

OKLAHOMA STATE DEPARTMENT OF
EDUCATION
— CHAMPION EXCELLENCE —

Cyberbullying and Threats: School --- Authority and Liability

Disclaimer

- Everything you are about to hear are the personal opinions of the speaker and not necessarily the policies or opinions of the State of Oklahoma. Information provided should not be construed as legal advice or opinion.
- Humor?

I Have Experienced _____ Online

42% = Offensive Name-Calling

32% = Spreading of False Rumors

16% = Physical Threats

Pew Survey (USA Teens)

Violence & Suicide Threats

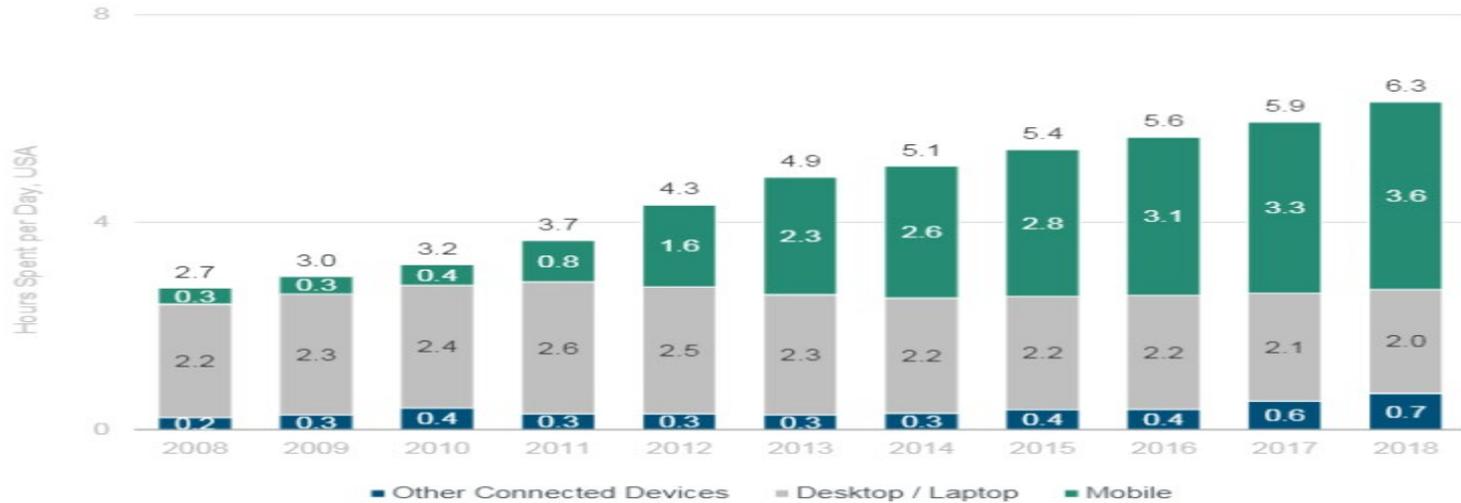
- Social media
 - 95% access to smartphone
 - 85% YouTube
 - 72% Instagram
 - 51% Facebook
- Social stats
 - 10-14: suicide is 3rd leading cause of death
 - 15-34: suicide is second leading cause of death
 - 829 bomb threats; 27% increase in 5 years

Do Social Media Platforms You Use Make These Health-Related Factors Better or Worse?



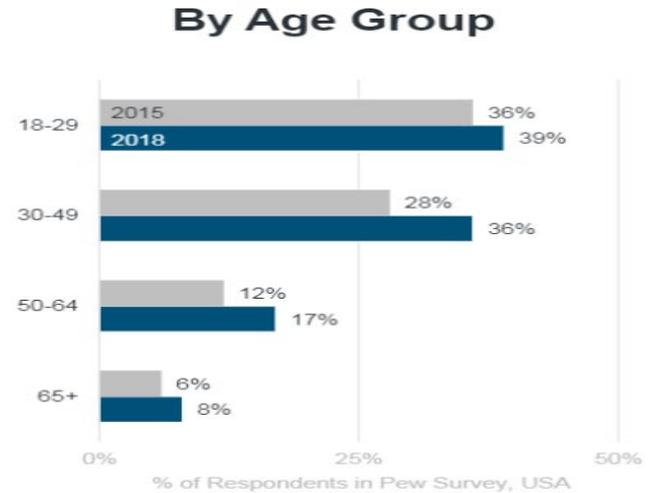
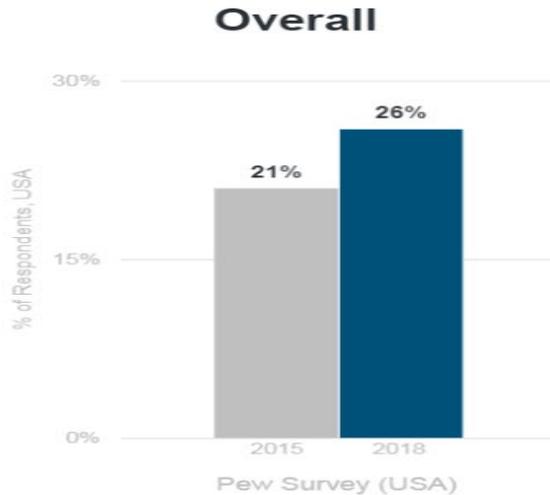
Digital Communication

Daily Hours Spent with Digital Media per Adult User, USA



Adults “Constantly” Online

% of Adults Online ‘Almost Constantly’

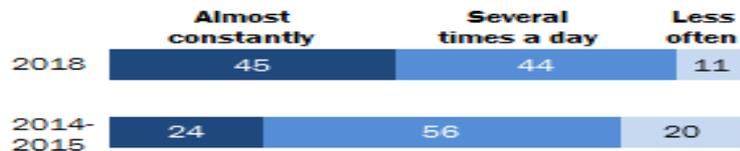


Teens “Constantly” Online

45% of teens say they’re online almost constantly

45% of teens say they’re online almost constantly

% of U.S. teens who say they use the internet, either on a computer or a cellphone ...



Note: “Less often” category includes teens who say they use the internet “about once a day,” “several times a week” and “less often.”

Source: Survey conducted March 7-April 10, 2018. Trend data from previous Pew Research Center survey conducted 2014-2015.

“Teens, Social Media & Technology 2018”

PEW RESEARCH CENTER

Monitoring & Access

- Social listening
 - Keywords
 - Locations
- Safety and school climate, not personal opinions
- Duty to report
- Liability considerations

On- v. Off-Campus

- Definition of “bullying” v. bullying policy requirements
- Fake accounts, impersonating others
- Privacy settings on accounts
- Liability and Duty to Report

On- v. Off-Campus - Bullying Defined

- any pattern of harassment, intimidation, threatening behavior, physical act, verbal or electronic communication...
- Results in or reasonably perceived as being done with intent to cause negative educational or physical result AND
- Communicated to disrupt or interfere with educational mission or education of student

– 70 O.S. 24-100.3

On- v. Off-Campus - Bullying Policies

- Bullying by students at school and by electronic communication, if the communication is
 - Directed at students or school personnel
 - AND
 - Concerns bullying at school
- “At school” – school grounds, school vehicles, school-sponsored activities, or school-sanctioned event

Threats

- Duty to report – 70 O.S. § 24-100.8
- Verbal or threatening behavior, whether directed at another or not
- Potential for future harm to students, school personnel or school property
- Immunity for good faith report

Abuse

- Duty to report? 10 O.S. § 1-2-101
- Every school employee having reason to believe that a child under age 18 is a victim of abuse or neglect
- “Abuse” – harm or threatened harm to health, safety or welfare.
 - Mental, sexual and/or physical
- Immediately report to DHS and law enforcement

Swatting

- False reports / hoax intended to deceive
- Fake accounts or hacking
- Threats through interstate communications
- #Thinkbeforeyoupost

Swatting - Examples

- Kentucky – fake Snapchat profile and threatened school
- Texas – social media threats against schools in Minnesota
- South Carolina – text messages claiming a bomb in a parking lot
- North Carolina – internet broadcast of bomb threats
- Oklahoma

Privacy Interests

- FERPA
- Law enforcement unit
- Federal grand jury subpoena or law enforcement
- State and local officials in connection with juvenile justice system
- Emergency if information necessary to protect health or safety of student or others

Liability Considerations

- School Bullying and Prevention Act
- Threats by Electronic Means
- Stalking
- Dissemination of Private Sexual Messages
- Soliciting Sexual Conduct by Technology
- Negligence
- Title VI - Race, color, national origin, sex or disability
- Title IX - sex or gender
 - Liaison, reporting and investigation, and administrative capability
- 1st Amendment
- 14th Amendment (Section 1983)
 - State-created danger
 - *Monell*

Discrimination & Harassment Laws

- School Bullying and Prevention Act
 - Policies to define, procedures for reporting, investigating, responding and reporting to law enforcement
 - Annual training
- Negligence
 - Policies
 - Supervision
 - Training
 - Investigation?

Case Law

- *Saxe v. State College Area Sch. Dist.* (3rd Cir. 2001)
- *J.C. ex rel. R.C. v. Beverly Hills Unified Sch. Dist.* , 711 F.Supp. 2d 1094 (C.D. Cal. 2010)
- *Layshock v. Hermitage Sch. Dist.* (3rd Cir. 2011)
- *Kowalski v. Berkeley Cty. Schools*, 652 F.3d 565 (4th Cir. 2011)

Case Law

- *People v. Marquan M.* - 24 N.Y. 3d 1, NY 2014 WL 2931482 (2014)
- *State v. Bishop* – 368 N.C. 869 (N.C. 2016)
- *A.N. v. Upper Perkiomen Sch. Dist.*, 228 F.Supp.3d 391 (E.D. Penn. 2017)

People v. Marquan M.

- New York cyberbullying law
 - Criminalize any act of communicating with no legitimate personal purpose, with intent to harass or annoy another...”
- Facts
 - “Cohoes Flame” – photos of classmates, descriptions of sexual acts and partners
- Criminal prohibition of “alarming breadth”
 - Extends far beyond reach of bullying of children
 - *Applies to adults, corporations, etc.*

State v. Bishop 368 N.C. 869 (N.C. 2016)

- NC cyberbullying statute
 - Prohibits “posting or encouraging others to post...private, personal or sexual information pertaining to a minor.”
- Facts
 - “excessively homoerotic,” “pathetic” and “defensive”
 - Victim found crying, throwing and hitting himself
- Speech regulation that is content based; not narrowly tailored

*A.N. v. UpperPerkiomen Sch. Dist., 228
F.Supp.3d 391 (E.D. Penn. 2017)*

- Facts
 - Sandy Hook and “Pumped Up Kicks” mash-up to *Evan*
 - “See you next year, if you’re still alive”
- *Tinker* – can restrict if substantial interference with operation of school?
 - Actual disruption and forecast disruption