

SCHOOL POLICY RESPONSES TO THE ISSUE OF CYBER-BULLYING

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Abstract

Cyber-bullying and related student acts are increasingly becoming the concern of schools. There exists a need for schools to make a considered response to these issues. In formulating policy responses it is of benefit to schools to consider their legal responsibilities with respect to these acts, alongside balancing community concerns and moral responsibilities. Often the policy position in response to cyber-bullying is to ban student use of social networking, and high risk websites. However, such a policy position may be considered to be over reactive, and contrary to the educational utility of these technologies. This paper considers legal issues related to cyber-bullying and uses these to consider school policy responses to this issue, ensuring a safe, but educative, school environment. A review of relevant case law and statutes was completed to develop a framework. This framework was then used to undertake an analysis of a publicly published policy of a local Catholic secondary school. The selected policy highlights some key considerations for policy makers in other schools. However, it still does not account for the full range of possible outcomes, though such a position may not be necessarily problematic. Schools need to develop an awareness of the effects of cyber-bullying and ensure that their current policy positions adequately respond to these, particularly the schools duty of care policy for students. Schools also need to ensure that in developing policy responses that they do not over-step boundaries and create unnecessary legal burdens. Any policy response must be accompanied by an educational program and should not limit student use of web-based resources to an extent that it becomes detrimental to their learning

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(Cyber)-Bullying in schools

Schoolyard bullying has long been a reality of many at school, from the stereotypical 'tough guy' trying to extract loose change from the smaller student, to the hurtful, verbal assaults of name-calling and social exclusion (Rigby, 1997). The impact of bullying is significant for students, with effects including loss of self-esteem, increased isolation, depression, absenteeism and ultimately poorer educational outcomes (Rigby, 2003). Traditional bullying has been isolated to spaces of physical contact, thereby limiting its reach and allowing, even the most bullied, to find safe spaces to escape its effects. With the onset of technology and social networking, however, the reach of the schoolyard now extends beyond the school day and into the homes and bedrooms of students.

Cyber-bullying is a term used to describe the use of technologies, including the internet, email, social networking and mobile phones, to undertake the harassment of another student (Dooley, Pyzalski, & Cross, 2009). In Australia recent research (*Click and connect: Young Australian's use of online social media*, 2009; Cross, et al., 2009) indicates that between 7-10 percent of students in Years 4 to 9, and up to 20 percent of students by the time they turn 17 have been the victim of some form of cyber-bullying. However, these statistics have considerable levels of error due to a poor understanding of what actually comprises cyber-bullying, and a general under reporting of incidents (*High wire act: Cyber-safety and the young (Interim Report)*, 2011). For the purposes of this paper, cyber-bullying can be considered to be the use of technology, such as mobile phones, email, social networking sites, to purposefully intimidate or harm another person. Unlike other forms of bullying, cyber-bullying has no boundaries of safety or escape from the acts, with technology permeating all aspects of our lives and the perceived necessity of young people to remain connected (Dooley, et al., 2009). Therefore the impact of acts of cyber-bullying can have significant effects, including increased rates of suicide (Campbell, Butler, & Keft, 2008). There is some argument about whether cyber-bullying needs to be ongoing, systematic, and repetitive, or whether cyber-bullying can occur through a single act (*High wire act: Cyber-safety and the young (Interim Report)*, 2011). It is not the intent of this paper to contribute further to this distinction, but to argue that acts of cyber-bullying, or misuse of technology to cause harm, by school students requires a response from schools and education systems, regardless. There is a distinction, however, drawn between acts of cyber-bullying and broader considerations of cyber-safety, which may also include aspects such as grooming and predatory online behaviour. Cyber-bullying, within the context of this paper, is considered as being bounded by interactions between students and young people.

Cyber-bullying, just like schoolyard bullying, produces negative effects for the victim, including, but not isolated to, a lowering of self esteem, long-term mental health issues (such as depression and anxiety) and a growing hatred of school (Dooley, et al., 2009). These effects are not reduced by the use of technology as words and images can hurt as much as actions. There is limited research on the impact of cyber-bullying, but is readily hypothesised that the impact, given the longevity of harassment, the anonymity of the perpetrator, and the ability for the harassment to permeate into other safe spaces, that the impact of cyber-bullying may be more psychologically significant than other acts of bullying (Campbell, et al., 2008). With schoolyard bullying a student can normally find solace and safety within their home. However, with cyber-bullying intimidation and humiliation can occur at anytime the child has access to the Internet and/or mobile technologies. For instance a child may be engaged in a chat room with school friends at night, whilst in their bedroom. Within this chat room conversation another student begins to post harassing comments and/or images. At this time, away from the school, the student is the victim of bullying, despite being in what they should conceive of as the safe space of their bedroom. It is this ongoing and far-reaching nature of cyber-bullying which makes it such a serious concern. It is the harm that results from these acts which compels, morally if not legally, a school to act to protect its students.

The extent of duty of care owed by the School

Despite the seriousness of the effects of cyber-bullying, there still remains a question about the responsibility, and ability, of the school to intervene and prevent this harm from occurring. The school generally owes a duty of care to their students, particularly whilst the students are directly in the care of the school (e.g. at school and in class). However, the issue of cyber-bullying, whose origins are generally within the student to student relationships founded at the school, challenges the generally accepted physical boundaries of the school's responsibility, and highlights an as yet untested concept of the reasonableness of supervision that a school can provide for students in the use

of electronic media. Although schools have a duty to care for students and prevent injury from foreseeable harm, there is not an absolute conclusion that a student will never be injured at school. Likewise, with cyber-safety, there is a responsibility for schools to create a safe environment, but this cannot be extended to an absolute guarantee that no injury will ever occur. Central to a school's consideration of their duty of care is to ensure that adequate and appropriate precautions are in place to limit the opportunity for injury.

Schoolyard bullying creates an unsafe environment for children and also, usually, involves some form of intimidation, which may impact the student's learning within the school. Therefore, schools have ready-made policies to counter the impact of bullying within the schoolyard and reaffirm the right for a child to be safe as well as to fully access all aspects of education. Recently the importance of the role of schools to counter bullying was affirmed within the *National Safe Schools Framework*. Within these documents the dominant perspective has often been on face-to-face acts of bullying; the recently released Framework makes no direct mention of cyber-bullying. However, broadly speaking, the principles that have underlined school responses to face-to-face or schoolyard bullying can be generally extended to how we respond to cyber-bullying. It is well established in common law that schools have a duty and responsibility to ensure the safety of students under their care. This is also realised in statutes such as the *Civil Liability Act 2002 (NSW)*. Within the *Civil Liability Act 2002*, it is established that where a duty of care is owed to another, one may be negligent in failing to take precautions to ensure proper care, where it can be established that the risk of harm was foreseeable, the risk was not insignificant, and that a reasonable person would have responded in a particular manner; these criteria have since been tested by the courts.

Responses to schoolyard bullying have been predicated upon the existence of a duty of care with recent case law (*Oyston v St Patrick's*, NSW Supreme Court, 2011) further clarifying this position. In *Oyston*, a claim of negligence was brought against St Patrick's College, Campbelltown, which alleged injury resulting from prolonged bullying. Importantly, within this case the courts considered the relationship between school policies and responses to claims of bullying. Central to the decision within *Oyston* was consideration of the intent and enactment of school policy with respect to bullying. It was held by the Court, in *Oyston*, that 'the College's policies were the means by which the College met its duty of care in relation to student behaviour' (para. 16). However, due to a range of factors, it was established that the enactment of these policies had failed to protect the student from concerns of bullying that had been highlighted to the school previously. In his judgement Justice Schmidt concluded that:

Insisting that bullying cease, and taking steps which ensures that happens, if the conduct does not cease voluntarily, cannot, in my view be viewed as wrongly 'bullying the bully', but rather as exercising an undoubted right to insist that conduct which school bullying policies provide students are not to engage in, must cease. If such a requirement is flouted by students, schools must take steps designed to ensure that the bullying ceases. Mere counseling of a victim dealing with the consequences of ongoing bullying, will not be sufficient for a school to meet its duty of care. Discretion, a very necessary part of any teacher's role, cannot operate to the point where misbehaviour, including bullying, is dealt with inconsistently, or worse, arbitrarily or not at all. (para. 58-59)

This judgement establishes some key considerations for schools in responding to bullying. Firstly, there is an obligation for a school, and its staff, to ensure that its policy statements are being followed and that appropriate sanctions are enacted in response to bullying in an attempt to cease the bully from acting. Secondly, whilst there is an expectation that the school will provide counseling and support to the bullied, this by itself is not an adequate response. There is a requirement for schools to respond to the bullying and adequately attempt to ensure compliance to the school rules by those who have engaged in acts of bullying. Thirdly, whilst recognizing the importance of teacher discretion in dealing with students, and the professional knowledge of teachers in these matters, there is a need for school wide consistency in how to respond to issues of bullying. In particular, there should be an escalation of consequences for students that fail to comply with school policies and rules. The same criteria can be extended to matters of cyber-bullying, though by its nature cyber-bullying is more difficult for a school to respond to.

Unlike, what has been labelled in this paper as schoolyard bullying, cyber-bullying occurs, often, in an environment removed from the schoolyard and in a space, which the school does not control. Social networking sites and a student's personal mobile phone, in use outside school hours, are beyond the jurisdictional bounds of a school;

which may be somewhat akin to a student committing an act against school policy whilst at home on the weekend. Therefore responses to cyber-bullying are beyond the bounds of the normal responses to schoolyard bullying, such as removal of the problematic student and limitations placed around opportunities for interaction. Further problematic in considerations of cyber-bullying is the extent of the school's responsibility, and ability to, prevent the act from occurring. Some schools, in response to the complexities of these issues, (for example Ascham School as reported in the *Sydney Morning Herald*, 13/8/11) are moving to contract online companies to supervise student use of social media to highlight inappropriate conduct and possible cases of cyber-bullying. Whilst such responses may provide avenues of identification of improper student conduct it raises a raft of questions around student privacy, the disciplinary boundaries of a school and the over extension of a school's influence on recreational interactions. Therefore, draconian measures may not be the best response to these complex issues.

A school, though, is required to make a response to the issue of cyber-bullying, and needs to consider the responsibilities a school has towards its' students. The school holds a duty of care for a student where the relationship of teacher and student (or schoolmaster and pupil) is in existence. As highlighted by Campbell, et al. (2008, p.26):

The mere fact that the bully and his or her target attend the same school will not be sufficient to bring [a case of liability] within the purview of the school authority's duty of care.

Where there does not exist a relationship of teacher and pupil, the duty of care of the school does not exist. However, as evident in *Trustees of the Roman Catholic Church v Koffman* (1997) this duty is not negated solely by being outside the physical or temporal boundaries of the school. *Koffman* considered the limits, such as time and place, of a school's duty of care. In particular, this case centered around an incident which occurred at a bus stop, after school hours, and several hundred metres away from the school, located outside another school's grounds. It was held by Shellar, JA (Supreme Court of NSW) in *Koffman* that:

If a pupil is injured while the school is supervising or should have been supervising that pupil's activities, the duty of care the school authority owes the pupil depends on the relationship of proximity which itself derives from the fact that the injured person is a pupil. Other necessary ingredients are a risk of injury foreseeable to a reasonable person in the position of the school authority and the failure to do what a reasonable person in that position would do by way of response to the risk.

Within the above quote the key idea of proximity is considered by the court. It was determined that proximity derives from the relationship of teacher-student, or school-pupil, rather than being something that is bounded in time or space. The conclusion being that although the bell for the end of the day had rung, and the student was some distance from the school, waiting at a bus stop, this did not negate a duty of care. Instead, given the particular circumstance the school's duty of care can extend beyond the school day and schoolyard. Shellar, concluded in the judgement that:

In my opinion the extent and nature of the duty of the teacher to the pupil is dictated by the particular circumstances. I do not think its extent is necessarily measured or limited by the circumstance that the final bell for the day has rung and the pupil has walked out the school gate.

The boundary of responsibility is also not as clear regards the acts associated with cyber-bullying. The relationship of student and pupil clearly exists where the student is engaged in the use of school resources, such as the school email or internet, particularly where this use is occurring on school premises. In the case of Ascham School, a boarding school for girls, it could be established that where students are engaged in the use of technology on the school grounds, and/or under the care of the school there is a duty on the school to ensure its safe and appropriate use. This may also extend to contributions a student makes to a school-hosted website, blog or wiki, which may or may not exist within a school network (Campbell, et al., 2008). For example, if a teacher, through a third-party website (e.g. *Wikispaces*) establishes an online resource that requires students to contribute and participate in, and in this process a student intimidates or bullies another, it could be held that a relationship of teacher-pupil existed despite the activity occurring outside the defined boundaries of the school network. In this example there is an indication of a teacher-pupil relationship, therefore a duty of care exists.

With acts of cyber-bullying a student may bully another both within the boundaries of the school day as well as outside. A student at home, under the care of their parents, choosing to post a humiliating image of another student to their *Facebook* page, which is in-turn seen and commented upon by a range of other students, is acting outside the normal bounds of supervision and care of the school. As highlighted previously, the existence of a relationship between two people who may both be students at a particular school is not enough to claim a duty of care owed by the school authority. Developing the example of Ascham School further, if other students, who are not boarders at the school, utilise a public website, such as *Facebook*, to harass and intimidate another student, and these actions occur outside the school grounds and do not use school resources, then there is no presence of a duty on the school to ensure safe and appropriate use. As the students are now, clearly, under the care of their parents, this duty resides with them. If the same act, however, was to have occurred whilst the student was accessing the internet during school hours, and via the school server or computers, then the case for a duty of care owed by the school in this circumstance is clearer. To add to the complexity of this space, it could be argued that where a student is utilising their school email accounts to intimidate and harass another student the school holds a duty of care, regardless of whether the act occurred within the times of school day or not, and whether the student was under the immediate care of parents or not. Furthermore, an interesting scenario emerges when a student uses a school email address as a log-in tool for a public website. Can it be established that the use of this email establishes a relationship with the school? It is considerations of these boundaries that may influence the formation of school policy. However, often it is also these complexities that result in schools prohibiting any use of social media, and the like. The challenge for schools is in establishing a safe learning environment whilst maximizing students' opportunities to engage in the world around them.

A critique of current school policy

It is readily accepted that schools serve to educate students and prepare them for the world around them. Therefore responses to matters of cyber-bullying need to be considered from the perspective of the legal requirements of a school to act, as well as the broader social responsibility of a school (*National Safe Schools Framework*, 2011). Legally a school does not have any responsibility for the care of students within the home, beyond mandatory reporting requirements. Therefore if an act of bullying, or cyber-bullying, occurs outside the bounds of the school it could be contended that a school has no role in responding to this, and essentially this concern should be dealt with through other channels, such as police. However, a social responsibility of schools is to ensure that their students are cared for beyond that which is legally prescribed, for example ensuring students have access to counseling. So although a school does not have a legal requirement to act in these cases, there could still be a role for schools in the prevention of such acts, through education, and as a mediator in disputes and conflicts concerning their students. Current Department of Education (NSW) policies (*Bullying: Preventing and Responding to Student Bullying in Schools Policy*, 2011; *Student Discipline in Government Schools Policy*, 2006) advise schools that they should have developed clear guidelines for responding to bullying within schools. They also actively encourage parents, or students, to report 'school-related' acts of bullying to the school for advice and support to resolve the issue. Likewise, the Catholic Education Office (Sydney) (*Strategies for dealing with cyberbullying (Operational draft)*, 2008), considers that there is a response required to acts which occur both within and outside the school where it disrupts school life or significantly breaks down relationships between members of the school community. Recognised within both of these policy positions is that the effects of cyber-bullying extend far beyond the immediate act. Therefore, if it could be established that a particular act of cyber-bullying was outside the duty of care of the school, it may still be the case that adequately responding to the effects may well be within the responsibility of the school.

Likewise the *National Safe Schools Framework* (2011) proposes responses by schools to cyber-bullying beyond their legal responsibility and in consideration of their educative role in society. The Framework proposes that school policies and practice should address six areas of response: (1) school culture and values, (2) establishment of agreed policies, programs and procedures, (3) provision of education and training, (4) proper management of incidents of abuse and victimisation, (5) provision of support for students and (6) working closely with parents. It is clearly evident from this list that there is an intent for schools to consider their educative as well as disciplinary role with regards the conduct of students. However, a school must be cautious to not over extend the educative role to the detriment of other students. As considered in *Oyston*,

As well as meeting their legal duty of care to their students, schools must educate and support their students during their adolescence, a difficult time in the lives of many people. ... the evidence suggests that there was an overemphasis on supporting certain students, while they continued to engage in misbehaviour, in order to help them to overcome that conduct. The policy at one point emphasised ensuring that the bullies were not themselves bullied. Unquestionably, the College faced a difficult task. ... The emphasis placed on caring for and supporting those who engaged in misbehaviour, came at the cost of not ensuring that Ms Oyston, the victim of that behaviour, was not injured as the result of being bullied. (para. 34)

Therefore, although a school has a purpose to educate and help students move beyond poor conduct, there remains an obligation to discipline and prevent further harm coming from such actions.

The response of schools to cyber-bullying is usually contained across two areas, proper use of internet, information technology and school resources, and student conduct and discipline policies. Westlake¹ College, an all-girls Catholic systemic school, is no different. Broad school policies related to student conduct reaffirm the notion of a safe and supportive school environment. These policy frameworks also provide for procedures for the handling of complaints and grievances. Central to these procedures is a collaborative relationship between the school and home. Where a student makes a complaint against another student the school has adopted a procedure of having the student document their concerns, which are then retained by the Guidance Coordinator for that particular cohort; such a practice is supported by the findings in *Oyston*. Procedurally these practices ensure that a clear record is maintained of the concern and response made, which would ensure that any future review would be able to clearly ascertain the appropriateness of any response. The limitation, however, of such procedures, is the perception of students that committing something to paper as being serious and threatening, and therefore reducing the likelihood of reporting. This is a key concern in responding to cyber-bullying as, if there is not a free and open pathway of reporting, many incidents will be unknown to the school. This concern, however, needs to be properly managed ensuring that the school both encourages students to report and discuss cyber-bullying, but that they also maintain proper records and evidence.

Within Westlake College's policy on Internet usage, it counters the anonymity often associated with acts of cyber-bullying with a clear statement that the school 'reserves the right to monitor any material that is stored, accessed or deleted from the network, including personal drives'. Such a policy position is an imperative in this space to be able to provide reasonable supervision of student use, but is a limited response in comparison to the reports of some schools reviewing all student Internet use (Stevenson, 2011). The policy also prohibits students using external non-approved websites, such as chat-rooms (e.g. *MSN Messenger*) and/or use of the resources for non-school related activities.

The policy is dated by no clear mention of social networking sites (e.g. *Facebook*); however, a clear list of examples provides enough clarity that any activity that may violate or infringe the right of another student, or which may be illegal is prohibited. This policy position accepts the importance of Internet use and the possibilities of social media in supporting student learning. As has been the experience of the author in many schools, this position is often contrary to what is realised in school policies that have a tendency to prohibit all use of social media within the school, and/or have active security systems to prevent access. Such a response is analogous with stopping students from participating in sport or science experiments because there is a risk of harm. The risk of harm should not be the reason to prevent such activities if there is educational benefit, instead the obligation is on the school to ensure that they are handled in a safe manner. For example, a science experiment may be inherently dangerous but teachers and schools can manage this danger removing foreseeable harms from students. Likewise responses to Internet use and social media need to be considered in the same way. Access to a website such as *Facebook* or *Twitter* may allow for students to connect easily with others from around the globe, engage in current 'hot' topics and debate, and build international expert networks to support their learning. Therefore, there could be educational benefit through participation in such activities. The harm of these tools does not come from their use, but the nature of this use. So a reasoned policy response should consider the nature of use rather than an over reactive response of absolute prohibition.

¹ Use of pseudonym

Critical in Westlake's policy is the clear statement of sanctions for breach of the policy. One of the critical findings in *Oyston* was the need for a consistent response to issues of bullying, whilst still acknowledging the professional knowledge and discretion of teachers in dealing with students. In any well-constructed policy response to cyber-bullying there must be a clear description of sanctions and responses that will be made to allegations and confirmed acts. Dismissal of cyber-bullying acts as merely childhood naivety is not appropriate and would be held to be a neglect of the duty of the school to care for those being bullied. A level of seriousness needs to be evident in the responses made to acts of cyber-bullying. Therefore it may be more than appropriate for a school policy to indicate possible criminal, as well as school-based, sanctions in response to particular degrees of cyber-bullying. Although there does not exist any specific laws related to cyber-bullying there is some legislation, such as *Crimes Act 1900* (NSW) and Commonwealth telecommunications laws, which have indirect sanctions for acts, like harassment, which could be consequential from cyber-bullying. Likewise in some jurisdictions, such as the introduction of the *Crimes Amendment Bullying Bill 2011* (VIC), there is evidence of a growing legislative trend towards acts of bullying, which can be easily extended to acts of cyber-bullying. Crucial, as concluded in *Oyston*, is that within school policy, there is a clearly prescribed pathway of disciplinary action articulated, and that those members of staff with carriage for such policy, for example pastoral care coordinators, have a clear understanding of its nature.

Absent from Westlake College's policy position is any mention of home Internet use, other than the policy extends to include any remote access to the School network. Such an absence is not problematic as this use is outside the boundaries of the school and to have included a statement regards this may imply a student-pupil relationship, which would otherwise not have existed. Where a student utilises external technology to bully a student, the student may be deemed to have breached the school welfare policy, which requires students to 'contribute to a safe and secure school which is free from discrimination and intimidation'. Such a claim would be common in assessments of cyber-bullying as most acts (estimates of up to an 80% correlation) of cyber-bullying tend to be an extension of other bullying acts which occur within the school, there is a nexus that exists between 'offline' and 'online' bullying (*High wire act: Cyber-safety and the young (Interim Report)*, 2011). A position, which recognises the permeability of acts of cyber-bullying, affords the school the capacity to respond where they become aware that activities beyond their boundaries are impacting on the activities within the school. Furthermore, where a school becomes aware of an act of cyber-bullying this could be an indication of acts of bullying within the purview of the school and therefore could be considered to be reasonable evidence of a need to act. Therefore, policy positions should provide for the reporting of all bullying and then allowing the school to make the decision about the relevance of their response.

Conclusion

Cyber-bullying is a real concern for schools, parents, students and the broader community. There is evidence that these acts do cause significant harm to students, including the increased likelihood of suicide and self-harm. Therefore there is a need for schools to make clear policy which provides the foundation for their response to these issues, and ensures that they fulfill their legal requirements. Good policy in response to cyber-bullying needs to consider the educative as well as disciplinary role of schools. A school needs to continually educate students on proper use of technology, such as social media, to ensure that the students gain the available educational benefit from these technologies, but limit the possibility of harm coming through their use. Over reactive policy that prohibits technology use fails to acknowledge the usefulness of these tools for learning and does not adequately prepare students for their future engagement with these technologies once they leave school. Cyber-bullying is a serious issue and needs to be responded to in a serious manner, but with a consciousness of where a particular student is at in their moral development. It is a reasonable position to conclude that any policy response needs to be accompanied by an educative program delivered to all entering students, and staff, so they have clarity around what is acceptable and what is not, and also providing opportunity, to highlight the possible criminal nature of cyber-bullying. The content and nature of such a program is beyond the scope of this paper. Contained within such a program, as has been suggested in this paper, is the need to develop an awareness of the possible sanctions and a consistency in their application. In short a school needs to ensure that it supervises student activities, whether they are physically evident, or located within cyber-space, and respond swiftly and appropriately to any perceived acts which may be deemed to be bullying.

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