verbal, or electronic communication or threat directed against a student that is persistent, severe, or

> repeated and that: (a) causes a student physical harm, damages a student's property, or places a student in reasonable fear of harm to the student or the student's property; (b) creates a hostile environment by interfering with or denying a student's access to an educational opportunity or benefit; or (c) substantially and materially disrupts the orderly operation of a school. (Montana Code Ann. § 20-5-208)

One-time actions were considered bullying under Montana Code Ann. § 20-5-208. The "substantial disruption" language from the decision in *Tinker* was included in the definition of bullying. It was unclear whether school officials had the authority to discipline students for acts of bullying or cyberbullying that occurred on or off school grounds; there was no school sanction imposed for bullying at the time of this study. School districts were not required to develop policies to address bullying at the time of this study.

Montana had statutes in place that criminalized intimidation, stalking, and harassment, including online harassment. According to Montana Code Ann. § 45-5-203 intimidation was a criminal offense, which was defined as a threat to "(a) inflict physical harm on the person threatened or any other person; (b) subject any person to physical confinement or restraint; or (c) commit any felony." Additionally, according to Montana Code Ann. § 45-5-220, stalking was a criminal offense. Stalking was defined as follows:

> Purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly: (a) following the stalked person; or (b) harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication, as defined in 45-8-213, or any other action, device, or method. (Montana Code Ann. § 45-5-220)

There was also a statute in place that specifically criminalized electronic harassment. According to Montana Code Ann § 45-8-213:

> A person commits the offense of violating privacy in communications if the person knowingly or purposely: (a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend. (b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received; (c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation.

Together, Montana Code Ann. § 45-5-203, Montana Code Ann. § 45-5-220, and Montana Code Ann § 45-8-213, criminalized bullying and cyberbullying.

Nebraska

School officials had the authority to discipline students for bullying and cyberbullying that occurred on school grounds in Nebraska. According to Nebraska Revised Statutes § 79-267, bullying was considered grounds for long-term suspension, expulsion, or mandatory reassignment. Bullying was defined as follows:

> Any ongoing pattern of physical, verbal, or electronic abuse on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose by a school employee or his or her designee, or at school-sponsored activities or school-sponsored athletic events. (Nebraska Revised Statutes § 79-2,137)

Since bullying was defined as an ongoing pattern of behavior, school officials did not have the authority to sanction students for singular acts of harassment. School districts were required to develop antibullying policies under Nebraska Revised Statutes § 79-2,137; however, there were no specific requirements listed for the school policies.

According to Nebraska Revised Statutes § 28-311.02, stalking and harassment were criminal offenses. Stalking was defined as "willfully [harassing] another person or a family or household member of such person with the intent to injure, terrify, threaten, or intimidate" (Nebraska Revised Statutes § 28-311.03). Harass was defined as "to engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose." Course of conduct was defined as follows:

> A pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning, contacting, or otherwise communicating with the person. (Nebraska Revised Statutes § 28-311.02)

Electronic communication was not specifically addressed in the statutes.

There was no statute that addressed cyberbullying or electronic harassment via computer, Internet, or text message in Nebraska; however, there was a statute in place to address harassment by telephone call (Nebraska Revised Statute § 28-1310). Telephone calls made with

the intent to "terrify, intimidate, threaten, harass, annoy, or offend" were illegal at the time of this study (Nebraska Revised Statute § 28-1310).

New Hampshire

There was antibullying legislation in place in New Hampshire that required school districts to develop policies to prevent bullying and cyberbullying in public schools. School officials had the authority to sanction students for bullying that occurred off-school grounds and not at a school-sponsored event if "the conduct [interfered] with a pupil's educational opportunities or substantially [disrupted] the orderly operations of the school or school-sponsored activity or event" (New Hampshire Revised Statutes Ann. § 193-F:4). Bullying was defined as follows:

> A single significant incident or a pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which: (1) Physically harms a pupil or damages the pupil's property; (2) Causes emotional distress to a pupil; (3) Interferes with a pupil's educational opportunities; (4) Creates a hostile educational environment; or (5) Substantially disrupts the orderly operation of the school. (New Hampshire Revised Statutes Ann. § 193-F:3)

Bullying was defined as "a single significant event or pattern of incidents;" therefore, school officials could sanction students for one-time offenses (New Hampshire Revised Statutes Ann. § 193-F:3). The "substantial disruption" language from the decision in *Tinker* was included in the definition of bullying.

New Hampshire Revised Statutes Ann. § 193-F:4 required school districts to have a policy in place to address bullying outlined specific requirements for the school policy. School antibullying policies had to include the definition of bullying, disciplinary consequences for

bullying, and procedures for reporting and investigating bullying (New Hampshire Revised Statutes Ann. § 193-F:4). School districts were required to notify parents of the victims and accused perpetrators of bullying within 48 hours of receiving the report and investigate incidents of bullying within 5 days of receiving the report (New Hampshire Revised Statutes Ann. § 193-F:4). Parents of victims and perpetrators were required to be notified of the outcome within 10 days of the conclusion of the investigation (New Hampshire Revised Statutes Ann. § 193-F:4). School districts were required to have training and educational programs in place for staff and students regarding bullying and cyberbullying (New Hampshire Revised Statutes Ann. § 193-F:5). School districts were required to report incidents of bullying to the Department of Education (New Hampshire Revised Statutes Ann. § 193-F:56).

Stalking and harassment were criminal offenses in New Hampshire; however, cyberbullying was not a criminal offense. Stalking was defined as follows:

> Purposely, knowingly, or recklessly [engaging] in a course of conduct targeted at a specific person which would cause a reasonable person to fear for his or her personal safety or the safety of a member of that person's immediate family, and the person is actually placed in such fear; (b) Purposely or knowingly [engaging] in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family**.** (New Hampshire Revised Statutes Ann. § 633:3-a**)**

In order for the conduct to be considered stalking under New Hampshire Revised Statutes Ann. § 633:3-a, it had to cause a person to fear for his or her safety or the safety of a family member.

Harassment was also a criminal offense in New Hampshire; however, electronic harassment was not included in the definition of harassment. Phone calls were included in the

definition of harassment. Under New Hampshire Revised Statutes Ann. § 644:4, the definition of harassment included "a telephone call, whether or not a conversation ensues, with no legitimate communicative purpose or without disclosing his or her identity and with a purpose to annoy, abuse, threaten, or alarm another" as well as "insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response" (New Hampshire Revised Statutes Ann. § 644:4). Although telephone calls were included in the definition of harassment, New Hampshire Revised Statutes Ann. § 644:4 did not criminalize electronic communications such as emails, social media posts, text messages, or other electronic communications.

New Jersey

New Jersey had comprehensive antibullying legislation in place that required schools to adopt a school policy with specific requirements to prevent bullying and authorized school officials to discipline students for bullying and cyberbullying that occurred on or off school grounds. School officials had the authority to discipline students for one-time acts of harassment, bullying, or intimidation, which were defined as follows:

> Any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that: a. a reasonable person should know, under

> the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property; b. has the effect of insulting or demeaning any student or group of students; or c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student. (New Jersey Statutes Annotated § 18A:37-14)

School officials had the authority to discipline students for acts of bullying that occurred on or off school grounds. The "substantial interference" language from *Tinker* was included in New Jersey's definition of bullying.

In New Jersey, each school district was required to adopt a policy to prevent harassment, intimidation, or bullying under New Jersey Statutes Annotated § 18A:37-15. School districts were required to have a procedure in place for reporting, investigating, and addressing harassment, intimidation, or bullying (New Jersey Statutes Ann. § 18A:37-15). At the time of this study, school officials were required to begin investigations of bullying within one day of receiving a report, and conclude the investigation within 10 school days of receiving the report (New Jersey Statutes Ann. § 18A:37-15). School districts were required share the results of each investigation with the board of education. School districts were required to post specific information about bullying on their website such as the antibullying policy, the name and contact information for the district's antibullying coordinator and the name and contact information for the school's antibullying specialist (New Jersey Statutes Ann. § 18A:37-15).

School districts were required to appoint school antibullying specialists and a district antibullying coordinator (New Jersey Statutes Ann. §18A:37-20). Schools were also required to

establish school safety teams chaired by the antibullying specialist to review reports of harassment, intimidation, or bullying and improve school culture (New Jersey Statutes Ann. §18A:37-21).

According to New Jersey Statutes Ann. § 18A:37-17, school districts were required to "establish, implement, document, and assess bullying prevention programs or approaches, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members." School districts were also required to establish training programs for staff members on the school district's antibullying policy (New Jersey Statutes Ann. § 18A:37-17). Additionally, under New Jersey Statutes Ann. 18A:37-29, a Week of Respect was established in October; each school district was required to provide character education to students during that week. A Bullying Prevention Fund was established to help school districts implement the training programs (New Jersey Statutes Ann. §18A:37-28).

Not only was training required for staff and students on harassment, intimidation, and bullying; but it was required for teachers, administrators, and supervisors in training as well. Under New Jersey Statutes Annotated § 18A:37-22 and New Jersey Statutes Annotated § 18A:37-23, all candidates for teaching certification, supervisory certification, and administrative certification were required to complete a program on harassment, intimidation and bullying.

New Jersey had comprehensive antibullying legislation in place which required school districts to develop and post detailed antibullying policies, designate personnel to investigate cases of harassment, intimidation, and bullying, develop school safety teams committed to improving school culture, and provide ongoing training and education for staff and students.

New Jersey also had legislation in place that criminalized harassment, stalking, and cyber-harassment. According to New Jersey Statutes Ann. § 2C:33-4, harassment was illegal. Harassment was defined as follows:

> A communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm; b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person. (New Jersey Statutes Ann. § 2C:33-4)

Additionally, New Jersey Statutes Ann. § 2C:12-10 made stalking a criminal offense. According to New Jersey Statutes Ann. § 2C:12-10:

> A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress.

Finally, New Jersey Statutes Ann § 2C:33-4.1 criminalized cyber-stalking. Cyber-stalking was defined as follows:

> making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person: (1) threatens to inflict injury or physical harm to any person or the property of any person; (2) knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or (3)

threatens to commit any crime against the person or the person's property. (New Jersey Statutes Ann § 2C:33-4.1)

Collectively, New Jersey Statutes Ann § 2C:33-4.1, New Jersey Statutes Ann. § 2C:12-10, and New Jersey Statutes Ann. § 2C:33-4 imposed criminal sanctions on harassment, intimidation, and bullying, including cyberbullying.

New Mexico

School officials in New Mexico had the authority to sanction students for bullying and cyberbullying that occurred on school grounds, in school vehicles, or at school-sponsored events (NMAC § 6.12.7.7). According to New Mexico Administrative Code § 6.12.7.7, bullying was defined as follows:

> Any repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events. Bullying includes, but is not limited to, hazing, harassment, intimidation or menacing acts of a student which may, but need not be based on the student's race, color, sex, ethnicity, national origin, religion, disability, age or sexual orientation.

School officials had the authority to sanction students for repeated acts of harassment; one-time acts were not considered bullying. School officials had the authority to sanction students for acts of cyberbullying that occurred on school grounds. Cyberbullying was defined as follows:

> Electronic communication that: (1) targets a specific student; (2) is published with the intention that the communication be seen by or disclosed to the targeted student; (3) is in fact seen by or disclosed to the targeted student; and (4) creates or is certain to create a

> hostile environment on the school campus that is so severe or pervasive as to substantially interfere with the targeted student's educational benefits, opportunities or performance. (NMAC § 6.12.7.7)

The substantial interference language from *Tinker* was included in the definition of cyberbullying.

School districts in New Mexico were required to develop both antibullying policies as well as cyberbullying prevention programs (NMAC § 6.12.7.8). The antibullying policies had to include definitions, a statement prohibiting bullying, and methods for distributing the antibullying and anticyberbullying policies to students, parents, and staff, as well as procedures for reporting incidents of bullying and cyberbullying. There was no requirement for timelines for investigating bullying and cyberbullying incidents included in New Mexico Administrative Code § 6.12.7.8. New Mexico Administrative Code § 6.12.7.7 also required that consequences for bullying, cyberbullying, and false reporting be listed in each school district's policy.

At the time of this study, harassment and stalking were criminal offenses in New Mexico. Under New Mexico Statute § 30-3A-2, harassment, defined as "knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm, or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress" was a crime. Electronic communication was not included in the definition of harassment. Stalking, which was defined as a pattern of conduct directed at an individual that "would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual" was also a criminal offense in New Mexico under New Mexico Statute § 30-3A-3. Although New Mexico Statute § 30-3A-3 did not specify electronic communication as a means of stalking, "pattern of

conduct" was defined as "two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person." The inclusion of "any device or means" could be interpreted as electronic communication.

New York

At the time of this study, New York had antibullying legislation in place to prohibit bullying and cyberbullying in K-12 public schools (New York Education Law § 12). The definition of bullying included cyberbullying, and enabled school officials to discipline students for acts of harassment and bullying that occurred on or off school grounds, provided that it substantially disrupted the school environment or it was foreseeable that it would substantially disrupt the learning environment. The definition of harassment and bullying under New York Education Law § 11 was as follows:

> The creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying, that (a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or (b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or (c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or (d) occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property. Acts of harassment and bullying shall include, but not be limited to, those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group,

> religion, religious practice, disability, sexual orientation, gender or sex. For the purposes of this definition the term "threats, intimidation or abuse" shall include verbal and nonverbal actions.

School officials had the authority to discipline students for singular acts of bullying. The "substantial disruption" language from *Tinker* was included in the definition of harassment and bullying.

New York Education Law § 13 required school districts to develop policies to "create a school environment that is free from harassment, bullying and discrimination." Policies were to identify a school administrator that would be in charge of receiving harassment, bullying, and discrimination reports as well as designate a staff member to lead investigations of harassment, bullying, and discrimination (New York Education Law § 13). School districts were also required to develop policies that enabled students, staff, and parents to report instances of bullying, harassment, and discrimination and require staff members to report instances of bullying, harassment or discrimination (New York Education Law § 13). While a mandatory timeline was not provided, school districts were required to promptly investigate reports of harassment, bullying, and discrimination and "to take prompt actions reasonably calculated to end the harassment, bullying or discrimination" (New York Education Law § 13).

Additionally, school districts were required to post the antibullying policy on their school website and share a hard copy or electronic copy of the policy annually with school employees, students, and parents (New York Education Law § 13). New York, like New Jersey, had a statute in place that made antibullying training a licensing requirement for school professionals (New York Education Law § 14).

New York had a statute in place that criminalized stalking, which was defined as "likely to cause reasonable fear of material harm" to a person or "causes material harm to the mental or emotional health of such a person, where such conduct consists of following, telephoning or initiating communication or contact with such person" (New York Penal Law § 120.45). The definition of stalking included telephoning, but did not explicitly include other forms of electronic communication.

Nevada

Nevada had antibullying legislation in place that gave school officials the authority to discipline students for bullying and cyberbullying. Bullying was defined as follows:

> Written, verbal or electronic expressions or physical acts or gestures, or any combination thereof, that are directed at a person or group of persons, or a single severe and willful act or expression that is directed at a person or group of persons, and: (a) Have the effect of: (1) Physically harming a person or damaging the property of a person; or (2) Placing a person in reasonable fear of physical harm to the person or damage to the property of the person; (b) Interfere with the rights of a person by: (1) Creating an intimidating or hostile educational environment for the person; or (2) Substantially interfering with the academic performance of a pupil or the ability of the person to participate in or benefit from services, activities or privileges provided by a school; or (c) Are acts or conduct described in paragraph (a) or (b) ... 2. The term includes, without limitation: (a) Repeated or pervasive taunting, name-calling, belittling, mocking or use of put-downs or demeaning humor regarding the actual or perceived race, color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability of a person, sex or any other distinguishing characteristic or background of a person; (b)

> Behavior that is intended to harm another person by damaging or manipulating his or her relationships with others by conduct that includes, without limitation, spreading false rumors; (c) Repeated or pervasive nonverbal threats or intimidation such as the use of aggressive, menacing or disrespectful gestures; (d) Threats of harm to a person, to his or her possessions or to other persons, whether such threats are transmitted verbally, electronically or in writing; (e) Blackmail, extortion or demands for protection money or involuntary loans or donations; (f) Blocking access to any property or facility of a school; (g) Stalking; and (h) Physically harmful contact with or injury to another person or his or her property (Nevada Revised Statutes § 388.122).

According to Nevada Revised Statutes § 388.122, school officials had the authority to discipline students for one-time acts of bullying if they were severe. The "substantial interference" language from *Tinker* was present in the definition of bullying.

It was unclear whether school officials had permission to discipline students for acts of bullying that occurred off school grounds. The definition of bullying under Nevada Revised Statutes § 388.122 did not include the location of where the bullying took place, except for "blocking access to any property or facility of a school." Nevada Revised Statutes § 388.132 declared that public schools were to be safe learning environments:

> Every classroom, hallway, locker room, cafeteria, restroom, gymnasium, playground, athletic field, school bus, parking lot and other areas on the premises of a public school in [Nevada] must be maintained as a safe and respectful learning environment, and no form of bullying or cyber-bullying will be tolerated within the system of public education in [Nevada].

Since off-campus behavior was not included in Nevada's antibullying legislation, and no form of bullying or cyberbullying was tolerated within the system of public education, it did not appear that school officials had the authority to sanction students for bullying or cyberbullying that occurred off school grounds. Unlike other state statutes, Nevada's statute did not specify that bullying was prohibited at school-sponsored events or on a school bus; however, it could be argued that school sponsored events and school transportation vehicles were within the system of public education.

School districts were required to adopt the antibullying policy created by the Department of Education, which included methods for reporting bullying and methods for training staff and students on the antibullying policy and ways to promote a positive learning environment (Nevada Revised Statutes § 388.133). Additionally, school principals were charged with investigating reports of bullying and also required to develop "school safety teams" responsible for investigating patterns of bullying and improving the learning environment (Nevada Revised Statutes § 388.1343; Nevada Revised Statutes § 388.1343). Under NRS § 388.1351, timelines were established for reporting and investigating instances of bullying as well as contacting parents of victims and perpetrators. Specific disciplinary consequences were not included in NRS § 388.1351; however, under NRS § 388.132 it was clear that disciplinary action would be taken for violations of the bullying policy:

> Any teacher, administrator, principal, coach or other staff member or pupil who tolerates or engages in an act of bullying or cyber-bullying or violates a provision of NRS 388.121 to 388.1395, inclusive, regarding a response to bullying or cyber-bullying will be held accountable."

Within the Department of Education in Nevada, the Office for a Safe and Respectful Learning Environment was established and charged with providing antibullying training and outreach for students, parents, and school staff members (Nevada Revised Statutes § 388.1323). Additionally, a Week of Respect was established under Nevada Revised Statutes § 388.1395, which was a week dedicated to improving the school environment and providing education about bullying and cyberbullying.

At the time of this study, there were statutes in place in Nevada that criminalized harassment and stalking, including electronic harassment. Under Nevada Revised Statutes § 200.571, harassment was prohibited, which included threats to bodily harm or safety or "to do any act which is intended to substantially harm the person threatened or any other person with respect to his or her physical or mental health or safety." Nevada Revised Statutes § 200.575 criminalized stalking, defined as follows:

> Willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member.

Specifically included in Nevada Revised Statutes § 200.575 were methods of stalking such as through "use of an Internet or network site, electronic mail, text messaging or any other similar means of communication to publish, display or distribute information;" therefore, cyberbullying was illegal in Nevada. Together, Nevada Revised Statutes § 200.571 and Nevada Revised Statutes § 200.575 criminalized bullying and cyberbullying.

North Carolina

Bullying or harassing behavior, including cyberbullying, was not permitted in public schools in North Carolina. The "substantial interference" language from the decision in *Tinker* was included in the definition of bullying or harassing behavior. Under North Carolina General Statute § 115C-407.15, "bullying or harassing behavior" was defined as follows:

> Any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and that: (1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or (2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior. Bullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics.

In addition to disciplining students for patterns of bullying or harassing behavior, school officials had the authority to discipline students for one-time physical acts or threatening communications (North Carolina General Statute § 115C-407.15). School administrators only had the authority to

discipline students for acts of bullying that occurred on school property, at a school-sponsored event, or on a school bus (North Carolina General Statute § 115C-407.15); therefore, acts of cyberbullying or bullying that occurred off school grounds were not punishable.

School districts were required to establish and implement an antibullying policy under North Carolina General Statute § 115C-407.16 which included the definition of bullying, a statement prohibiting bullying, consequences for bullying, and a procedure for reporting and investigating instances of bullying. Schools were responsible for determining how the antibullying policy would be shared (North Carolina General Statute § 115C-407.16) as well as for establishing the procedures for reporting and investigating bullying.

There was a statute in place that criminalized stalking, North Carolina General Statute § 14-277.3A, as well as two laws that criminalized cyberbullying: North Carolina General Statute § 14-458.1 and North Carolina General Statute § 14-458.2. North Carolina General Statute § 14-458.1 criminalized cyberbullying of a minor, while North Carolina General Statute § 14-458.2 criminalized cyberbullying of a school staff member by a student. Collectively, North Carolina General Statute § 14-277.3A, North Carolina General Statute § 14-458.1, and North Carolina General Statute § 14-458.2 made bullying and harassing behavior criminal offenses in North Carolina.

Stalking was a criminal offense according to North Carolina General Statute § 14-277.3A. Stalking was defined as follows:

> Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or

about a person, or interferes with a person's property. (North Carolina General Statute § 14-277.3A)

Included in the definition of stalking were forms of electronic harassment such as telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions (North Carolina General Statute § 14-277.3A) with the intent to terrorize or torment another person.

North Carolina General Statute § 14-458.1 made cyberbullying of a minor a criminal offense. Included in the definition of cyberbullying were examples of means of cyberbullying such as by creating a fake social media profile or posing as a minor in a chat room or through email communication (North Carolina General Statute § 14-458.1). Additionally, it was unlawful to send doctored or real images with the intent of harming a minor or minor's parent or guardian (North Carolina General Statute § 14-458.1). Furthermore, it was illegal to "make any statement, whether true or false, intending to immediately provoke, and that is likely to provoke, any third party to stalk or harass a minor" as well as to "copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a minor" (North Carolina General Statute § 14-458.1). Harassing electronic communications were also illegal (North Carolina General Statute § 14-458.1).

Under North Carolina General Statute § 14-458.2, it was a criminal offense for students to cyberbully a school staff member. It was unlawful to create fake social media profiles with the intent to harass a school staff member, as well as "post or encourage others to post on the Internet private, personal, or sexual information pertaining to a school employee" (North Carolina General Statute § 14-458.2). It was also unlawful to share doctored or real images of a

school staff member with the intent to torment a school employee. Additionally, harassing electronic communications were illegal (North Carolina General Statute § 14-458.2).

North Dakota

Bullying was prohibited in North Dakota public schools under North Dakota Century Code Chapter 15.1-19-18. School officials only had the authority to discipline students for acts of bullying that occurred on school grounds, in a school vehicle or at school sanctioned events (N.D.C.C.C. 15.1-19-18); the definition of bullying indicated that school officials had the authority to discipline students for one-time acts of bullying. Bullying was defined as follows:

> a. Conduct that occurs in a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event and which: (1) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities; (2) Places the student in actual and reasonable fear of harm; (3) Places the student in actual and reasonable fear of damage to property of the student; or (4) Substantially disrupts the orderly operation of the public school; or b. Conduct that is received by a student while the student is in a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event and which: (1) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities; (2) Places the student in actual and reasonable fear of harm; (3) Places the student in actual and reasonable fear of damage to property of the student; or (4) Substantially disrupts the orderly operation of the public school. (N.D.C.C.C. 15.1-19-18)

"Conduct" as used in the definition of bullying was defined to include "use of technology or other electronic media;" therefore, cyberbullying on school grounds, in school vehicles, or at school sponsored events was a punishable offense in public schools. The "substantial disruption" and "substantial interference" language from *Tinker* was included in the definition of bullying.

School districts were required to develop antibullying policies under North Dakota Century Code Chapter 15.1-19-18. The antibullying policy had to include a definition for bullying as well as establish a procedure for reporting, documenting, and investigating bullying as well as establish timelines for handling bullying investigations (N.D.C.C.C 15.1-19-18). School districts had the autonomy to develop their own procedures and timelines. The policy also had to include disciplinary guidelines and consequences for bullying and procedures for notifying local law enforcement of bullying when necessary (N.D.C.C.C 15.1-19-18). Schools were required to provide professional development activities for staff in regard to the prevention of bullying (N.D.C.C.C 15.1-19-19) as well as antibullying programs for students N.D.C.C.C 15.1-19-20).

North Dakota had two statutes in place, which, in effect, criminalized bullying and cyberbullying: North Dakota Century Code Chapter 12.1-17-07 and North Dakota Century Code Chapter 12.1-17-07.1). Under North Dakota Century Code Chapter 12.1-17-07, harassment, including electronic harassment was a crime. Harassment was defined as communication "in writing or by electronic communication a threat to inflict injury on any person, to any person's reputation, or to any property," making repeated phone calls or electronic communications, and communicating "a falsehood in writing or by electronic communication and causes mental anguish (N.D.C.C.C 12.1-17-07). According to North Dakota Century Code Chapter 12.1-

17.07.1, stalking was a crime. The definition of stalking included a pattern of behavior that frightens, harasses, or intimidates another person (N.D.C.C.C. 12.1-17.07.1).

Ohio

School officials in Ohio had the authority to discipline students for singular acts of harassment, intimidation, and bullying under Ohio Revised Code Annotated § 3313.666) Harassment, intimidation, and bullying was defined as follows:

> (a) Any intentional written, verbal, electronic, or physical act that a student has exhibited toward another particular student more than once and the behavior both: (i) Causes mental or physical harm to the other student; (ii) Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student. (b) Violence within a dating relationship. (Ohio Revised Code Annotated § 3313.666)

Electronic harassment was included in the definition of bullying; however, school officials only had the authority to discipline students for acts of harassment, intimidation, and bullying that occurred "on school property, on a school bus, or at school-sponsored events (Ohio Revised Code Annotated § 3313.666)."

School districts were required to develop antibullying policies that included a statement prohibiting harassment, intimidation, and bullying, the definition of harassment, intimidation, and bullying, consequences for harassment, intimidation, and bullying including the possibility of suspension, and requirements for staff members to report harassment, intimidation, and bullying when observed (Ohio Revised Code Annotated § 3313.666). Additionally, school policies had to include procedures for reporting, investigating, and addressing harassment, intimidation, and bullying as well as for notifying parents of incidents of harassment,

intimidation, and bullying (Ohio Revised Code Annotated § 3313.666). Additionally, students had to be informed and educated about the antibullying policy (Ohio Revised Code Annotated § 3313.666).

Ohio Revised Code Annotated § 3313.667 outlined possible, but not required, antibullying initiatives such as creating an antibullying task force or program. Additionally, school districts were required to provide training, workshops, or courses on the antibullying policy "to the extent that state or federal funds [were] appropriated for these purposes" (Ohio Revised Code Annotated § 3313.667).

There were two criminal sanctions in place that addressed harassment, intimidation, and bullying in Ohio: Ohio Revised Code Annotated § 2903.21 and Ohio Revised Code Annotated § 2917.21. Under Ohio Revised Code Annotated § 2903.21, aggravated menacing was a crime. Aggravated menacing was defined as follows:

> [Causing] another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs. (Ohio Revised Code Annotated § 2903.21)

Ohio Revised Code Annotated § 2917.21 criminalized telecommunications harassment. The definition of telecommunications harassment included "telecommunication with purpose to

harass, intimidate, or abuse any person." Telecommunications harassment involved phone calls; other forms of electronic harassment such as text messaging email, and social media posts were not included in the definition of telecommunications harassment.

Oklahoma

School officials in Oklahoma had the authority to discipline students for incidents of harassment, intimidation, and bullying. Oklahoma Statute Annotated §70-24-100.3, defined "harassment, intimidation, and bullying" as follows:

> Any gesture, written or verbal expression, electronic communication, or physical act that a
>
> reasonable person should know will harm another student, damage another student's property, place another student in reasonable fear of harm to the student's person or damage to the student's property, or insult or demean any student or group of students in such a way as to disrupt or interfere with the school's educational mission or the education of any student. "Harassment, intimidation, and bullying" include, but are not limited to, gestures, written, verbal, or physical acts, or electronic communications.

One time acts were considered harassment, intimidation, or bullying.

School officials had the authority to discipline students for acts of cyberbullying that occurred on or off school grounds, whether or not school equipment was used, provided that the communication was "specifically directed at students or school personnel and [concerned] harassment, intimidation, or bullying at school" (Oklahoma Statute Annotated §70-24-100.4).

School districts were required to develop school policies to address bullying under Oklahoma Statute Annotated §70-24-100.4. The school policies had to prohibit harassment, intimidation, and bullying and include education and strategies for the prevention of harassment,

intimidation and bullying (Oklahoma Statute Annotated §70-24-100.4). Additionally, school districts were required to develop procedures for investigating and dealing with incidents of harassment, intimidation, and bullying including disciplinary measures and mental health care (Oklahoma Statute Annotated §70-24-100.4).

Under Oklahoma Statute Annotated §70-24-100.5, schools were required to establish School Safety Committees, comprised of teachers, parents of affected students, students, and a school official responsible for investigating harassment, intimidation, and bullying incidents. The purpose of the School Safety Committee was to investigate harassment, intimidation, and bullying in school and find ways to improve the school climate.

Cyberbullying was a criminal offense in Oklahoma. Oklahoma Statute Annotated §21-1172 made "obscene, threatening or harassing telecommunication or other electronic communications" a crime. In Oklahoma it was unlawful to make "electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person (Oklahoma Statute Annotated §21-1172)."

Additionally, according to Oklahoma Statute Annotated §21-1173, stalking was a criminal offense. The crime of stalking was defined as "willfully, maliciously, and repeatedly follows or harasses another person." "Harasses" was further defined as follows:

> A pattern or course of conduct directed toward another individual that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. (Oklahoma Statute Annotated §21-1173)

Collectively, Oklahoma Statute Annotated §21-1173 and Oklahoma Statute Annotated §21-1172 criminalized harassment, intimidation, and bullying as well as cyberbullying.

Oregon

School officials in Oregon had the authority to discipline students for acts of harassment, intimidation, or bullying, including cyberbullying, that occurred "at school-sponsored activities, on school-provided transportation and at any official school bus stop" (Oregon Revised Statutes § 339.356). School officials did not have the authority to discipline students for off-campus behavior. Cyberbullying was defined as "the use of any electronic communication device to harass, intimidate or bully" (Oregon Revised Statutes § 339.351). Harassment, intimidation, or bullying was defined as follows:

> Any act that: (a) Substantially interferes with a student's educational benefits, opportunities or performance; (b) Takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop; (c) Has the effect of: (A) Physically harming a student or damaging a student's property; (B) Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student's property; or (C) Creating a hostile educational environment, including interfering with the psychological well-being of a student; and (d) May be based on, but not be limited to, the protected class status of a person. (Oregon Revised Statutes § 339.351)

School officials had the authority to discipline students for one-time acts of harassment, intimidation, or bullying. The "substantial interference" language from the decision in *Tinker* was included in the definition of bullying.

Oregon Revised Statutes § 339.356 required school districts to develop antibullying policies that defined harassment, intimidation, bullying, cyberbullying, and protected class as well as specified that harassment, intimidation, bullying, and cyberbullying were prohibited "at

school-sponsored activities, on school-provided transportation and at any official school bus stop" (Oregon Revised Statutes § 339.356). Furthermore, school districts needed to include a uniform procedure for investigating instances of harassment, intimidation, bullying, and cyberbullying as well as specify the school officials that would be responsible for carrying out the investigations (Oregon Revised Statutes § 339.356). Consequences and remedial action for violating the policy had to be included (Oregon Revised Statutes § 339.356). Furthermore, the policy had to be shared with members of the school district annually (Oregon Revised Statutes § 339.356).

It was also mandatory for school districts to incorporate training on harassment, intimidation, bullying, and cyberbullying for staff and students Oregon Revised Statutes § 339.359). Oregon Revised Statutes § 339.359 suggested that school districts develop antibullying task forces comprised with stakeholder groups that were charged with preventing and developing appropriate responses to harassment, intimidation, bullying, and cyberbullying.

At the time of this study, there was no legislation in place in Oregon to prevent cyberbullying. There were two statutes in place that criminalized components of the conduct defined as harassment, intimidation, and bullying under Oregon Revised Statutes § 339.351: Oregon Revised Statutes § 163.190 which addressed menacing and Oregon Revised Statutes § 163.73 which addressed stalking. Under Oregon Revised Statutes § 163.190, menacing was a criminal offense. Menacing was defined as when a person "by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury" (Oregon Revised Statutes § 163.190). Stalking, under Oregon Revised Statutes § 163.73, was defined as when a person:

> Knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person; (b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

There was no inclusion of electronic communication in Oregon Revised Statutes § 163.190 or Oregon Revised Statutes § 163.73. The definitions of menacing and stalking criminalized repeated unwanted contact with another person and imposing fear of physical injury; however, they did not include key components of harassment, intimidation, bullying, and cyberbullying such as interfering with the psychological well-being of a person or targeting a protected class.

Pennsylvania

At the time of this study, school officials in Pennsylvania had the authority to discipline students for acts of bullying and cyberbullying that occurred on or off school grounds. Under Pennsylvania Consolidated Statute 24 § 13-1303.1-A, school districts were required to implement antibullying policies which included disciplinary consequences for bullying. The antibullying policy had to be shared with students annually as well as posted on the school website (Pennsylvania Consolidated Statute 24 § 13-1303.1-A). Bullying was defined as follows:

> "Bullying" shall mean an intentional electronic, written, verbal or physical act, or a series of acts: (1) directed at another student or students; (2) which occurs in a school setting; (3) that is severe, persistent or pervasive; and (4) that has the effect of doing any of the following: (i) substantially interfering with a student's education; (ii) creating a

> threatening environment; or (iii) substantially disrupting the orderly operation of the school; and "school setting" shall mean in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised or sanctioned by the school. (Pennsylvania Consolidated Statute 24 § 13-1303.1-A)

School officials could discipline students for one-time acts of bullying. The "substantial disruption" and "substantial interference" language from *Tinker* was included in the definition of bullying. Although the definition of bullying included "on school grounds," there was a provision in the law that:

> A school entity shall not be prohibited from defining bullying in such a way as to encompass acts that occur outside a school setting if those acts meet the requirements contained in subsection (e)(1), (3) and (4). (Pennsylvania Consolidated Statute 24 § 13-1303.1-A)

School officials could discipline students for off-campus bullying if the bullying was directed at other students, pervasive, and had substantially disrupted the learning of another student or learning environment (Pennsylvania Consolidated Statute 24 § 13-1303.1-A).

Harassment and cyber-harassment of a child were both criminal offenses in Pennsylvania. The definition of harassment, according to Pennsylvania Consolidated Statute 18 § 2709, included when a person "with intent to harass, annoy or alarm another," threatens physical harm to a person and "[engages] in a course of conduct or repeatedly commits acts which serve no legitimate purpose."

Pennsylvania Consolidated Statute 18 § 2709 criminalized cyber-harassment of a child. Cyber-harassment of a child was defined as when a person

> with intent to harass, annoy or alarm a child: engages a continuing course of conduct of making any of the following by electronic means directly to a child or by publication through an electronic social media service: (i) seriously disparaging statement or opinion about the child's physical characteristics, sexuality, sexual activity or mental or physical health or condition; or (ii) threat to inflict harm (Pennsylvania Consolidated Statute 18 § 2709).

The criminalization of harassment and cyber-harassment of a minor under Pennsylvania Consolidated Statute 18 § 2709 criminalized both bullying and cyberbullying.

Rhode Island

A statewide antibullying policy was implemented in Rhode Island; all schools in Rhode Island, including private schools, had to implement the antibullying policy (Rhode Island General Laws § 16-21-34). The Department of Education was required to develop a policy to prohibit bullying and cyberbullying at school; the policy was to provide requirements for staff, students, parents, and guardians regarding the reporting of bullying, a means for anonymously reporting bullying, and a procedure for responding and investigating to reports of bullying (Rhode Island General Laws § 16-21-34). Bullying was defined as follows:

> The use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof directed at a student that: (i) Causes physical or emotional harm to the student or damage to the student's property; (ii) Places the student in reasonable fear of harm to himself/herself or of damage to his/her property; (iii) Creates an intimidating, threatening, hostile, or abusive educational environment for the student; (iv) Infringes on the rights of the student to participate in school activities; or

> (v) Materially and substantially disrupts the education process or the orderly operation of a school. The expression, physical act or gesture may include, but is not limited to, an incident or incidents that may be reasonably perceived as being motivated by characteristics such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression or mental, physical, or sensory disability, intellectual ability or by any other distinguishing characteristic. (Rhode Island General Laws § 16-21-33)

The "substantial disruption" language from the court decision in *Tinker* was included in the definition of bullying. Electronic expression was included in the definition of bullying, which gave school officials the authority to discipline students for cyberbullying (Rhode Island General Laws § 16-21-33). Additionally, one-time actions were be considered bullying under (Rhode Island General Laws § 16-21-33). In Rhode Island General Laws § 16-21-33, cyberbullying was defined as "through the use of technology or any electronic communication" and a means in which cyberbullying can occur such as through texts, instant messages, or "the creation of a web page or blog in which the creator assumes the identity of another person" were also included. Under Rhode Island General Laws § 16-21-34, students were not permitted to use social media websites during the school day, unless the site was being used for educational purposes with approval from administration.

School officials had the authority to discipline students for acts of bullying that occurred of school grounds. Although bullying and cyberbullying were prohibited at school, "at school" was defined as follows:

> On school premises, at any school-sponsored activity or event whether or not it is held on school premises, on a school-transportation vehicle, at an official school bus stop, using

> property or equipment provided by the school, or creates a material and substantial disruption of the education process or the orderly operation of the school. (Rhode Island General Laws § 16-21-33)

The final clause in the definition of "at school"—"or creates a material and substantial disruption of the education process or the orderly operation of the school"—grants school officials the authority to discipline students for acts of bullying that occur off school grounds (Rhode Island General Laws § 16-21-33).

Both cyberstalking as well as cyber-harassment were criminal offenses in Rhode Island. Under Rhode Island General Laws § 11-52-4.2, it was unlawful to transmit "any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his or her family (Rhode Island General Laws § 11-52-4.2).

Face-to-face harassment was also a criminal offense in Rhode Island at the time of this study. Under Rhode Island General Laws § 11-59-2, harassing another person was prohibited. "Harasses" was defined as follows:

> Knowing and willful course of conduct directed at a specific person with the intent to seriously alarm, annoy, or bother the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury.

As "course of conduct" was included in the definition of "harasses," and defined as a pattern of behavior, one time acts were not punishable under Rhode Island General Laws § 11-59-2.

Collectively, Rhode Island General Laws § 11-59-2 and Rhode Island General Laws § 11-52-4.2 made harassment, intimidation, bullying, and cyberbullying criminal offenses.

South Carolina

South Carolina had antibullying legislation in place that prohibited harassment, intimidation, or bullying at school. "Harassment, intimidation, or bullying" was defined as follows:

> A gesture, an electronic communication, or a written, verbal, physical, or sexual act that is reasonably perceived to have the effect of: (a) harming a student physically or emotionally or damaging a student's property, or placing a student in reasonable fear of personal harm or property damage; or (b) insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the school (South Carolina Code Annotated §59-63-120).

School officials had the authority to discipline students for one time acts of bullying, harassment, or intimidation, including electronic communication. The "substantial disruption" and "substantial interference" language from the decision in *Tinker* was included in the definition of "harassment, intimidation, or bullying."

While school officials had the authority to discipline students for electronic communication, they did not have the authority to discipline students for acts of cyberbullying that occurred off school grounds. "At school" was defined as follows:

> In a classroom, on school premises, on a school bus or other school-related vehicle, at an official school bus stop, at a school-sponsored activity or event whether or not it is held on school premises, or at another program or function where the school is responsible for the child. (South Carolina Code Annotated §59-63-120)

According to South Carolina Code Annotated § 59-63-140, school districts were required to adopt policies to prohibit bullying, harassment, or intimidation at school. Policy requirements

included the definition of bullying, harassment, or intimidation and consequences and remedial actions for engaging in bullying, harassment, or intimidation (South Carolina Code Annotated § 59-63-140). Additionally, school districts were required to include procedures for investigating reports of bullying, harassment, or intimidation as well as a statement about how the policy would be publicized (South Carolina Code Annotated § 59-63-140). School districts were encouraged to provide training in bullying prevention for staff, students, and parents (South Carolina Code Annotated § 59-63-140).

There was legislation in place that criminalized harassment and cyberbullying in South Carolina, effectively making bullying, harassment, or intimidation a criminal offense. According South Carolina Code Annotated § 16-3-1700, harassment and stalking were criminal offenses. Harassment was defined as follows:

> A pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress.

The definition of harassment did not include electronic harassment; however, stalking was defined as "a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose (South Carolina Code Annotated § 16-3-1700). Both stalking and harassment were defined as patterns of behavior; therefore, one-time acts were not considered stalking or harassment.

South Dakota

South Dakota had legislation in place to prohibit bullying in schools. The definition of bullying included "use of data or computer software" and school officials had the authority to discipline students for acts of electronic harassment that occurred off school grounds (South

Dakota Codified Laws § 13-32-15; South Dakota Codified Laws § 13-32-18). Bullying was defined as follows:

> A pattern of repeated conduct that causes physical hurt or psychological distress on one or more students that may include threats, intimidation, stalking as defined in chapter 22-19A, physical violence, theft, destruction of property, any threatening use of data or computer software, written or verbal communication, or conduct directed against a student that: (1) Places a student in reasonable fear of harm to his or her person or damage to his or her property; and either (2) Substantially interferes with a student's educational performance; or (3) Substantially disrupts the orderly operation of a school. (South Dakota Codified Laws § 13-32-15)

Since bullying was defined as a "pattern of repeated conduct," school officials did not have the authority to discipline students for one-time actions. The "substantial interference" and "substantial disruption" language from *Tinker* was included in the definition of bullying.

School districts were required to develop a policy to prohibit bullying which included the definition of bullying, a description of acceptable student behavior, consequences for violating the antibullying policy, and procedures for reporting and investigating bullying. School districts had the autonomy to develop their own procedures for investigating bullying (South Dakota Codified Laws § 13-32-16). School districts also had to include a statement requiring the prompt investigation of all reports of bullying, including those that occur "while the child is aboard a school bus, at a school bus stop, or at a school-sponsored event." Although off-campus behavior was not included in South Dakota Codified Laws § 13-32-16, South Dakota Codified Laws § 13-32-18 gave school officials the authority to discipline students for electronic forms of harassment or bullying that occurred off school grounds:

> Neither the physical location nor the time of day of any incident involving the use of computers or other electronic devices is a defense to any disciplinary action taken by a school district for conduct determined to meet the definition of bullying in South Dakota Codified Laws § 13-32-15.

At the time of this study, there was a statute in place that criminalized stalking, including stalking through electronic means. In effect, South Dakota Codified Laws § 22-19A-1 criminalized bullying, as the definitions of "bullying," under South Dakota Codified Laws § 13-32-15, and "stalking," under South Dakota Codified Laws § 22-19A-1, were very similar.

According to South Dakota Codified Laws § 22-19A-1, stalking included "willfully, maliciously, and repeatedly [harassing] another person by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication." "Harass" was defined as a "course of conduct... which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose" (South Dakota Codified Laws § 22-19A-4).

Tennessee

There was legislation in place that required all school districts in Tennessee to adopt a policy prohibiting harassment, intimidation, bullying, or cyberbullying in schools (Tenn. Code Ann. § 49-6-4504). Cyberbullying was defined as "bullying undertaken through the use of electronic devices" (Tenn. Code Ann. § 49-6-4502). "Harassment, intimidation, or bullying" was defined as follows:

> Any act that substantially interferes with a student's educational benefits, opportunities or performance; and: (A) If the act takes place on school grounds, at any school-sponsored activity, on school-provided equipment or transportation or at any official school bus stop, the act has the effect of: (i) Physically harming a student or damaging a student's

> property; (ii) Knowingly placing a student or students in reasonable fear of physical harm to the student or damage to the student's property; (iii) Causing emotional distress to a student or students; or (iv) Creating a hostile educational environment; or (B) If the act takes place off school property or outside of a school-sponsored activity, it is directed specifically at a student or students and has the effect of creating a hostile educational environment or otherwise creating a substantial disruption to the education environment or learning process (Tenn. Code Ann. § 49-6-4502).

The "substantial interference" and "substantial disruption" language from *Tinker* was included in the definition of bullying. School officials had the authority to discipline students for singular acts and acts that took place off school property provided that the act of harassment, intimidation, or bullying created a "hostile educational environment" or "a substantial disruption to the education environment or learning process" (Tenn. Code Ann. § 49-6-4502).

School districts were required to develop antibullying policies that included a statement prohibiting harassment, intimidation, bullying, or cyberbullying as well as definitions of harassment, intimidation, bullying, or cyberbullying (Tenn. Code Ann. § 49-6-4503). Additionally, schools were required to describe expected student behavior as well as the disciplinary and remedial consequences for engaging in harassment, intimidation, bullying,or cyberbullying (Tenn. Code Ann. § 49-6-4503).

District antibullying policies also had to include procedures for reporting and promptly investigating incidents of harassment, intimidation, bullying, or cyberbullying; school districts were required to begin the investigation process within 48 hours of receiving a report of harassment, intimidation, bullying, or cyberbullying (Tenn. Code Ann. § 49-6-4503). The district antibullying policy also had to specify the school officials that would be responsible for

conducting investigations of harassment, intimidation, bullying, or cyberbullying and the policy had to be shared annually with staff (Tenn. Code Ann. § 49-6-4503). School districts were encouraged to form antibullying task forces (Tenn. Code Ann. § 49-6-4506).

In Tennessee, there was legislation in place that effectively criminalized harassment and cyberbullying. Under Tenn. Code Ann. § 39-17-315, stalking was a criminal offense. Stalking was defined as "repeated or continuing harassment of another individual" and "harassment" was defined as "repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress" (Tenn. Code Ann. § 39-17-315). Tenn. Code Ann. § 39-17-315 included electronic communication in the definition of "unconsented contact."

Additionally, there was a statute in place that criminalized harassment. According to Tenn. Code Ann. § 39-17-308, harassment was defined as when a person communicates a threat or:

> Communicates with another person without lawful purpose, ... with the intent that the frequency or means of the communication annoys, offends, alarms, or frightens the recipient and, by this action, annoys, offends, alarms, or frightens the recipient. (Tenn Code Ann. § 39-17-308)

"Communicate" was further defined to include electronic means of communication (Tenn Code Ann. § 39-17-308).

Together, Tenn. Code Ann. § 39-17-315 and Tenn Code Ann. § 39-17-308 criminalized harassment, intimidation, bullying, and cyberbullying in Tennessee at the time of this study.

Texas

Bullying was prohibited in Texas schools and school districts were required to implement antibullying policies. Bullying was defined as follows:

> Engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district and that: (1) has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or (2) is sufficiently severe, persistent, and pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student (Texas Education Code Ann. § 37.0832).

In order for the conduct to be considered bullying it also had to:

> (1) [exploit] an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct; and (2) [interfere] with a student's education or substantially disrupts the operation of a school (Texas Education Code Ann. § 37.0832).

School officials in Texas had the authority to discipline students for singular acts of bullying, including cyberbullying at the time of this study; however, school officials did not have the authority to discipline students for off-campus behavior. The "substantial disruption" language from *Tinker* was included in the definition of bullying.

School districts in Texas were required to adopt an antibullying policy that prohibited bullying, established a procedure for reporting and investigating instances of bullying, and established a procedure for notifying parents or guardians of the victims and bullies "within a reasonable amount of time after the incident" (Texas Education Code Ann. § 37.0832). The antibullying policy also had to establish counseling options for victims and bullies in addition to

disciplinary measures (Texas Education Code Ann. § 37.0832). Victims of bullying or bullies may be transferred to other schools via Texas Education Code Ann. § 25.0342.

Cyberbullying was not a criminal offense in Texas; however, there was legislation in place that criminalized face-to-face stalking. Stalking was defined as a one time or repeated action that involved threatening bodily harm, threatening destruction of property, or causing another person to "feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended" (Texas Penal Code Ann. § 42.072). Texas Penal Code Ann § 42.072 criminalized face-to-face stalking or harassment, but did not criminalize electronic harassment.

Utah

In Utah, bullying, cyberbullying, and harassment were prohibited in schools. School officials had the authority to discipline students for bullying, cyberbullying, and harassment that occurred on school property, on a school bus, at a school bus stop, or at a school sponsored event as well as cyberbullying that occurred on or off school grounds (Utah Code Annotated § 53A-11a-201). Bullying was defined as follows: intentionally or knowingly committing an act that:

> (i) (A) endangers the physical health or safety of a school employee or student; (B) involves any brutality of a physical nature [...], (C) involves consumption of any food, liquor, drug, or other substance; (D) involves other physical activity that endangers the physical health and safety of a school employee or student; or (E) involves physically obstructing a school employee's or students' freedom to move; and (ii) is done for the purpose of placing a school employee or student in fear of (A) physical harm to the school employee or student; or (B) harm to property of the school employee or student. (Utah Code Annotated § 53A-11a-102)

Bullying was defined as physically harming another person or placing the person in fear of physical harm. The definition of harassment covered verbal forms of bullying. Harassment was defined as "repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual (Utah Code Annotated § 53A-11a-102)." Additionally, the term cyber-bullying was defined as follows:

> Using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication. (Utah Code Annotated § 53A-11a-102)

Utah Code Annotated § 53A-11a-102 gave school officials the authority to discipline students for one-time acts of cyberbullying or bullying; however, harassment was considered repeated behavior.

School districts were required to implement bullying, cyberbullying, harassment, hazing, and retaliation policies which included definitions of bullying, cyberbullying, harassment, and hazing as well as a statement prohibiting bullying, cyberbullying, harassment, hazing, and retaliation (Utah Code Annotated § 53A-11a-301). The policy had to be publicized in student and employee handbooks (Utah Code Annotated § 53A-11a-301). Additionally, school employees were required to be trained in bullying, cyber-bullying, harassment, hazing, and retaliation under Utah Code Annotated § 53A-11a-401.

There was legislation in place that criminalized harassment and electronic harassment in Utah. Under Utah Code Annotated § 76-5-106, harassment was a criminal offense. Harassment

was defined as communication of "a written or recorded threat to commit any violent felony" with the "intent to frighten or harass another" (Utah Code Annotated § 76-5-106). Additionally, stalking was a criminal offense under Utah Code Annotated § 76-5-106.5. Stalking was defined as when a person:

> Intentionally or knowingly engages in a course of conduct ... and knows or should know that the course of conduct would cause a reasonable person: (a) to fear for the person's own safety of the safety of a third person; or (b) to suffer other emotional distress. (Utah Code Annotated § 76-5-106.5)

Included in the definition of "code of conduct" was when a person "uses a computer, the Internet, text messaging, or any other electronic means to commit an act (Utah Code Annotated § 76-5-106.5);" therefore, cyberbullying was criminalized in Utah at the time of this study.

Together, Utah Code Annotated § 76-5-106 and Utah Code Annotated § 76-5-106.5 criminalized bullying, harassment, and cyberbullying.

Vermont

Vermont had legislation in place that required school districts to establish and implement harassment, hazing, and bullying prevention policies (16 V.S.A. § 570). The school policies had to be at least as stringent as the state's model policy (16 V.S.A. § 570). Harassment was defined as follows:

> Incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student's or a student's family member's actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a

> student's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment. (16 V.S.A. § 11)

Furthermore, bullying was defined as follows:

> Any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and that: (A) is repeated over time; (B) is intended to ridicule, humiliate, or intimidate the student; and (C)(i) occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity; or (ii) does not occur during the school day on school property, on a school bus, or at a school-sponsored activity and can be shown to pose a clear and substantial interference with another student's right to access educational programs. (16 V.S.A. § 11)

The "substantial interference" language from *Tinker* was included in the definition of bullying. Under the definitions of harassment, hazing, and bullying, school officials had the authority to discipline students for one-time offenses as well as for electronic acts of bullying or harassment. School officials had the authority to discipline students for acts of hazing or bullying that occurred off school grounds, provided that the act posed a "clear and substantial interference with another student's right to access educational programs" (16 V.S.A. § 11).

Included in 16 V.S.A. § 570 was "hazing" which was a form of harassment that was committed against a student that was "pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization that is affiliated with an educational institution (16 V.S.A. § 11)." Under 16. V.S.A. § 11, it was indicated that "hazing may occur on or off the campus of an educational institution."

The policies for addressing harassment, bullying, and hazing had to include statements that harassment, bullying, and hazing as defined by 16 V.S.A. § 11 were prohibited as well as procedures for reporting and investigating instances of harassment, bullying, and hazing (16 V.S.A. § 570a; 16 V.S.A. § 570b; 16 V.S.A. § 570c). School boards were required to provide training for school staff members in preventing, recognizing, and responding to harassment, bullying, and hazing (16 V.S.A. § 570a; 16 V.S.A. § 570b; 16 V.S.A. § 570c).

There were two statutes in place in Vermont that criminalized harassment, bullying, and cyberbullying: 3 V.S.A. § 1061 and 13 V.S.A. § 1027. Under V.S.A. § 1061, stalking was a crime. Stalking was defined as engaging:

> Purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to fear for his or her safety or the safety of another or would cause a reasonable person substantial emotional distress" (V.S.A. § 1061).

"Course of conduct," according to V.S.A. § 1061, was defined as two or more acts committed "by any action, method, device, or means." Although V.S.A. § 1061 did not specifically address electronic harassment, by including "method" and "device," electronic forms of stalking were criminal offenses. Additionally, Vermont had a statute in place to specifically address electronic harassment; according to V.S.A. § 1027, "disturbing peace by use of telephone or other electronic communications" was a criminal offense.

Virginia

Virginia Code Annotated § 22.1-291.4 prohibited bullying in Virginia schools. School boards were required to develop policies and programs to educate staff members about bullying (Virginia Code Annotated § 22.1-291.4). Bullying was defined as follows:

> Any aggressive and unwanted behavior that is intended to harm, intimidate, or humiliate the victim; involves a real or perceived power imbalance between the aggressor or aggressors and victim; and is repeated over time or causes severe emotional trauma. "Bullying" includes cyber bullying. "Bullying" does not include ordinary teasing, horseplay, argument, or peer conflict. (Virginia Code Annotated § 22.1-276.01)

Cyberbullying was included in the definition of bullying. School officials also had the authority to discipline students for one-time acts of bullying under Virginia Code Annotated § 22.1-276.01. It was unclear whether school officials had the authority to discipline students for acts of bullying or cyberbullying that occurred off school grounds under Virginia Code Annotated § 22.1-276.01; however, according to the Virginia Board of Education's "Model Policy to Address Bullying in Virginia's Public Schools (2013)," acts of bullying that occurred on or off school grounds were punishable. According to the "Model Policy: to Address Bullying in Virginia's Public Schools (2013):

> Bullying is of concern for a school division when an incident occurs at any time during an education program or activity conducted a. at any school-related or school-sponsored program or activity; b. on a school bus or chartered transportation for school sponsored activities and other means of transportation funded by public schools; c. in any community setting where the behavior or interaction of students extended beyond the school environment but has negative impact on the academic setting; or d. through a communication device, computer system, or computer network in a school or off campus which poses a reasonable forecast of substantial disruption of school activities.

"Substantial disruption" was included in the model policy language but not in the state laws. According to the model policy, cyberbullying that occurred off campus but that posed a

"reasonable forecast of substantial disruption of school activities" was within school administrators' reach.

Virginia Code Annotated § 22.1-279.6 required school districts to adopt a code of conduct that included "policies and procedures that include a prohibition against bullying." The policies and procedures had to be consistent with the guidelines established by Virginia's Department of Education (Virginia Code Annotated § 22.1-279.6).

Virginia had a statute in place that criminalized cyberbullying. According to Virginia Code Annotated § 18.2-152.7:1,"harassment by computer" was a criminal offense:

> 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. (Virginia Code Annotated § 18.2-152.7:1)

The definition of "harassment by computer" did not include "text messaging" or phone communication. There was not a statute in place that criminalized face-to-face bullying as defined in Virginia Code Annotated § 22.1-276.01.

Washington

According to RCW § 28A.300.285, school districts in Washington were required to adopt a policy prohibiting "the harassment, intimidation, or bullying of any student" in accordance with the state department's revised model policy (RCW § 28A.300.285). Harassment, intimidation, or bullying was defined as follows:

> Any intentional electronic, written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080 (3), or other

> distinguishing characteristics, when the intentional electronic, written, verbal, or physical act: (a) Physically harms a student or damages the student's property; or (b) Has the effect of substantially interfering with a student's education; or (c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or (d) Has the effect of substantially disrupting the orderly operation of the school. Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying. (RCW § 28A.300.285)

School officials had the authority to discipline students for singular acts of bullying, harassment, or intimidation. The definition of "harassment, intimidation, or bullying" did not specify whether or not the behavior had to occur on school grounds in order for it to be a punishable offense; however, as "has the effect of substantially disrupting the orderly operation of the school (RCW § 28A.300.285)" was included in the definition of "harassment, intimidation, or bullying," school officials might have the authority to sanction students for acts of bullying that occurred off school grounds. The "substantial disruption" language from *Tinker* was included in the definition of harassment, intimidation, or bullying (RCW § 28A.300.285).

WAC § 392-400-226 required school districts to annually publicize and make available their harassment, intimidation and bullying policy to parents, guardians, students, and school staff. Additionally, the following materials had to be published: "policy and procedure, an incident reporting form and current contact information for the district's harassment, intimidation and bullying compliance officer" (WAC § 392-400-226).

In Washington, there were three statutes in place criminalized addressed harassment, intimidation, and bullying, including cyberbullying: RCW § 9.61.260, RCW § 9.61.230**,** and RCW § 9a.36.080.

RCW § 9.61.260 criminalized cyberstalking in Washington. The crime of cyberstalking was defined as when a person

> with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party: (a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act; (b) Anonymously or repeatedly whether or not conversation occurs; or (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household. (RCW § 9.61.260)

Although "telephone harassment" was excluded from RCW § 9.61.260, RCW § 9.61.230 specifically criminalized telephone harassment. Telephone harassment was defined as when a person

> with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person: (a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or (b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household. (RCW § 9.61.230)

Together, RCW § 9.61.260 and RCW § 9.61.230 criminalized cyberbullying.

RCW § 9a.36.080 criminalized "malicious harassment." A person was guilty of "malicious harassment" if

> he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender,

> sexual orientation, or mental, physical, or sensory handicap: (a) Causes physical injury to the victim or another person; (b) Causes physical damage to or destruction of the property of the victim or another person; or (c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. (RCW § 9a.36.080)

RCW § 9a.36.080 only criminalized harassment that caused a person in reasonable fear of physical harm or harm to property; it did not criminalize behavior that caused emotional harm.

West Virginia

West Virginia had legislation in place that prohibited harassment, intimidation or bullying in schools. "Harassment, intimidation or bullying" was defined as follows:

> any intentional gesture, or any intentional electronic, written, verbal or physical act, communication, transmission or threat that: (1) A reasonable person under the circumstances should know will have the effect of any one or more of the following: (A) Physically harming a student; (B) Damaging a student's property; (C) Placing a student in reasonable fear of harm to his or her person; or (D) Placing a student in reasonable fear of damage to his or her property; (2) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or emotionally abusive educational environment for a student; or (3) Disrupts or interferes with the orderly operation of the school. (West Virginia Code §18-2C-2)

Electronic communication was included in the definition of harassment, intimidation, or bullying; therefore, school officials had the authority to discipline students for cyberbullying. Furthermore, one-time acts were considered harassment, intimidation, or bullying.

School officials did not have the authority to discipline students for acts of bullying that occurred off school grounds. Under West Virginia Code §18-2C-3, school districts were required to adopt policies prohibiting harassment, intimidation, or bullying "on school property, a school bus, at a school bus stop or at school sponsored events."

West Virginia Code §18-2C-3 required school districts to implement policies "prohibiting harassment, intimidation or bullying" that included a statement prohibiting harassment, intimidation, or bullying as well as definitions of harassment, intimidation, or bullying as defined under West Virginia Code §18-2C-2. Additionally, each school district's' policy had to include procedures for reporting, documenting, and responding to incidents of harassment, intimidation, or bullying as well as a requirement for school staff to report incidents of harassment, intimidation, or bullying that they were aware of (West Virginia Code §18-2C-2). Disciplinary consequences and strategies for protecting victims of bullying had to be included in the school district's policy as well (West Virginia Code §18-2C-2).

School districts were encouraged, but not required, to establish antibullying task forces under West Virginia Code §18-2C-5. Additionally, training programs for staff and education programs for students regarding harassment, intimidation, and bullying were to be implemented "to the extent state or federal funds" were appropriated (West Virginia Code §18-2C-5).

Cyberbullying and harassment were criminal offenses in West Virginia. According to West Virginia Code §61-3C-14a, "obscene, anonymous, harassing and threatening communications by computer, cell phones and electronic communication devices" was a crime. It was unlawful for a person to

> with the intent to harass or abuse another person, to use a computer, mobile phone, personal digital assistant or other electronic communication device to: (1) Make contact

with another person without disclosing his or her identity with the intent to harass or abuse; (2) Make contact with a person after being requested by the person to desist from contacting them: Provided, That a communication made by a lender or debt collector to a consumer, regarding an overdue debt of the consumer that does not violate chapter forty-six-a of this code, does not violate this subsection; (3) Threaten to commit a crime against any person or property; or (4) Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material. (West Virginia Code §61-3C-14a)

Additionally, West Virginia Code §61-2-9a criminalized in-person stalking and harassment. It was unlawful to harass or make credible threats of bodily injury to another person according to West Virginia Code §61-2-9a. "Harass" was defined as "willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress" (West Virginia Code § 61-2-9a).

Together, West Virginia Code §61-2-9a and West Virginia Code §61-3C-14a criminalized harassment, intimidation, bullying, and cyberbullying.

Wisconsin

There was a statute in place that required the Wisconsin Department of Education to develop a model policy to prohibit bullying (Wisconsin Statute § 118.46). The policy had to include a definition and prohibition on bullying and a procedure for reporting and investigating reports of bullying (Wisconsin Statute § 118.46). The policy also had to name a school official responsible for investigating reports of bullying and require school staff to report incidents of bullying that they were aware of (Wisconsin Statute § 118.46). The policy had to identify the school-related events at which the policy applies, the property owned, leased, or used by the

school district on which the policy applies, and the vehicles used for pupil transportation on which the policy applies (Wisconsin Statute § 118.46). The policy also had to include a list of disciplinary alternatives for pupils that engage in bullying or who retaliate against a pupil who reports an incident of bullying (Wisconsin Statute § 118.46). School boards had to adopt an antibullying policy and may adopt the model policy as described in Wisconsin Statute § 118.46.

There was no definition of bullying included in Wisconsin Statute § 118.46. Bullying was prohibited on school grounds, in a school vehicle, or at school-related events (Wisconsin Statute § 118.46). The policy as described under Wisconsin Statute § 118.46 did not include a requirement of disciplinary consequences for bullying.

The definition of bullying as included in the Wisconsin Department of Instruction's Model Bullying Policy, was as follows:

> Bullying is deliberate or intentional behavior using words or actions, intended to cause fear, intimidation, or harm. Bullying may be repeated behavior and involves an imbalance of power**.** The behavior may be motivated by an actual or perceived distinguishing characteristic, such as, but not limited to: age; national origin; race; ethnicity; religion; gender; gender identity; sexual orientation; physical attributes; physical or mental ability or disability; and social, economic, or family status. Bullying behavior can be: 1. Physical (e.g. assault, hitting or punching, kicking, theft, threatening behavior) 2. Verbal (e.g. threatening or intimidating language, teasing or name-calling, racist remarks) 3. Indirect (e.g. spreading cruel rumors, intimidation through gestures, social exclusion, and sending insulting messages or pictures by mobile phone or using the Internet – also known as cyber bullying). (Model Bullying Policy, n.d.)

The Model Bullying Policy's definition of bullying included cyberbullying; however, school districts were not required to adopt Wisconsin's model policy under Wisconsin Statute §118.46, and therefore, not required to adopt the definition of bullying. In fact, included in the Model Policy is the statement that "school boards may add to, modify or delete any elements of the model policy in creating their district policy" (Model Bullying Policy, n.d.). The Model Bullying Policy also included disciplinary sanctions for students that engaged in bullying; however, the school district was not required to adopt the model policy.

There were two statutes in place that, in effect, criminalized cyberbullying in Wisconsin at the time of this study: Wisconsin Statute § 947.012 and Wisconsin Statute § 947.0125. Wisconsin Statute § 947.012 criminalized "unlawful use of telephone." Unlawful use of telephone included making a telephone call "with intent to frighten, intimidate, threaten, abuse or harass" and "threatens to inflict injury or physical harm to any person or the property of any person" or "uses any obscene, lewd or profane language or suggests any lewd or lascivious act" (Wisconsin Statute § 947.012).

While Wisconsin Statute § 947.012 addressed harassing telephone calls, Wisconsin Statute § 947.0125 criminalized "unlawful use of computerized communication systems." Under Wisconsin Statute § 947.0125, it was a crime to "with intent to frighten, intimidate, threaten, abuse or harass another person" contact a person "on an electronic mail or other computerized communication system and in that message threatens to inflict injury or physical harm to any person or the property of any person" (Wisconsin Statute § 947.0125). Additionally, the behavior was unlawful if it was committed "with the reasonable expectation that the person will receive the message and in that message threatens to inflict injury or physical harm to any person or the property of any person" (Wisconsin Statute § 947.0125). "Obscene, lewd or profane

language or suggests any lewd or lascivious act" that were sent electronically "with intent to frighten, intimidate, threaten, abuse or harass another person" were also prohibited (Wisconsin Statute § 947.0125).

Harassment was also a crime in Wisconsin according to Wisconsin Statute § 947.013. Under Wisconsin Statute § 947.013, harassment was defined as when a person

> with intent to harass or intimidate another person ... (a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same. (b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

Wisconsin Statute § 947.013 criminalized face-to-face harassment while Wisconsin Statute § 947.0125 and Wisconsin Statute § 947.012 criminalized cyberbullying.

Wyoming

In Wyoming, "harassment, intimidation or bullying" was prohibited in schools (Wyo. Stat. § 21-4-313). Wyo. Stat. § 21-4-312 defined "harassment, intimidation or bullying" as follows:

> Any intentional gesture, any intentional electronic communication or any intentional written, verbal or physical act initiated, occurring or received at school that a reasonable person under the circumstances should know will have the effect of: (A) Harming a student physically or emotionally, damaging a student's property or placing a student in reasonable fear of personal harm or property damage; (B) Insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the school; or (C) Creating an intimidating, threatening or

> abusive educational environment for a student or group of students through sufficiently severe, persistent or pervasive behavior.

The definition of bullying included electronic communication and students could be disciplined for singular acts of bullying (Wyo. Stat. § 21-4-312). The "substantial disruption" language from *Tinker* was included in the definition of "harassment, intimidation or bullying."

School districts were required to adopt policies to prevent harassment, intimidation or bullying "at school (Wyo. Stat § 21-4-314)." School was defined as follows:

> A classroom or other location on school premises, a school bus or other school-related vehicle, a school bus stop, an activity or event sponsored by a school, whether or not it is held on school premises, and any other program or function where the school is responsible for the child. (Wyo. Stat. § 21-4-312)

Although school officials had the authority to discipline students for electronic communication, they did not have the authority to discipline students for acts of bullying that occurred off school grounds.

School districts were required to adopt a policy prohibiting harassment, intimidation or bullying that included definitions of harassment, intimidation or bullying and consequences and remedial actions for engaging in harassment, intimidation, or bullying (Wyo. Stat § 21-4-314). School districts were also required to establish procedures for reporting, documenting, and investigating acts of harassment, intimidation or bullying as well as procedures to protect victims (Wyo. Stat § 21-4-314). Additionally, school districts had to include a plan to discuss the harassment, intimidation or bullying policy with students (Wyo. Stat § 21-4-314). Professional development in the harassment, intimidation or bullying policy had to be provided to school staff (Wyo. Stat § 21-4-314).

Harassment, including electronic harassment, was criminalized in Wyoming. Wyo. Stat § 6-2-506 made stalking a criminal offense. Stalking was defined as follows:

> With intent to harass another person, the person engages in a course of conduct reasonably likely to harass that person, including but not limited to any combination of the following: (i) Communicating, anonymously or otherwise, or causing a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses; (ii) Following a person, other than within the residence of the defendant; (iii) Placing a person under surveillance by remaining present outside his or her school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; or (iv) Otherwise engaging in a course of conduct that harasses another person.

"Harass" was further identified as a "course of conduct" that involved "verbal threats, written threats, lewd or obscene statements or images, vandalism or nonconsensual physical contact." The definition of stalking included "electronic communication;" therefore, cyberbullying was a criminal offense in Wyoming.