**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Collecting Evidence for Our Argument**

**Directions:** Read and annotate each of the articles. For each article, identify the Thesisand the two most important quotes used to support the thesis.

|  |  |  |
| --- | --- | --- |
| **Source #1 Thesis:** | Evidence (Quote) #1 | Evidence (Quote) #2 |
| **Source #2 Thesis:** | Evidence (Quote) #1 | Evidence (Quote) #2 |
| **Source #3 Thesis:** | Evidence (Quote) #1 | Evidence (Quote) #2 |

## SOURCE #1:

## Off-Campus Cyberbullying

## http://www.unc.edu/courses/2010spring/law/357c/001/Cyberbully/off-campus-bullying.html

It is important to note that all of the Supreme Court’s student speech cases have involved speech occurring on school grounds or during school-sponsored activities.  As a result, there is no clear indication of whether schools can punish cyberbullying, or restrict student speech, occurring outside of a school context.  However, language from past Supreme Court cases is helpful in predicting how such a situation might be resolved by the Court.  
  
In the seminal student speech case, [Tinker v. Des Moines Independent Community School District](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0393_0503_ZO.html), 393 U.S. 503 (1969), the Supreme Court explained that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”  When the Court stated that students do not shed their First Amendment rights at the schoolhouse gate, it implied that they have full First Amendment rights outside of schoolhouse gates.  Otherwise, they would have nothing to shed.  As a result, it can be argued that if cyberbullying takes place off-campus, is not during a school function, and uses no school resources, a school cannot punish the student for that speech without violating his/her First Amendment rights.  
  
In [Bethel School District No. 403 v. Fraser](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0478_0675_ZO.html), 478 U.S. 675 (1986), Justice Brennen concurred in the majority opinion, which upheld a school’s decision to punish a student for making a speech containing sexual innuendo at a school assembly.   However, Justice Brennen emphasized that "[i]f respondent had given the same speech outside of the school environment, he could not have been penalized simply because government officials considered his language inappropriate."  Similarly, in [Hazelwood School District v. Kuhlmeir](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0484_0260_ZO.html), 484 U.S. 260 (1988), the Supreme Court explained that schools may regulate in-school speech "even though the government could not censor similar speech outside [of] the school." These statements could have an important impact on the Court’s resolution of future cases involving off-campus cyberbullying, as they suggest that off-campus student speech receives full First Amendment protection.    
  
As a matter of policy, the Supreme Court must confront the issue of whether a school violates a student’s free speech rights by punishing them for creating, on their own time and using their own computers, electronic material that mocks, insults, or threatens school officials or classmates.  Until they do, lower courts will continue to struggle with the resolution of whether school’s can punish students for engaging in off-campus cyberbullying.  Notably, the trend among lower courts appears to allow schools to punish off-campus cyberbullying if such actions cause a material and substantial interference with on-campus school administration.     
  
One recent and notable federal court decision is worth mentioning here.  In [Doninger v. Niehoff](http://scholar.google.com/scholar_case?case=18121071340301870893&hl=en&as_sdt=2&as_vis=1&oi=scholarr), 527 F.3d 41 (2d Cir. 2008), the 2nd Circuit Court of Appeals allowed a school to punish off-campus student speech posted on the internet, and created a rule that would govern off-campus cyberbullying.   The court held that “a student may be disciplined for expressive conduct, even conduct occurring off school grounds, when this conduct would foreseeably create a risk of substantial disruption within the school environment, [and] it was similarly foreseeable that the off-campus expression might also reach campus.”  This case is particularly notable because current Supreme Court Justice Sonia Sotomayor was part of the three-judge panel presiding over this case, and ruled in favor of the school’s ability to punish off-campus cyberbullying.  Should a similar case reach the Supreme Court, this case could be a good indication of how she would vote.  
  
Sources:   
\* [Tinker v. Des Moines Independent Community School District](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0393_0503_ZO.html), 393 U.S. 503 (1969).

* [Bethel School District No. 403 v. Fraser](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0478_0675_ZO.html), 478 U.S. 675 (1986).
* [Hazelwood School District v. Kuhlmeir](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0484_0260_ZO.html), 484 U.S. 260 (1988).
* [Doninger v. Niehoff](http://scholar.google.com/scholar_case?case=18121071340301870893&hl=en&as_sdt=2&as_vis=1&oi=scholarr), 527 F.3d 41 (2d Cir. 2008).
* Clay Calvert, *Punishing Public School Students for Bashing Principals, Teachers & Classmates in Cyberspace: The Speech Issue the Supreme Court Must Now Resolve*, 7 First Amend. L. Rev. 210 (2008).

# Source #2:

# California Schools Can Now Discipline Students for Cyberbullying Off-Campus

### *A cyberbullying law gives school district administrators more authority.*

##### BY WENDY LEUNG, VENTURA COUNTY STAR / JANUARY 6, 20140

Jan. 3 — A new law that took effect Wednesday allows school administrators to punish students who engage in cyberbullying even if it takes place off-campus.

In the past, schools were authorized to suspend or expel students for online bullying only if it occurred at school, at a school event or on the way to or from school.

"Cyberbullying is real," said John Walker, board president of the Ventura Unified School District. "Kids don't realize the power of a word. Sometimes comments really hurt once you put them on the Internet."

Walker said many students have been victims of cyberbullying, including his own grandchildren. Often, parents are not aware their children are cyberbullies until it becomes a major issue.

"Every day, children in middle school and high school are getting hurt," he said.

The new legislation was authored by Assemblywoman Cristina Garcia, D-Bell Gardens, and signed by Gov. Jerry Brown in October.

Many local school leaders support the legislation, which closes a loophole in anti-bullying law. California is one of 18 states that include cyberbullying in their anti-bullying laws, according to the Cyberbullying Research Center, and now one of 12 states that include off-campus behavior in the laws.

"Bullying can have such a dangerous impact on young people's lives," said Socorro Lopez Hanson, board president of the Oxnard Union High School District. "Anything we can do to deter them from that route is worth exploring."

But Hanson conceded that behavior taking place outside of school is typically the parents' business.

"I think we're starting to get into a dark gray area here," Hanson said. "We don't belong in the home in that sense. On the other hand, I'm not happy with the consequences of cyberbullying."

Hanson said schools should try suspending or expelling cyberbullies on a trial basis to see if punishment works at curbing the behavior.

Even though schools in the past didn't have the authority to punish such off-campus behavior, Superintendent Jeff Baarstad of the Conejo Valley Unified School District said it doesn't mean administrators didn't get involved.

In Conejo Valley Unified, regardless of where the cyberbullying behavior originates, parents of the bully are notified. Baarstad said an administrator then sits down with the student and parents to talk about the offensive or threatening post.

Baarstadt said off-campus cyberbullying is akin to students who get in trouble after a football game.

"If they're impacting the life of the school and the health and safety of our kids, we tend to get involved," he said.

On the Net: [Law information](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB256)

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**Source #3**

# Social Media Policy Ignites Controversy in California School District

### *The ACLU of Northern California and the Student Press Law Center are working to get a social media policy revised.*

##### BY NEWS STAFF / AUGUST 22, 20130

Some California students who believe their high school’s social media policy is too oppressive are now getting help from the ACLU of Northern California (ACLU-NC) and the Student Press Law Center.

The guidelines from the board of trustees of the Lodi Unified School District in California include [best practices](http://lhs-lusd-ca.schoolloop.com/file/1271057813834/1272096761347/6290886632877159163.pdf) for student athletes and consequences for inappropriate behavior on social networking sites, including profane or sexual language, cyberbullying and demeaning others. For the [first offense](http://lhs-lusd-ca.schoolloop.com/file/1271057813834/1272096761347/8315202159781141821.pdf), student athletes would be benched for one game. A second offense would prevent the student from playing on any school athletic team for at least the remainder of the academic year.

Students have been protesting the policy and on Monday, Aug. 12, the ACLU-NC and the Student Press Law Center issued a press release condemning the original policy as a violation of First Amendment Rights, the California Constitution and California statutes that protect freedom of expression for students.

An August 12 [letter](http://www.splc.org/news/newsflash.asp?id=2597) to the school district also called the policy "draconian and constitutionally infirm." The Lodi Unified School District suspended its student athlete social media policy on Aug. 14, with the intent of revising it. But at its Aug. 20 meeting, the school board decided to wait on revisions and opted to post three alternative versions on its website for public reading, the *Lodi News-Sentinel*[reported](http://www.lodinews.com/news/article_f597f334-833e-50bb-a781-c64fec70fbb5.html).

Dawn Vetica, assistant superintendent for Lodi middle and high schools, [told](http://www.lodinews.com/news/article_ae6a5ed6-7e8e-5c3a-9d0b-8b0641dadd67.html) the*News-Sentinel*that the original policy was designed to address student athletes who bullied others online and made inappropriate comments about other students and staff.

Lodi Unified isn't alone in its attempt to draft policy around student social media use. A number of school districts across the country are grappling with how to handle student behavior that occurs online and off-campus but also has an effect on students. [Some parents have said](http://www.lodinews.com/news/article_f597f334-833e-50bb-a781-c64fec70fbb5.html) schools have no business dealing with incidents outside of school or school activities. And schools are taking[different approaches](http://www.centerdigitaled.com/policy/Washington-Districts-Cyberbullying.html) to addressing this problem, including police involvement and cell phone searches.

<http://www.centerdigitaled.com/news/Social-Media-Policy-Ignites-Controversy-in-California-School-District.html?utm_source=related&utm_medium=direct&utm_campaign=Social-Media-Policy-Ignites-Controversy-in-California-School-District>

**Source #4**

# Online Bullies Pull Schools Into the Fray

**By**[**JAN HOFFMAN**](http://topics.nytimes.com/top/reference/timestopics/people/h/jan_hoffman/index.html)

**New York Times** JUNE 27, 2010

The girl’s parents, wild with outrage and fear, showed the principal the [text messages](http://topics.nytimes.com/top/reference/timestopics/subjects/t/text_messaging/index.html?inline=nyt-classifier): a dozen shocking, sexually explicit threats, sent to their daughter the previous Saturday night from the cellphone of a 12-year-old boy. Both children were sixth graders at Benjamin Franklin Middle School in Ridgewood, N.J.

Punish him, insisted the parents.

“I said, ‘This occurred out of school, on a weekend,’ ” recalled the principal, Tony Orsini. “We can’t discipline him.”

Had they contacted the boy’s family, he asked.

Too awkward, they replied. The fathers coach sports together.

What about the police, Mr. Orsini asked.

A criminal investigation would be protracted, the parents had decided, its outcome uncertain. They wanted immediate action.

They pleaded: “Help us.”

Schools these days are confronted with complex questions on whether and how to deal with cyberbullying, an imprecise label for online activities ranging from barrages of teasing texts to sexually harassing group sites. The extent of the phenomenon is hard to quantify. But one 2010 study by the [Cyberbullying Research Center](http://www.cyberbullying.us/), an organization founded by two criminologists who defined bullying as "willful and repeated harm” inflicted through phones and computers, said one in five middle-school students had been affected.

Affronted by cyberspace’s escalation of adolescent viciousness, many parents are looking to schools for justice, protection, even revenge. But many educators feel unprepared or unwilling to be prosecutors and judges.

Often, school district discipline codes say little about educators’ authority over student cellphones, home computers and off-campus speech. Reluctant to assert an authority they are not sure they have, educators can appear indifferent to parents frantic with worry, alarmed by recent adolescent suicides linked to bullying.

Whether resolving such conflicts should be the responsibility of the family, the police or the schools remains an open question, evolving along with definitions of cyberbullying itself.

Nonetheless, administrators who decide they should help their cornered students often face daunting pragmatic and legal constraints.

“I have parents who thank me for getting involved,” said Mike Rafferty, the middle school principal in Old Saybrook, Conn., “and parents who say, ‘It didn’t happen on school property, stay out of my life.’ ”

According to the [Anti-Defamation League](http://www.adl.org/education/cyberbullying/%20%20), although 44 states have bullying statutes, fewer than half offer guidance about whether schools may intervene in bullying involving “electronic communication,” which almost always occurs outside of school and most severely on weekends, when children have more free time to socialize online.

A few states say that school conduct codes must explicitly prohibit off-campus cyberbullying; others imply it; still others explicitly exclude it. Some states say that local districts should develop cyberbullying prevention programs but the states did not address the question of discipline.

Judges are flummoxed, too, as they wrestle with new questions about protections on student speech and school searches. Can a student be suspended for posting a video on YouTube that cruelly demeans another student? Can a principal search a cellphone, much like a locker or a backpack?

It’s unclear. These issues have begun their slow climb through state and federal courts, but so far, rulings have been contradictory, and much is still to be determined.

**Middle School Misery**

Meredith Wearley, Benjamin Franklin’s seventh-grade guidance counselor, was overwhelmed this spring by dramas created on the Web: The text spats that zapped new best friendships; secrets told in confidence, then broadcast on Facebook; bullied girls and boys, retaliating online.

“In seventh grade, the girls are trying to figure out where they fit in,” Mrs. Wearley said. “They have found friends but they keep regrouping. And the technology makes it harder for them to understand what’s a real friendship.”

Because students prefer to use their phones for texting rather than talking, Mrs. Wearley added, they often miss cues about tone of voice. Misunderstandings proliferate: a crass joke can read as a withering attack; did that text have a buried subtext?

The girls come into her office, depressed, weeping, astonished, betrayed.

“A girl will get mad because her friend was friends with another girl,” Mrs. Wearley said.

They show Mrs. Wearley reams of texts, the nastiness accelerating precipitously. “I’ve had to bring down five girls to my office to sort things out,” she said. “It’s middle school.”

Recently, between classes, several eighth-grade girls from Benjamin Franklin reflected about their cyberdramas:

“We had so many fights in seventh grade,” one girl said. “None of them were face-to-face. We were too afraid. Besides, it’s easier to say ‘sorry’ over a text.”

Another concurred. “It’s easier to fight online, because you feel more brave and in control,” she said. “On Facebook, you can be as mean as you want.”

Studies show that online harassment can begin in fourth grade. By high school, students inclined to be cruel in cyberspace are more technologically sophisticated, more capable of hiding their prints. But that is also when older students may be more resilient:

“By high school, youths are developing more self-confidence, engaged in extracurricular activities and focusing on the future,” said Sameer Hinduja, a professor at Florida Atlantic University and an author of[“Bullying Beyond the Schoolyard.”](http://www.cyberbullyingbook.com/)

“Their identity and self-worth come from external things that don’t revolve around social relationships.”

But during middle school, he said, “Peer perception largely dictates their self-worth.” With their erupting skin and morphing bodies, many seventh-grade students have a hard enough time just walking through the school doors. When dozens of kids vote online, which is not uncommon, about whether a student is fat or stupid or gay, the impact can be devastating.

While research shows that traditional at-school bullying is far more pervasive than cyberbullying, each type of hostility can now blur and bleed into the other. Jeff Taylor, principal of Frank Lloyd Wright Intermediate School in West Allis, Wis., wades into cyber-related conflicts at school several times each week.

Recently, a seventh-grade girl held a weekend birthday party and her jealous former friend showed up. By Tuesday night, the uninvited guest had insulted the birthday girl’s dress on Facebook, calling it and the girl’s mother cheap. The remarks were particularly wounding, because the birthday girl’s family is not well-off.

By Wednesday, Mr. Taylor said, “There were rumblings about it in the cafeteria. When kids start posturing and switching lunch tables, you can tell.” He and an assistant tried to calm them.

But the posturing continued online. A confrontation at school was planned, and the details were texted. On Friday, during the four minutes between seventh-grade lunch and the next period, 20 girls showed up in a hallway and began shrieking.

At least four adults pulled the girls apart and talked them down.

“We must have spent five or six hours on this, throughout the week,” Mr. Taylor said. “We got to the bottom of that pain and rejection. I don’t consider it a waste of time. But at 3:03 those buses were pulling out and you know that as soon as the girls got home, they’d be blasting away about it on Facebook.”

Though resolving cyberwars can be slippery and time-consuming, some schools would like students to report them at the outset, before they intensify. But experts on adolescence note that teenagers are loath to tell adults much of anything.

Some students think they can handle the ridicule themselves. Or are just too embarrassed to speak up. Others fear that parents will overreact.

If the child is texting at school or has a Facebook page without permission, “and now they’re being bullied on it,” said Parry Aftab, executive director of[WiredSafety.org](http://www.wiredsafety.org/index.html), “they can’t admit it to parents. The parents will take away the technology and the kids are afraid of that. Or the parents will underreact. They’ll say: ‘Why read it? Just turn it off!’ ”

The most threatening impediment to coming forward can be the cyberbully’s revenge. Graffiti on a cyberwall can’t be blacked out with a Sharpie.

Mindful of risks to students who report bullies, some school districts have created anonymous tip sites. At Benjamin Franklin, the staff has many ways to give students cover.

“When girls ask their friends, ‘What were you doing in the guidance counselor’s office?’ ” Mrs. Wearley said, “I tell them, just say ‘Mrs. Wearley was fixing my schedule.’ ”

**The Legal Battles**

Tony Orsini, the Ridgewood principal, learned about a devastating Facebook group last November, two months after it started.

“I had a 45-year-old father crying in my office,” Mr. Orsini said. “He kept asking, ‘Why would someone do this to my son?’ ”

A Facebook page had sprung up about the man’s son, who was new in town. The comments included ethnic slurs, snickers about his sexuality and an excruciating nickname. In short order, nearly 50 children piled on, many of them readily identifiable. “Kids deal with meanness all the time and many can handle it,” said Mr. Orsini, 38, a father of two children. “But it never lasts as long as it does now, online.”

The boy could not escape the nickname. At soccer and basketball games around town, opposing players he’d never met would hoot: “Oh, you’re that kid.”

The boy began missing school. He became ill. After weeks, he reluctantly told his parents.

“We don’t always get to address these problems until the damage is done,” Mr. Orsini said.

Because the comments had been made online and off-campus, Mr. Orsini believed that his ability to intervene was limited.

Rulings in a handful of related cases around the country give mixed signals.

A few families have successfully sued schools for failing to protect their children from bullies. But when the Beverly Vista School in Beverly Hills, Calif., disciplined Evan S. Cohen’s eighth-grade daughter for cyberbullying, he took on the school district.

After school one day in May 2008, Mr. Cohen’s daughter, known in court papers as J. C., videotaped friends at a cafe, egging them on as they laughed and made mean-spirited, sexual comments about another eighth-grade girl, C. C., calling her “ugly,” “spoiled,” a “brat” and a “slut.”

J. C. posted the video on YouTube. The next day, the school suspended her for two days.

“What incensed me,” said Mr. Cohen, a music industry lawyer in Los Angeles, “was that these people were going to suspend my daughter for something that happened outside of school.” On behalf of his daughter, he sued.

Last November, Judge Stephen V. Wilson of Federal District Court found that the off-campus video could be linked to the school: J. C. told perhaps 10 students about it; the humiliated C. C. and her mother showed it to school officials; educators watched it and investigated.

But the legal test, he wrote in his 57-page [decision](http://lawyersusaonline.com/wp-files/pdfs/jc-v-beverly-hills-a.pdf), was whether J. C.’s video had caused the school “substantial” disruption. Judge Wilson ruled in favor of the young videographer, because the disruption was only minimal: administrators dealt with the matter quietly and before lunch recess.

This legal test comes from a 1969 Supreme Court case, Tinker v. Des Moines Independent Community School District, in which a school suspended students for wearing black armbands to protest the Vietnam War.

The court overturned the suspension, but crafted a balance between a school’s authority and a student’s freedom of expression. When a student’s speech interferes substantially with the school’s educational mission, a school can impose discipline.

The district had to pay J. C.’s costs and lawyers’ fees: $107,150.80.

Judge Wilson also threw in an aside that summarizes the conundrum that is adolescent development, acceptable civility and school authority.

The good intentions of the school notwithstanding, he wrote, it cannot discipline a student for speech, “simply because young persons are unpredictable or immature, or because, in general, teenagers are emotionally fragile and may often fight over hurtful

The lesson Mr. Cohen hopes his daughter learns from the case is about the limits on governmental intrusion. “A girl came to school who was upset by something she saw on the Internet,” Mr. Cohen said in a telephone interview, “and these people had in their mind that they were going to do something about it. The school doesn’t have that kind of power. It’s up to the parents to discipline their child.”

He did chastise his daughter, saying, “That wasn’t a nice thing to do.”

He describes her video as “relentlessly juvenile,” but not an example of cyberbullying, which he said he did not condone. His daughter offered to remove it from YouTube. But Mr. Cohen keeps it posted, he said, “as a public service” so viewers can see “what kids get suspended for in Beverly Hills.”

The J. C. decision has ignited debate. [Nancy Willard](http://www.cyberbully.org/), an Oregon lawyer who consults with schools, said that the judge could have applied another, rarely cited prong of the Tinker standard: whether the student’s hurtful speech collided with “the rights of other students to be secure.”

The Supreme Court has not yet addressed online student speech. Lower-court judges in some districts have sided with schools that have disciplined students for posting threatening videos about educators from their home computers.