

Liability for Schools and Administrators Related to Cybersecurity and Cyberbullying

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Agenda

- A Digital Life
- Cybersecurity and Cyber Safety
- Cyberbullying
- Sexting
- Online Privacy
- Texting While Driving
- Liability Considerations
- Recommendations
- Questions and Comments

A Digital Life



- 92% of teens ages 13-17 go online daily
 - 24% report they go online “almost constantly”
- Pew Research Center*

> CareerSafe®

A Digital Life

- **Always Active:** A digital life never sleeps.
- **Permanent:** A digital life never dies.
- **Anonymous:** A digital life can be observed, evaluated, and impacted by anonymous and hidden sources.
- **Replicable:** A digital life can be reproduced.
- **Accessible:** A digital life can be easily found and accessed by a larger, broad, global audience.
- **Analytical:** A digital life can be rapidly analyzed and converted to information used by others to further their own personal goals.

Cybersecurity and Cyber Safety

Protecting Cyberspace and its Underlying Infrastructure.
Department of Homeland Security



Protecting People in a Cyber World.
CareerSafe®

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Cyber Safety Awareness Training

- Launched in Fall 2015 semester
- Age-appropriate scenario-based online courses for grades 6 – 12
- School climate survey and administrative reports
- Covering four topics:
 - Cyberbullying
 - Sexting
 - Protecting your personal information online
 - Texting while driving
- As of November 2017
 - 250+ schools in 34 states with >40,000 students trained

Cyber Safety Awareness Training

- Scenarios are developed from true-to-life situations faced by students
- We use students in what we call our Youth-to-Youth™ Design to select the scenarios and age-appropriate language

17-year-old Justin saw the post on Facebook. Justin thought it was dumb that David was making a post asking for people to be nice to Ashley. He didn't think she deserved his pity.

"I won't miss you"
"You're not important"
"Just end it all"

Justin decided to text Ashley with the number David posted and let her know how he really felt.

Justin sent over 100 text messages like this using a website that would let you "text bomb" people. The text bomb makes it appear that many different phone numbers are texting you, when it really was just the one person.

When Ashley saw these texts from all these "different people", she felt alone.

What should Ashley do now?

Call the police and report the text messages immediately.

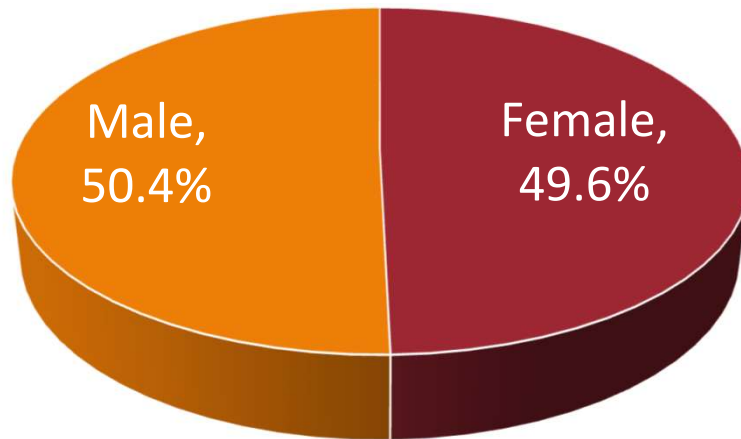
Do nothing and keep it to herself.

> CareerSafe Cyber Safety Awareness Training

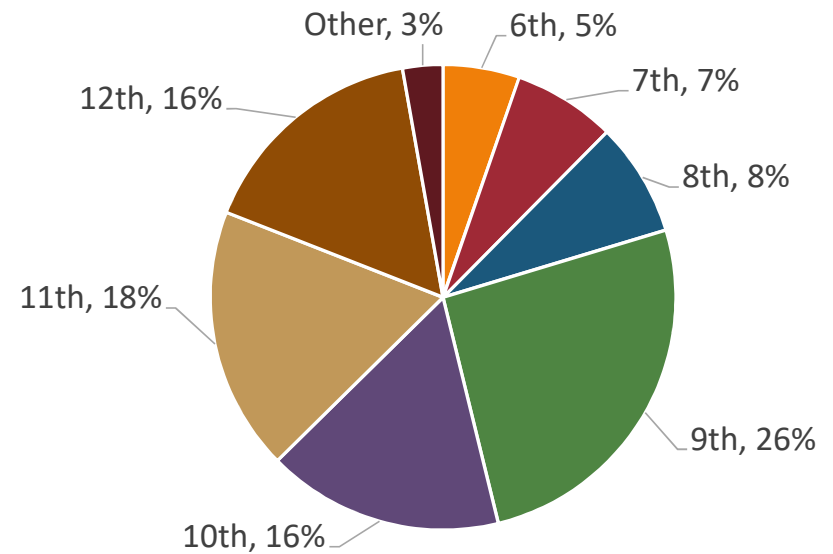
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Cyber Safety Survey

Respondents by Gender



Respondents by Grade



N=38,127 Students as of October 2017

Cyberbullying

“...a whole new class of bullies...”

Denis Binder, LLM, SJD

Cyberbullying

- Cyberbullying as a form of bullying merits distinction due to the unique characteristics of digital communication in general:
 - Ease of use and dissemination
 - False sense of privacy, anonymity, disinhibition, and casual cruelty
 - Inflation/escalation of emotions
 - Inability for target to get away.
- The inability to stop the digital communication functions to “increase the sense of helplessness common to victimization.”
- Cyberbullying can have a more severe impact on the victim.

Elizabeth Kendel Englander, PhD

Cyber Safety Survey

- 25% have been cyberbullied; 40% have witnessed cyberbullying
- Cyberbullying is more prevalent among younger grades
- Females are 4-6% more likely to have been cyberbullied
- Females are 326% more likely to be “very upset” and 190% more likely to be “upset” by cyberbullying than their male counterparts.

Cyber Safety Survey

- 36% say cyberbullying occurs “occasionally” or “frequently” at school
- 60% report their school has a policy against cyberbullying; 32% don’t know
- 73% say their school doesn’t have an anonymous reporting system or that they don’t know if they do
- 52% would use an anonymous reporting system if available

Sexting

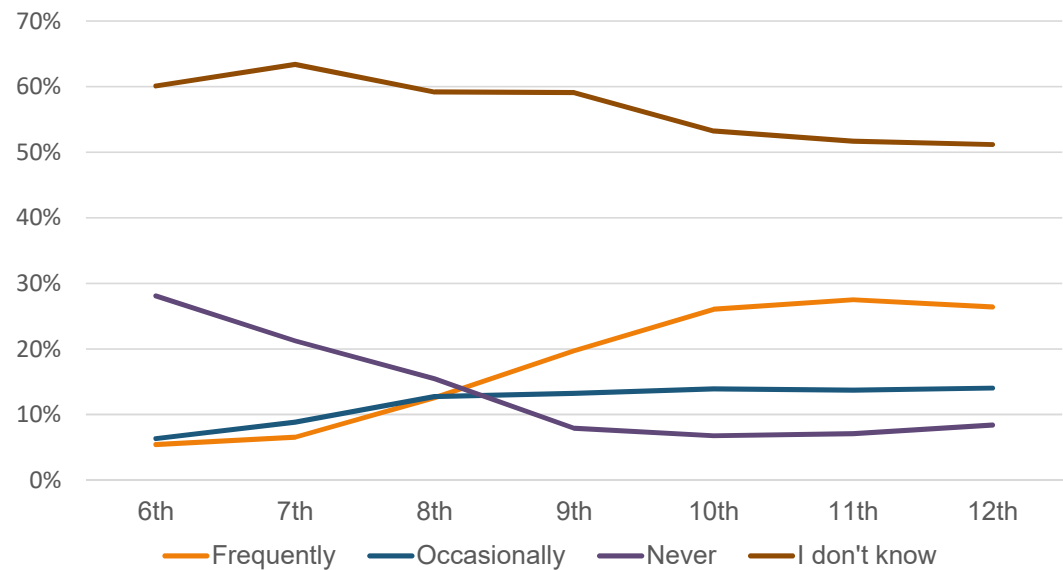
Curiosity ■ Peer pressure ■ To express love ■ To flirt ■ To be sexy ■
As a joke ■ Belief that sexting is safer than sex ■
Obliviousness to the consequences

Lohmann (2017) and Bauman (2016)

Cyber Safety Survey

- 33% of students “frequently” or “occasionally” engage in sexting
- 35% have received an inappropriate image or text
- Sexting activity increases with age and grade.

How often do students at your school engage in sexting?



Protecting Personal Information

Being online exposes us to cyber criminals and others who commit identity theft, fraud, and harassment.

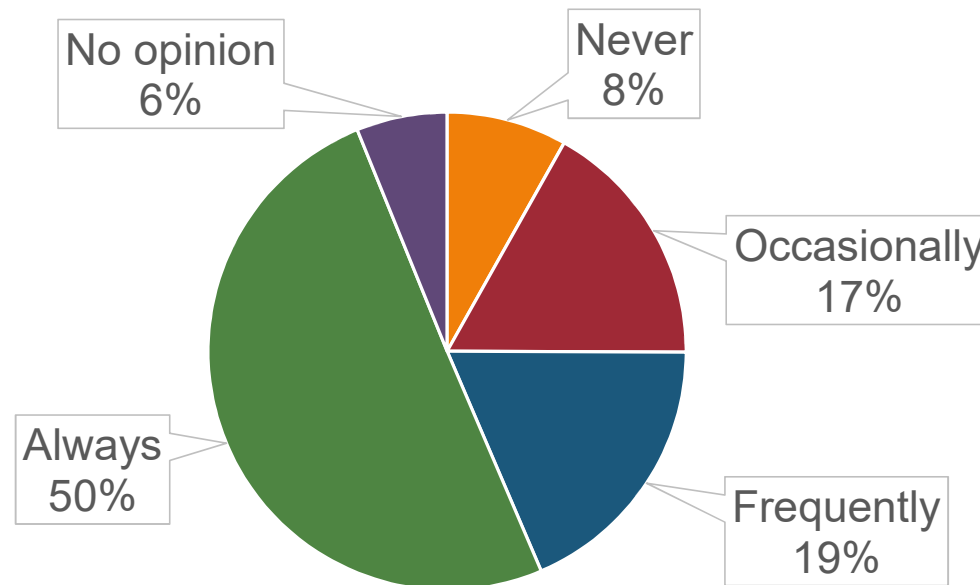
Department of Homeland Security

Protecting Personal Information

- Apps and websites collect information
- Online activity is tracked
- Individuals share personal details
- Identity thieves use stolen personal information online
- Location information is tracked
- Phishing and Spear Phishing

Cyber Safety Survey

How much do you worry about protecting your personal information when you are online?



Texting While Driving

3,477 people were killed and 391,000 injured
as a result of distracted driving in 2015

National Highway Traffic Safety Administration

Texting While Driving

- Sending or reading a text takes your eyes off the road for 5 seconds...at 55mph that is like driving the length of a football field with your eyes closed.
- Dialing a phone number while driving increases the risk of crashing by six times; texting increases it by 23 times
- Teens were the largest age group reported as distracted at the time of fatal crashes

Source NHTSA 2015

Cyber Safety Survey

- 40% of students ride with someone who texts while driving
- 14% report they text while driving
 - 12% of females text while driving
 - 16% of males text while driving
- 2% report they “always” text and drive, of those males are 257% more likely to do so

Note: There are almost 10 million licensed drivers age 19 and under.

Liability Concerns

34 States Have Laws Against Cyberbullying

Title IX prohibits discrimination on the basis of sex; Title IX Guidance prohibits sex-based bullying and harassment...in person or in electronic form.

Department of Education

Sample of Relevant Cases

- \$130,000 J.C. v Emerson Board of Education
- \$225,000 Harrison v. Clatskanie School District
- \$154,000 Logan v. Sycamore Community School Board of Education
- \$225,000 Presas v. Lansing Public Schools
- \$150,000 Holland v. LaLevee
- \$500,000 Shively v. Green Local School District Board of Education

Source: Public Justice Report

First Amendment

- The courts have repeatedly held that schools may discipline students for off-campus cyberspeech consistent with the First Amendment if it was reasonably foreseeable that the speech would create a substantial disruption in the school environment.
- School systems and administrators must institute systematic processes to protect, defend, and respond to cyberbullying incidents.
- Established policies and processes must be strictly followed.

Recommendations

1. Be knowledgeable of your state laws on bullying and/or cyberbullying. Schedule a periodic review with outside counsel to be sure you are in compliance.
2. Determine if your school comes under federal law through Title IX of the Education Amendments Act of 1972 (i.e., if your school received federal funding). If so, institute policies to put you in compliance.
3. Maintain a written policy for all school personnel and another policy for students. Give copies to all parties and have them sign that they have received and read the copy. Review annually for any updates due to changes in state law and/or court cases.
4. The policy should clearly cover conduct that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district, or if the conduct would result in a substantial disruption in the school environment.

Recommendations

5. Provide periodic training separately for both school administrators/teachers/staff and students on the pertinent policy with exercises that demonstrate cyberbullying behavior. Document training content and who attended. Maintain a cybersecurity awareness program with hallway posters as constant reminders.
6. Explain consequences and be clear so that students who may be potential perpetrators understand the full spectrum of consequences including recorded convictions, lost opportunities, and in extreme cases, having to register as a sex offender.
7. Realize that in addition to legal consequences, reputational consequences can be damaging to school systems, schools, administrators, teachers, and staff.

Recommendations (cont.)

8. Institute a specific response process when a student files a complaint. Maintain all documentation. Assume the student is telling the truth until evidence is overwhelmingly to the contrary. Have consequences for all involved parties. If necessary, involve police authorities as soon as possible.
9. If the accused harasser is a school administrator/teacher/staff, institute a special process, limiting the investigation to a specific team. Do not allow a “defend at all costs” attitude.
10. Be mindful of students’ privacy—including the alleged cyberbullying parties. There should be a strict “need to know” policy with absolutely no discussion or gossip about any incident where a child/student is involved.

Questions and Comments



Contact Information

To get a copy of the White Paper go to:
www2.careersafeonline.com/cyber

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