



Embrace Civility in the Digital Age ~ Issue Brief

Digital Risk ~ Investigation & Intervention

Digital Risk Concerns

In a companion Issue Brief, *Educator's Guide to Digital Risk*, the key areas of youth risk related to the use of digital technologies were outlined. These include:

- *Digital Aggression*. Use of digital technologies to intentionally engage in hurtful acts directed towards another.
- *Digital Threats or Distress*. Posting information that is a direct threat or "leakage" indicating emotionally distress and the potential for violence against self or others.
- *Digital Abuse*. Abusive and controlling use of digital technologies in the context of abusive personal relationships.
- *Digital Exploitation*. Fantasy relationships, pressure to provide or distribution of revealing images, grooming, and sex trafficking.
- *Unsafe Online Communities*. Online communities that support self-harm or hatred and violence.

Legal Issues

There are a number of legal standards that must inform the investigation and intervention process.

- *Student Off-Campus Speech*. Federal courts have consistently held that school officials can formally respond to student off-campus speech that has or reasonably could cause a substantial disruption on campus, including situations that have or could lead to violence, overall interference with the delivery of instruction, or significant interference with the ability of any other student to fully participate in school activities. Document the following:
 - *Nexus*. The connection between student's off-campus speech and the school community.
 - *Interference with Rights of Other Students*. How student speech is interfering with the rights of another student or students to be safe and receive an education. If students have targeted school staff, the disruption must interfere with students' rights.
 - *Substantial*. Why the interference is "substantial," not merely an inconvenience or situation that has caused offense.
 - *Predicted Disruption*. If disruption has not occurred, reasons why disruption can be predicted.
 - *Interference With Other Student to Receive an Education*. Must be demonstrated based on both that student's subjective perspective and an objective observer perspective.
- *District Responsibility*. Schools have a responsibility under civil rights laws to prevent student-on-student harassment that is so severe that it deprives a student of the right to receive an education. While there is no case law, if a school has actual knowledge that a student is being denied a right to an education by another student's off-campus speech combined with hurtful actions at school, failure to intervene could be considered deliberately indifference.
- *Search and Seizure*. Students have a significant expectation of privacy in these digital records. Reasonable suspicion is likely sufficient for school official search. But school officials can only search records related to the suspicion, not all records on the device. When law enforcement becomes involved, the standard shifts to probable cause. Students and their parents should be advised of their right to refuse consent to search by a school official or by a law officer without a search warrant.

Policies & Practices

Effective investigations and interventions must be ground in appropriate policies and protocols. These policies and protocols will govern the actions of school officials and law enforcement when investigating and intervening.

- *Bullying and Harassment Policy*. Include language in the district policy that ensures students and parents have notice the school will intervene in situations where off-campus speech has or could cause a substantial disruption at school or interfere with the rights of students to be secure. Additionally, include provisions that require a full investigation, encourage restorative interventions, and ensure post-incident evaluation. This policy should apply to extracurricular activities.
- *Threat Assessment and Suicide Prevention Protocols*. Revise to address the fact that threatening material is posted online.
- *Cell Phone and Imaging Devices*. Develop reasonable policies to restrict harmful use on campus.
- *Law Enforcement and Mental Health Involvement*. Develop a protocol with local law enforcement and community mental health professionals for investigation and intervention of the more significant concerns. Protect students' constitutional rights. Promote community-based restoration.

Investigation

School officials, as well as law enforcement, must take the time to fully investigate any digital risk situation. School officials can use digital evidence to more fully understand the situation, but this evidence could be deceptive or not disclose the entire situation. It is important to gain an understanding of the entire situation--including face-to-face interactions, as well as digital. Follow these steps:

- *Preserve Digital Evidence*. Gather and preserve the digital evidence and determine the identity of individuals involved. If someone is anonymous or it appears a fake profile has been created, look for lesser-involved students who are identifiable and question them, promising confidentiality. Law officers have greater ability to determine identities through a subpoena if the matter involves criminal activity. Watch out for fake profiles designed to get someone into trouble. Once the materials have been preserved, file an Abuse Report on the site to get any hurtful or inappropriate materials removed.
- *Review the Situation*. Review the digital material and gain insight from the student reporting to assess the harmful relationships. Determine who is playing what role in this situation, with what apparent motivation. Look closely to determine whether online incident is a continuation of--or in retaliation for--other hurtful interactions between the parties. Determine whether the evidence gathered raises concerns that any student may pose a risk of harm to others or self. A staff member who has been targeted online should not have responsibility for the investigation.
- *Collaborative Investigations*. If it appears that there is an imminent threat of violence, contact law enforcement and initiate a protective response in accord with threat assessment plan. If there appears to be an imminent threat of suicide, follow suicide prevention protective plan. Situations involving sexting or exploitation will require law enforcement and child protective services involvement in accord with protocol that has been developed.

Restorative Interventions

Recent research, as well as litigation, has raised concerns about the effectiveness of school responses to student aggression. Students will not seek adult assistance if doing so could make things much worse. Punitive interventions that generate anger can lead to digital retaliation that can be accomplished anonymously or by enlisting the support of online friends over whom a school has no authority. It is imperative to shift from a punishment-based approach to restorative interventions.¹

Punishment-based approaches ask these questions:

- Who did it?
- What "rule" was broken?
- How should the offender be punished?

Restorative interventions view transgressions as harm done to people and communities. Restorative approaches ask these questions:

- What is the harm to the person and to the community?
- What needs to be done to repair the harm?
- Who is responsible for this repair?
- What needs to occur to prevent similar harm in the future?

Discussions with Targets of Aggression

Students who are targeted online are also likely experiencing—or could be causing—difficult relationships at school. Discuss what has happened online and relationship issues at school. If a hostile environment exists at school, make sure this, and the school's protective responses, are well documented.

Discuss with target what response by the aggressor could help to restore well-being. Make sure the intervention plan is something the target agrees with. Recognize the target is at risk of retaliation as a result of reporting to the school.

Discussions with Those Engaged in Aggression

The intent of a restorative intervention is to hold the person who caused harm accountable in a manner that is restorative. To be held accountable requires that this person:

- Acknowledge that he or she caused harm.
- Understand the harm as experienced by the other person.
- Recognize that he or she had a choice.
- Take steps to make amends and repair the harm.
- Enunciate an intent to make changes in future behavior so that the harm will be unlikely to happen again.

Aggressors often have emotional challenges that are not being effectively addressed. Some may be the target of hurtful acts at school—by other students or by staff. Some may have other emotional challenges. Ask about and develop a plan to address these challenges. If the aggressor is the target of bullying at school, by students or staff, and has not reported this or the situation has not been resolved, this issue that must be addressed. Restorative interventions should ensure these issues are addressed.

Interventions Involving Dating Abuse

School officials may become aware of situations involving dating abuse that also involve using digital technologies for control and manipulation. A challenge in addressing these situations is that young people in such relationships often resist adult involvement and may not have access to ongoing counseling.

Online resources can provide a significant advantage in addressing these concerns. There are high quality sites that provide resources on these issues, as well as "hotline" services.²

Supporting Students Who are Distressed

Help any student who has been involved in a digital aggression, abuse, or exploitation situation plan an approach to effectively deal with the emotional trauma. Discuss with these students possible sources of strength such as family support, friends, community support, healthy activities, and counseling. Help the target plan a "next steps" strategy to tap into these sources.

Make sure the student also knows to report any continuing challenges. Periodically check in with the student to find out how things are going. Also contact the student's teachers to ask them to be attentive to any concerns.

In any situation where a student has had a revealing image distributed, it is essential to predict sexual harassment and have a plan of action to prevent and intervene. This will require ongoing, intensive support of the student depicted. Help this student enlist the help of supportive friends. Respond to reports of harassment in a manner that is restorative and that sends a clear message that such harassment will not be tolerated.

Law Enforcement & Mental Health Involvement

Situations involving sexting and other forms of exploitation will often require the involvement of law enforcement. Some incidents of digital aggression meet the criteria for a criminal offense, as will some situations involving threats.

The young people who are involved in these situations may often require more significant mental health intervention than is possible to expect in a school setting.

Multidisciplinary collaboration involving law enforcement, community mental health, and the schools will be necessary to intervene in these more challenging situations.

A Restorative Justice program that works in conjunction with the juvenile justice system can be very helpful vehicle to address sexting and egregious digital aggression situations. If there is currently not a Restorative Justice program in the community, it is strongly recommended that schools provide leadership to encourage the creation of such a program. Information resources are available from the U.S. Department of Justice.³

Evaluation of Intervention

It is exceptionally important to conduct a post-evaluation of every situation to ensure the effectiveness of the intervention efforts.

- Request feedback from all parties involved. In digital aggression situations, this includes the target, target's parents, aggressor, aggressor's parents, and other students who witnessed and reported.
- Evaluate individual reports to determine need for continued or corrective efforts.
- Conduct an aggregated analysis to inform school/district prevention and intervention efforts.

Embrace Civility in the Digital Age

Embrace Civility in the Digital Age (a program of Center for Safe and Responsible Internet Use) promotes approaches that will best ensure all young people become cyber savvy and that seek to address youth risk in the digital age in a positive and restorative manner. Web site: <http://embracecivility.org> E-mail: info@embracecivility.org

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Nancy Willard's new, *Cyber Savvy: Embracing Digital Safety and Civility* (Corwin Press), and online course, *Cyber Savvy: Promoting Students' Safe and Civil Internet Practice* (Knowledge Delivery Systems) extensive insight into effective instructional approaches.

1 Valuable insight comes from the International Institute for Restorative Practices. <http://www.iirp.org>

2 <http://loveisrespect.org>; <http://thatsnotcool.com>; <http://www.breakthecycle.org>; <http://loveisnotabuse.org>; and <http://athinline.org>.

3 Nicholl, C. G. Community Policing, Community Justice, and Restorative Justice: Exploring the Links for the Delivery of a Balanced Approach to Public Safety. Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services, 1999. http://www.cops.usdoj.gov/files/rjc/Publications/e09990014_web.pdf, and Nicholl, C. G. Toolbox for Implementing Restorative Justice and Advancing Community Policing. Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services, 1999. http://www.cops.usdoj.gov/pdf/publications/e09990003_web.pdf