CYBERBULLYING FROM CLASSROOM TO COURTROOM: APPROACHES TO PROTECTING CHILDREN IN A DIGITAL AGE*

Panel 2—Cyberbullying In The Classroom: Educators, Policy, and Protecting Students

REMARKS OF LAWRENCE PASKA**

I will talk about the implementation side of state policy, and the kinds of services that we, as a state education agency, try to provide to empower school districts to talk to their communities about the responsible uses of technology in education. Perhaps starting less from a deficit model and more from an empowerment model. And that can be very challenging to do, especially as technologies emerge, change very quickly, and schools struggle to keep up with them. Even government

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agencies, we struggle to just keep up with latest tools and technologies and know how to use them effectively.

The world that we exist in right now is one that's also shaped at a federal level by numerous policies and regulations that come down to us. Last year there was a National Education Technology Plan.[1] This National Education Technology Plan was used in large part in tandem here in New York State to develop a Statewide Learning Technology Plan[2] that the Board of Regents approved last February.

Both of these plans are not talking about what students can't do with technology, and the limits and restrictions of that technology, but rather quite the opposite—what students should be doing in curriculum, in assessment, what teachers should be doing with professional development using technology. The national plan talks about learning, assessment, teaching, and the infrastructure that needs to be in place so that students are productive and teachers are productive and communities have good access to information about their child's learning.

Our Board of Regents similarly was very interested in looking at what digital content look like? How do you use technology responsibly? How do you ensure adequate access and infrastructures so that schools can log on and schools can participate in new and emerging pathways for learning? How do you foster leadership in technology in a school, especially when a lot of people are scrambling just to keep up with good math instruction or work as good guidance counselors every day, and how do you keep up with all of the trends and the terminology and the ways kids use technology today? Accountability and funding: how do we ensure new funding for technological tools?

And so, the basic premise behind our State Board of Education's vision for technology was that it starts first with the belief that every space is a space for learning. Truly, all of us, we're in this room right now learning. This may not be a classroom as we often conceive it, with chalkboards and thirty desks in neat rows, and maybe a TV in the corner, and an overhead projector. Any space could be a space for learning.

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[1] *Nat'l Educ. Tech. Plan*, ED.GOV 2010, http://www.ed.gov/technology/netp-2010 (last visited Aug. 1, 2011).

[2] *See EdTech: Educ. Design & Tech, Univ. of the State of N.Y. Statewide Learning Tech. Plan*, NYSED.GOV, http://www.p12.nysed.gov/technology/techplan/ (last updated Dec. 27, 2011).

The way our Board of Regents in New York State is structured, it has oversight over the entire continuum of learning, literally from birth throughout life. So when our State Policy Board meets every month they talk about K–12 education, and they also certify institutions of higher education. They license professions in forty-eight separate professions, everything from nursing to architecture to interior design. They also charter cultural institutions: museums around the State, historical societies, our archives, our libraries. Those are all under the oversight of our State Board of Education,[3] and so they wanted to take a moment to say that as we're talking about responsible uses of technology, let's not just stop with the P–12 classroom, let's look at all classrooms. Let's look at our museum classrooms, our law school classrooms. Let's look at what the definition of classroom means and how technology can really help change that.

Today I share the goals set forth by the Board of Regents. We're looking at expanding the policies and the standards by which we can evaluate good use of technology—developing incentives to promote digital learning much more robustly, using online and blended learning, for example, and in many different ways. And obviously setting forth policies and guidance to help address areas that are very crucial like cyberbullying that we're talking today.

This is the fundamental question I think we have to ask ourselves as educators every day: what's our relationship to the Internet? Is it a closed one? Is it one in which we are blocked and filtered from everything? Is it one where we're afraid to talk to our students about what it means to be a responsible citizen online? Is it one in which we can't access materials ourselves, either as a student or as a teacher or as a parent or community member? Is it one in which we don't have the tools that we need to do our jobs for learning, for teaching, for growing? And so to that end, as the State Education Department, we've been charged with implementing the New York State Education Law 814[4], which talks about Internet safety and appropriate usage.

To do that, we've developed a series of toolkits[5] that are meant

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[3] *See New York State Education Department*, NYSED.GOV, http://usny.nysed.gov/about/ (last updated Aug. 1, 2011).

[4] N.Y. EDUC. LAW § 814 (McKinney, Westlaw current through L.2012 ch. 1–24).

[5] *See EdTech: Educ. Design & Tech, Internet Safety* NYSED.GOV, http://

to help guide schools, because one of the fundamental missions of our State Board of Regents now is to make sure that our State Education Department does not merely just help with compliance with regulations, but that every time a school calls it's not always about making sure they adhered to this part of the regulations, but that we're actually providing a service, which means helpful guidance. So instead of a school saying, "What's the law that I don't want to break today?," it's saying, "What's a way in which I can help good instruction happen? Please share with me a tool or a resource. Help me understand what bullying and cyberbullying mean to my school community, or help me with some of the talking points that I can talk to my own board about, or I can talk to parents about who are concerned."

So to that end, four pieces of guidance I wanted to share today to have you think about some of the ways in which we want to move toward an empowerment model as opposed to just a deficit model when we're dealing with these important topics. One is an Internet safety program evaluation rubric.[6] This is an optional tool for schools, but it helps the school say, "let's take a look at our implementation of Internet safety in all the ways in which it's defined throughout our standards-based instructional program."

Again, our State Education Department is charged with implementing this education law. One of the ways we want to do that is to help schools think about how Internet safety and how their own acceptable use policies in their district become part of their standards-based instructional program, not the separate add-on thing we sign at the beginning of the year saying, "yes, we follow the law and we're going to move on and not give any more thought to it." So, I want to walk you through just a couple of quick things about this rubric.

Student responsibilities. We see that students are responsible for their use of technology. They're responsible for acceptable and effective use. And an example of that might be that students know how to practice effective search strategies on their own and they're guided on how to do that. So when they're going online

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www.p12.nysed.gov/technology/internet_safety/ (last updated Oct. 17, 2011).

　[6] *EdTech: Educ. Design & Tech, NYSED Internet Safety Program Evaluation Rubric*, NYSED.GOV, http://www.p12.nysed.gov/technology/internet_safety/documents/InternetSafetyProgramEvaluationRubric.pdf (last updated Nov. 30, 2010).

the first page they're not seeing is Google and they're just typing in whatever word comes along and then go from there, and the journey begins, and it could end very well or not. Students should know how to practice effective search tools and techniques and be given the opportunity to do so.

Cyberethics. The fact that there is a cyberbullying prevention policy in place in the school, it's clearly articulated, and students understand what it's about. The term *netiquette*. Students have the guidance they need to refrain from making damaging statements about and to others. And again, this term can apply not just in the cyber world, but just in general.

Protecting personal information. That schools use the internet safety policies, their acceptable use policies address the fact that there are plans in place so that students know not to access people they haven't met before online in the real world—the fact that they understand the importance of protecting their personal information. The school gives them instruction and strategies on how to do that.

Students don't have all the responsibilities either. Administrators and teachers have responsibilities for curriculum, for instruction, for assessment, and for their own professional learning. So, an example of how curriculum is an essential element in the school's Internet safety program is the fact that teachers should be collaborating with their school librarians on how to provide effective instruction in Internet safety.

The key struggle for a classroom teacher is the fact that when you're dealing with hundreds of students a day in short periods of time, we've got a lot of material to teach, we're worried about state assessments, we're worried about our own accountability, we're worried about our students being nourished when they come into school and whether they have a safe journey home, and whether their parents are supporting them and potentially reading with them and helping them. So we've got all these worries and the number one worry is, "great, now I've got to teach Internet safety on top of all this." The answer is not to teach Internet safety as a separate class period where now you have to develop a whole separate curriculum, but to infuse it throughout your instructional program.

Many of you in this room I'm assuming are social science majors or humanities majors, and so in New York State we have standards for social studies. And one of those standards is "civics,

citizenship, and government."[7] We require that students walk out of high school knowing their rights and responsibilities—personal rights and responsibilities—rights and responsibilities as citizens, locally in the State, in the world. And so what a perfect opportunity to help teach what it means to be a "digital citizen". This goes to another element, instructional alignment. Have you addressed legal and safety issues in all aspects of your instruction? Do you share these issues with your students? Do you talk frankly and honestly with them about cyberbullying and about cyberethics? About the responsibilities of being online?

Assessment. Do you provide opportunities for students to assess their own development and do you as a teacher assess your own development online?

Professional development. As part of your job as an educator—going out and learning the latest technologies, the latest tools—are you learning about the latest research and what it's saying? Are you constantly growing yourself so that you're also keeping up with bullying, cyberbullying, and how they're getting shaped and defined?

Lastly we turn to the school district itself and the responsibilities that a district has in providing a safe and responsible space for our students and our teachers and our community members.

An acceptable use policy.[8] Does your acceptable use policy, or AUP, have progressive levels of response for different types of violations? And is it very clearly articulated? Again, what a violation is and how the school is going to respond to it.

Internet filtering and monitoring. Are students able to identify, and is the school able to identify, what constitutes unacceptable content, illegal content, and what's your plan for addressing it?

And confidentiality of student information. Do you have a technology committee in your school that reviews the policies and procedures annually and makes adjustments?

So, although this sounds like it's a lot of additional stuff to do in a day, we hope that a checklist like this provides a way for a

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[7] *C&I: Curriculum & Instruction, Social Studies*, NYSED.GOV, http://www.p12.nysed.gov/ciai/socst/ (last updated Oct. 23, 2009).

[8] *See EdTech: Educ. Design & Tech., Internet Safety Resources*, NYSED.GOV, http://www.p12.nysed.gov/technology/internet_safety/resources.html#aup (last updated Sep. 2 2010) (providing guidance to school districts for customization of an effective acceptable use policy).

school to think about Internet safety and the totality of its program.

But the next step is maybe you're finding that the area of your alignment is not very strong in curriculum and instruction. So, in New York State we have what are called learning standards for seven different subject areas. We have a total of twenty-eight individual learning standards in areas from English language arts to physical education, to family and consumer sciences, to social studies, to mathematics, science and technology.[9]

And so we took all of those learning standards and we aligned them to the principles of internet safety, of safe and responsible use, of how to avoid bullying and cyberbullying, and we said, because you have to teach to these standards and our tests are built on these standards and your students have to show mastery of these standards to graduate from high school, let's take the principles of respect and tolerance for others, dignity for others, how to avoid bullying and conflict, and how to address conflict responsibly and ethically, and let's infuse that in instruction so that again the social studies teacher can do this every day in a government class or in any kind of course, an English language arts teacher may do this through literature. You may have art teachers who do this through performance or do this through story scripting. Any kind of activity is a potential activity to teach Internet safety.

Most recently, back in August of 2010, our department issued a statement that specifically addresses guidance on bullying and cyberbullying.[10] And I want to walk you through a couple of pieces of it today, because the purpose of this brief was to provide some clarity around citing some specific court cases and citing some specific examples.

As it was mentioned earlier, the policies at a state level are in some ways are not overly prescriptive right now on cyberbullying. In fact, New York, I believe, is one of eight states that hasn't addressed it specifically in law, and yet through this guidance we're trying to showcase for schools how cyberbullying

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[9] *See C&I: Curriculum & Instruction, Learning Standards of New York State*, NYSED.GOV, http://www.p12.nysed.gov/ciai/standards.html (last updated Jan. 23, 2010).

[10] *EdTech: Educ. Design & Tech., Guidance on Bullying and Cyberbullying Prevention*, NYSED.GOV, http://www.p12.nysed.gov/technology/internet_safety/documents/cyberbullying.pdf (last updated Mar. 15, 2011).

is really assumed under other laws that have been passed previously.

So, just to walk you through a couple of things with this guidance, first of all, a way in which a school can help is through a positive climate. That is where it really begins. In fact, on July 1, 2012 we'll be implementing the Dignity For All Students Act here in New York State.[11] And the purpose of this legislation is to say that all schools are safe climates free from harassment in New York State. Bullying is not acceptable in any school. Every school needs to have someone who's a point person for the Dignity legislation. That person is a resource for the school.

And to that end we are going to be providing more and more tools around the Dignity Act.[12] But in a nutshell, the purpose of that Act is to say, every child deserves a respectful, tolerant environment in which he or she can learn. And likewise, no student deserves an environment in which harassment can be tolerated, in which respect is not a part of every child's learning experience. We believe fundamentally in New York State that learning and respect, learning and tolerance, learning and dignity go hand-in-hand.

So the importance of school climate cannot be underscored. We have provided a lot of guidance in the past around this, including a recent set of guidelines around social and emotional development in learning so that, again, guidance to schools is really about how you promote a positive school climate. These are not mandated guidelines, but they are for schools so that all schools have resources to follow.

The code of conduct. All school districts must adapt and enforce a code of conduct, and New York State Law requires that the code of conduct be reviewed annually. It should address issues such as Internet and electronic-device safety. And that includes cyberbullying; that includes sexting.

Although descriptions of cyberbullying and sexting are not written currently into any statute or regulation or case law, we have a system called VADIR reporting, Violent and Disruptive Incidents Reporting.[13] In VADIR reporting there are check boxes

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[11] 2010 N.Y. Sess. Laws ch. 482 (McKinney) (codified at N.Y. EDUC. LAW § 12(2)).

[12] *See The Dignity Act*, NYSED.GOV, http://www.p12.nysed.gov/dignityact/ (last updated Apr. 21, 2012) (guidance documents, PowerPoints, and webinars).

[13] *SSS: Student Support Services, VADIR*, NYSED.GOV, http://

for incidents such as cyberbullying or sexting that could be put into there. In fact, it's defined as if the incident is violent or disruptive in any way to the school or community, it if occurred on school property, or on school sponsored events, and if it meets or exceeds disciplinary actions that were previously given, that is considered a VADIR - a violent and disruptive incident in the school. So again, cyberbullying is something that should be reported in that context.

We also, again, in our guidance turn back to previous decisions of our Commissioner of Education,[14] the First Amendment protections, and what constitutes freedom of speech expression versus just outright disrespect or bullying. So, we recommend that districts sit down with their attorneys every year, review recent regulations, recent laws, both state and nationally, and ensure that their code of conduct is up-to-date and that it's reflecting recent decisions that are made. We also recommend that districts sit down with their attorneys and look over appeals to the Commissioner of Education around issues that have been decided one way or the other to inform local policy.

Children's Internet Protection Act,[15] the primary federal law concerning access to offensive content over the Internet on school or library computers. Schools need to develop an acceptable use policy to qualify for what are called E-Rate funds, and these funds are used to purchase computer equipment for schools. The catch to E-Rate and the catch to the CIPA, the Children's Internet Protection Act, is the fact that many school actually have acceptable use policies that far exceed what's required by the Federal government.

That, again, may or may not be a bad thing. What can be challenging sometimes is when a school's trying to develop a good internet safety program that takes advantage of new technologies, but they're afraid of going too far because they don't want to lose funding for computers, and so therefore they may have policies that are more restrictive than they need to be.

www.p12.nysed.gov/sss/ssae/schoolsafety/vadir/home.html (last updated Jan. 12, 2012).
[14] *Decisions of the Commissioner of Educ.*, NYSED.GOV, http://www.counsel.nysed.gov/Decisions/ (last updated July 25, 2012) (searchable database).
[15] Children's Internet Protection Act, Pub. Law No. 105-554 § 1(a)(4), 114 Stat. 2763 (codified at 47 U.S.C. § 254(h)).

Schools that are subject to the CIPA Act are required to adopt and enforce the policy to monitor the online activities of minors. And we do also, again, recommend that this is something that's undergone and evaluated every year so that school's going to keep up with emerging technology as well.

As far as internet safety policies in general, we don't have anything more specifically currently in the books than the New York State Education Law, so we also, again, encourage schools to revisit their policies yearly on social networking, on use of instant messaging for example, and other types of tools.

Going back to the importance of strong culture in school. Another resource would be the New York Center for School Safety,[16] which provides additional instructional resources for school districts that are looking to promote a positive and safe environment.

One other piece that we worked on over the past year is stronger guidance on the use of social networking, because of the potential for these sites and spaces to be very effective for teaching and learning. We've identified a number of different benefits that we're trying to share with schools that they should think about when they use social networks or consider using social networks.

First, is the fact that you can very easily identify student learning needs and you can assess them more easily when you have students going onto a space that they have to log onto regularly, and where they're sharing and interacting with content—that's a way to kind of tap into their own creativity and their curiosity, and you get to know that they're thinking that much sooner. You also get to see their interactions with each other that much more easily. You establish classroom community through social networks. So you're establishing an online presence and helping students to work together responsibly in an online environment and learn online norms, customs, and rights and responsibilities that way.

Let's face it, a lot of students are just engaged so much with computer technology, so to restrict those spaces might actually be a potential cause of some behaviors that we don't want to see online. To open up those spaces in a way might actually be a way

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[16] N.Y.S. CENTER FOR SCHOOL SAFETY, http://nyscenterforschoolsafety.org/index.cfm (last visited Aug. 1, 2012).

to engage students in learning that much more and treat the learning process more seriously.

Students may also have an increased sense of achievement. If you're on a social networking site with students and you have a class project there, and you're providing them immediate feedback, and students can see the power of how their learning's really taking shape, that will cause them to interact—we think—better with each other, better with the teacher, and have a more positive experience in school.

Also, a way to manage information. We don't have to talk about the fact that in the digital age, with information flying at us as quickly as it does (and some of you may get hundreds of e-mails a day and are trying to figure out how to negotiate all of that), a social network, a networking space, can be a way for a classroom to have a collection of information, a repository, a place to go where everybody can be together online learning.

We can't underscore the fact that some students may feel marginalized in a face-to-face classroom setting. And one way to potentially work on good peer-to-peer relationships could be through a social network where they don't have to feel uncomfortable answering a question. They can take the time to think through a response more carefully, and so another potential benefit of social networking.

But we also acknowledge the fact that there are number of serious concerns of the legality of social networks for education. Again, many schools are very cautious about implementing these networks, and so they become something to educate ourselves around.

Privacy of educators. The fact that as we get more public with our private lives, the fact that we're on Facebook, LinkedIn, so many other sites—this becomes an issue for us as, well and for our students, on how we negotiate the personal and the public upsides of our learning.

The equity of access issues. We can't underscore enough the fact that many schools are not fully connected to wireless broadband. So, by putting a class online and by saying let's work responsibly online, we may actually create a further equity gap between schools that can get online easily and those that cannot. Yet we can't create more hours in the day, we can't create more classes, we can't create more teachers that easily. So it becomes a resource issue as well.

So very briefly, we're looking to try grow pilot schools around the state that are willing to take on the use of social or educational networking more, so that they can think through some of the implications for supporting a more digital culture in their district.

We see an opportunity at the State Education Department to continue an ongoing conversation around how we use the tools, the technology to effectively, responsibly help our students to navigate the waters well. We do see it as the responsibility of us in the K–12 education system that when students graduate from high school, they already have a good sense of themselves as citizens and what their roles and responsibilities are. I use that phrase a lot because it just feels like a fundamental core of what we're talking about here today, which is when I know my relationship to myself and my relationship to others and I understand where my rights begin and end and where another's rights begin and end, I'm on the road to getting away from a culture of cyberbullying and a culture of bullying, and I'm on the road to a culture of dignity in my school.