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Chapter 419: Cyber Sexual Bullying, “Sexting” in Schools, and the Growing Need to Educate the Youth

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**Chapter 419: Cyber Sexual Bullying, “Sexting” in Schools,
and the Growing Need to Educate the Youth**

*Matt Gross**

Code Sections Affected

California Education Code §§ 234.2 (amended), 48900 (amended).
AB 2536 (Chau); 2016 STAT. Ch. 419.

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I. INTRODUCTION

Schools, school districts, and administrators across the nation are spending the 21st century focusing on curtailing the problems with peer-on-peer bullying in schools.¹ A recent study conducted by the National Campaign to Prevent Teen and Unplanned Pregnancy found 20 percent of teenagers, age 13 to 19, have transmitted either nude or semi-nude photographs or videos of themselves via text message or posted them online.² However, many students are unaware of how prolific the problem of school bullying, cyberbullying, and cyber sexual bullying occurs in schools.³ The expanding presence of technologies in schools created a new medium for bullying to occur.⁴ In fact, 43 percent of students in 2007 reported being cyberbullied in some regard, including cyber sexual bullying.⁵

1. See generally Atticus N. Wegman, *Cyberbullying and California’s Response*, 47 U.S.F. L. REV. 737 (2013) (addressing how California schools can handle the emerging issue of cyberbullying).

2. The Nat’l Campaign to Prevent Teen & Unplanned Pregnancy, *Sex and Tech: Results from a Survey of Teens and Young Adults 1* (2008), available at https://thenationalcampaign.org/sites/default/files/resource-primary-download/sex_and_tech_summary.pdf (on file with *The University of the Pacific Law Review*). The study further found that “71% of teen girls and 67% of teen guys who have sent or posted sexually suggestive content say they have sent/posted this content to a boyfriend/girlfriend.” *Id.* at 2. Moreover, “15% of teens who have sent or posted nude/seminude images of themselves say they have done so to someone they only knew online and 31% received “a nude or semi-nude picture/video from someone (of himself/herself).” *Id.* at 2, 11.

3. *Infra* Part IV.A.1 (for purposes of this article, all language and documents cited regarding sexting, sexual bullying, or online cyber bullying will be understood to represent cyber sexual bullying to remain consistent with the language of Chapter 419).

4. Chris Moessner, *Cyberbullying*, TRENDS & TUDES 1 (Harris Interactive, Inc. Vol. 6, Issue 4) (Apr. 2007), available at <http://www.ncpc.org/resources/files/pdf/bullying/Cyberbullying%20Trends%20-%20Tudes.pdf> (on file with *The University of the Pacific Law Review*); COX COMMUNICATIONS, *Teen Online & Wireless Safety Survey: Cyberbullying, Sexting, and Parental Controls* 23 (May 2009), available at <http://www.cox.com/wcm/en/aboutus/datasheet/takecharge/2009-teen-survey.pdf> (on file with *The University of the Pacific Law Review*). Reports further indicate, “81% of youth agree that bullying online is easier to get away with than bullying in person.” *Id.*

5. Moessner, *supra* note 4, at 1.

Academic performance can become affected when students are bullied physically or cyberbullied online.⁶ A 2010 study from UCLA found students bullied in intermediate school earned a lower GPA compared to fellow students.⁷ Poor academic performance is only one of the many effects of cyberbullying in schools.⁸

When coupled with existing bullying problems, the prevalence of technology in schools has culminated in a new phenomenon—cyberbullying and cyber sexual bullying.⁹ An outgrowth of cyberbullying,¹⁰ similar to its counterpart, cyber sexual bullying can occur on or off school grounds because it occurs mostly through cell phones or laptops.¹¹ Even more problematic is the increased audience—cyber sexual bullying can now spread through electronic media.¹² While cyber sexual bullying is called many names: sexting, online sexual bullying, or generally cyber bullying, they all refer to the same activity—sending nude or semi-nude photographs through the Internet.¹³ Cyber sexual bullying remains a problem and school districts and states are attempting to find solutions to maintain a safe learning environment.¹⁴

Online cyber sexual bullying reached the mainstream in July of 2008 when Jessica Logan, a high school senior, killed herself after her boyfriend shared her sexually explicit photos that were intended for him.¹⁵ The photos quickly circulated amongst friends and then throughout the school.¹⁶ The case brought

6. Stuart Wolpert, *Victims of Bullying Suffer Academically as Well*, *UCLA Psychologists Report*, UCLA NEWSROOM (Aug. 19, 2010), available at <http://newsroom.ucla.edu/releases/victims-of-bullying-suffer-academically-168220> (June 5, 2016) (on file with *The University of the Pacific Law Review*).

7. *Id.*

8. *Infra* Part II.A.

9. Sameer Hinduja & Justin W. Patchin, *Cyberbullying Fact Sheet: What You Need to Know About Online Aggression*, CYBERBULLYING RESEARCH CENTER 1 (2009), available at http://cyberbullying.org/cyberbullying_fact_sheet.pdf (on file with *The University of the Pacific Law Review*) (defining cyberbullying as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices”).

10. *Id.*

11. *Infra* Part IV.B.

12. Scott Meech, *Cyber-Bullying is Worse than Physical Bullying*, MEDIA VIOLENCE (David M. Haugen & Susan Musser eds., 2009), available at http://ic.galegroup.com/ic/ovic/ViewpointsDetailsPage/DocumentToolsPortletWindow?displayGroupName=Viewpoints&jsid=30b534b3ff76e6f329d9ad7e61cec309&action=2&catId=&documentId=GALE%7CEJ3010153274&u=stcloud_main&zid=9ee9fa759236a9ee5947190211985e87 (on file with *The University of the Pacific Law Review*).

13. *Miller v. Skumanick*, 605 F.Supp.2d 634, 637 (M.D. Pa. 2009) (defining “sexting” as “the practice of sending or posting sexually suggestive text messages and images, including nude or semi-nude photographs, via cellular telephones or over the Internet”).

14. Ernie Allen, “*Sexting*”: *A New Challenge for Educators and Families*, AASA, <http://www.aasa.org/content.aspx?id=7672> (last visited June 7, 2016).

15. Charlie Wells, *Teen Bullying Victim’s Family gets Settlement*, N.Y. DAILY NEWS (Oct. 9, 2012), available at <http://www.nydailynews.com/news/national/teen-bullying-victim-family-settlement-article-1.1178783> (on file with *The University of the Pacific Law Review*).

16. *Id.*

the problem of cyber sexual bullying into the news cycle¹⁷ and forced school districts to ask: how can schools protect students against the growing phenomena of cyber sexual bullying?¹⁸

The other individual involved in cyber sexual bullying cases is the actual offender.¹⁹ For instance, a Florida court convicted Phillip Alpert, who had recently turned 18 years-old, for sending child pornography after Alpert transmitted the sexually explicit photographs of his 16-year-old girlfriend to friends and family.²⁰ The court also required Alpert to register as a sex offender.²¹ The prosecution of cyber sexual bullies for sex crimes is one of the most common methods used by law enforcement and District Attorneys to stop the practice.²² Other states are grappling with the appropriate amount of punishment for students who distribute and own these sexually explicit photos.²³

II. LEGAL BACKGROUND

While federal law restricts the dissemination of sexually explicit photographs and videos depicting minors, only 20 states have enacted laws to stop cyber sexual bullying.²⁴ Part A discusses the current federal law approach taken by law enforcement for allegations of cyber sexual bullying and looks at how other states prosecute cyber sexual bullying.²⁵ Part B describes California law on cyber sexual bullying prior to Chapter 419.²⁶

17. Grace Chen, *Protecting Public School Students from "Sexting,"* PUBLIC SCHOOL REVIEW (Jan. 7, 2009), available at <http://www.publicschoolreview.com/blog/protecting-public-school-students-from-sexting> (on file with *The University of the Pacific Law Review*).

18. Sameer Hinduja & Justin W. Patchin, *Cyberbullying Fact Sheet: What You Need to Know About Online Aggression,* CYBERBULLYING RESEARCH CENTER 1 (2009), available at http://cyberbullying.org/cyberbullying_fact_sheet.pdf (on file with *The University of the Pacific Law Review*) (defining cyberbullying as "willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices").

19. *Infra* Part IV.A.3.

20. Deborah Feyerick & Sheila Steffen, *Sexting Lands Teen on Sex Offender List,* CNN (Apr. 7, 2009), <http://www.cnn.com/2009/CRIME/04/07/sexting.busts/index.html?iref=24hours> (on file with *The University of the Pacific Law Review*).

21. *Id.*; The Florida Department of Law Enforcement, *Florida Sex Offenders and Predators,* available at <http://offender.fdle.state.fl.us/offender/Search.jsp> (on file with *The University of the Pacific Law Review*) (follow Standard Offender Search; then enter "Phillip Alpert").

22. See generally Lorenzo Ferrigno, *Newton High School Students Charged in 'Sexting' Ring,* CNN, <http://www.cnn.com/2016/01/27/us/connecticut-high-school-sexting-ring/> (on file with *The University of the Pacific Law Review*) (charging three male juveniles with possession of child pornography and related offenses where juveniles distributed sexually explicit images of other students in their high school).

23. *Infra* Part IV.A.3.

24. Sameer Hinduja & Justin W. Patchin, *State Sexting Laws: A Brief Review of State Sexting and Revenge Porn Laws and Policies,* CYBERBULLYING.ORG 1 (July 2015) available at www.cyberbullying.org/state-sexting-laws.pdf (on file with *The University of the Pacific Law Review*).

25. *Infra* Part II.A.

26. *Infra* Part II.B.

A. Federal Law Prosecuting Cyber Sexual Bullying

District Attorneys' offices and police departments treat the dissemination of sexually explicit photos²⁷ of minors seriously.²⁸ High school students and teenagers are prosecuted for child pornography, and states lack a solution for a less draconian punishment.²⁹ In Wyoming County, Pennsylvania the District Attorney's office sought to prosecute a group of teenage girls for possession and distribution of their pornographic images and the parents subsequently filed suit for freedom of expression under the First Amendment.³⁰ If convicted, the teenagers could then be sentenced to a lengthy prison sentence, potentially be required to register as sex offenders, and have their names and pictures made available to the public on a sex offenders registry.³¹ In *Miller v. Mitchell*, the Third Circuit held that "appearing in a [sexting] photograph provides no evidence as to whether that person possessed or transmitted the photo."³² Ultimately, this represented a rare instance of a state prosecutor backing down from prosecuting cyber sexual bullying under child pornography laws, but it represents a significant problem.³³ Students in California currently face similar strict punishment for cyber sexual bullying.³⁴

A more difficult question arises in the context of non-consensual distribution of sexually explicitly images amongst teenagers.³⁵ In these cases, "[s]uch instances do not warrant the full force of child pornography sanctions," but this non-consensual distribution cannot go unpunished either and might justify the use of "an enhanced penalty" for an "aggravated sexting offense."³⁶ The problem for state legislatures is finding the appropriate balance between punishing the offender and protecting the victim.³⁷

27. E.g., Ben Deci, *Two Ponderosa HS Students Arrested on Child Pornography Charges*, FOX 40, (Oct. 17, 2015), <http://fox40.com/2015/10/17/two-ponderosa-hs-students-arrested-on-child-pornography-charges> (on file with *The University of the Pacific Law Review*); A.H. v. Florida, 949 So.2d 234, 235 (Fla. Dist. Ct. App. 2007) (convicting a 16-year-old Florida girl for consensually photographing herself and her 17-year-old boyfriend while engaged in sex acts).

28. *Miller v. Skumanick*, 605 F.Supp.2d 634, 637-38 (M.D. Pa. 2009).

29. *Infra* Part IV.A.3.

30. *Id.*

31. *Id.*

32. *Miller v. Mitchell*, 598 F.3d 139, 154 (3d Cir. 2010).

33. Lawrence G. Walters, *How to Fix the Sexting Problem: An Analysis of the Legal and Policy Considerations for Sexting Legislation*, 9 FIRST AMEND. L. REV. 98, 106 (2010).

34. *Infra* Part II.B.; see also Cyrus Farivar, *Beware, California Students: You Could be Expelled for "Sexting" on Campus*, ARS TECHNICA (Mar. 5, 2016), <http://arstechnica.com/tech-policy/2016/03/beware-california-students-you-could-be-expelled-for-sexting-on-campus> (on file with *The University of the Pacific Law Review*) (stating "[w]hile sexting is often prosecuted criminally as a sex-related offense, such as revenge porn or child pornography, schools don't always have a formal recourse to discipline students.").

35. *Infra* Part IV.A.3.

36. Lawrence G. Walters, *How to Fix the Sexting Problem: An Analysis of the Legal and Policy Considerations for Sexting Legislation*, 9 FIRST AMEND. L. REV. 98, 116 (2010).

37. *Infra* Part IV.A.

B. California's Law Before Chapter 419

1. Assembly Bill 86 (2008)

Assembly Bill ("AB") 86, passed by the California Legislature in 2008, amended the California Education Code Section 48900 to include bullying³⁸ and cyberbullying³⁹ as a justification for a student's suspension or expulsion.⁴⁰

Before passing AB 86, California Education Code Section 48900 prohibited "the suspension, or recommendation for expulsion, of a pupil from school unless the principal determines that the pupil has committed any of various specified acts, including, but not limited to, hazing."⁴¹ However, Education Code Section 48900 did not address cyberbullying and failed to give school authorities the power to suspend students for bullying or cyber bullying beyond hazing.⁴²

The Interagency School Safety Demonstration Act of 1985, does not provide such a broad definition for the legal term bullying.⁴³ The Act details the Legislature's intent to give local and county agencies⁴⁴ the power to "implement interagency strategies, in-service training programs, and activities that . . . reduce school crime and violence . . . including bullying."⁴⁵

Section 48900 now allows school authorities to suspend or expel students "engag[ing] in an act of bullying," which can include "any severe or pervasive physical or verbal act or conduct, including communications made . . . by means of an electronic act"⁴⁶ . . . directly specified toward a pupil or school personnel."⁴⁷ The Legislature continues to expand the definition of the phrase "electronic act" to address the growing problem of off-campus cyber bullying and cyber sexual bullying.⁴⁸

AB 86 also amended Education Code Section 32261.⁴⁹ The Legislature introduced language that merely encouraged local authorities, and no other

38. 2008 Cal. St. ch. 646, § 1 (enacting CAL. EDUC. CODE § 32261).

39. CAL. EDUC. CODE 48900(r) (the Education Code does not specifically state cyberbullying but it covers bullying through electronic acts).

40. 2008 Cal. St. ch. 646, § 1 (enacting CAL. EDUC. CODE § 32261).

41. Wegman, *supra* note 1, at 738–39.

42. *Id.* at 739; Cal. Pen. Code § 245.6(b) (defining hazing as "any method of initiation or preinitiation into a student organization or student body.").

43. CAL. EDUC. CODE § 32270 (AMENDED BY 1985 CAL. STAT. CH. 1457) (Existing law, the Interagency School Safety Demonstration Act of 1985, defines bullying as "including bullying committed personally or by means of an electronic act, teen relationship violence or by means of an electronic act, teen relationship violence, and discrimination and harassment, including, but not limited to, sexual harassment.").

44. CAL. EDUC. CODE § 32261(d) (West 2012).

45. *Id.*

46. CAL. EDUC. CODE § 48900(r)(1) (West 2016).

47. *Id.*

48. *E.g.*, 2013 Cal. Legis. Serv. 700 (West); 2012 Cal. Legis. Serv. 425 (West); 2011 Cal. Legis. Serv. 732 (West).

49. CAL. EDUC. CODE § 32261(d) (West 2012).

government body, to address cyberbullying problems.⁵⁰ Therefore, the passing of AB 86 encourages local law enforcement agencies to enforce bullying laws.⁵¹ Local law enforcement agencies and District Attorneys across the state are left to determine the appropriate punishments for cyberbullying and cyber sexual bullying.⁵²

2. *Assembly Bill 256 (2013)*

AB 256's passage on October 10, 2013, further identified the specific grounds under which a school administrator may suspend or expel a student.⁵³ The most substantial change came from the revision of California Education Code Section 48900(r)(2)(A), which added how an electronic message can be communicated by stating, "the creation and transmission [of a communication] originated *on or off the schoolsite*, by means of an electronic device . . ."⁵⁴ With the passage of AB 256, bullying and cyberbullying may be punished from activity occurring either on or off school grounds.⁵⁵

3. *Current California Law (2016)*

In *People v. Gonzales*, the California Court of Appeals held that self-produced pornography, when reproduced and transmitted to others, could reasonably be interpreted to be subject to child pornography laws.⁵⁶ Those found sending such self-produced child pornography images would also be subject to the registration requirement.⁵⁷ The court reasoned that despite that children often participate voluntarily in the production of the pornography (i.e. sexting), any child originally sending these self-produced images would not agree with the possession of their pornographic images by others.⁵⁸

However, there exists a potential loophole for cyber sexual bullying, which might not be covered under the current law by either the definition of bullying,⁵⁹

50. Wegman, *supra* note 1, at 738.

51. *Id.*

52. *See supra* Part II.A. (discussing how students who sexual bullying are being charged with distribution of child pornography).

53. CAL. EDUC. CODE § 48900 (amended by 2013 Cal. Stat. ch. 700).

54. *Id.* (emphasis added).

55. *Infra* Part IV.B.4.

56. *People v. Gonzales*, 211 Cal.App.4th 132, 139 (2012) (The court stated that "while the child may create the pornography voluntarily, and may even consent to one particular person possessing it, the child can never be sure who else will ultimately possess it, precisely because pornography can be reproduced and transmitted indefinitely" therefore sending photos to others will be classified under child pornography.).

57. *Id.*

58. *Id.*

59. CAL. EDUC. CODE § 48900(r) (West 2016).

sexual harassment,⁶⁰ or cyberbullying.⁶¹ This lack of clarity between the intent of the California Legislature and the language of the California Education Code creates uncertainty for educators and instructors in California schools.⁶²

III. CHAPTER 419

Chapter 419 enacts two changes to the Education Code for primary and secondary education in the area of disciplinary actions.⁶³ First, Chapter 419 broadens the definition in Section 48900(r) to incorporate cyber sexual bullying into the definition for bullying.⁶⁴ Second, it requires state-funded websites to provide information on how to address cyber sexual bullying and contains language encouraging schools to discuss the problems with students.⁶⁵

A. Expansion of the Definition of Bullying

First, Chapter 419 expands the definition of bullying in schools to include the act of cyber sexual bullying⁶⁶ through electronic communication.⁶⁷ Cyber sexual bullying will not include any depiction or imagery that has “serious literary, artistic, educational, political, or scientific value.”⁶⁸ It also will not include any athletic event or school-sanctioned activity.⁶⁹

An electronic act may include on- or off-campus texting, posting on social media, the creation of burn pages, as well as impersonating other students.⁷⁰ By

60. CAL. EDUC. CODE § 212.5 (West 2016) (defining sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting” that “has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.”).

61. Sameer Hinduja & Justin W. Patchin, *Cyberbullying Fact Sheet: What You Need to Know About Online Aggression*, CYBERBULLYING RESEARCH CENTER 1 (2009), available at http://cyberbullying.org/cyberbullying_fact_sheet.pdf (on file with *The University of the Pacific Law Review*).

62. *Infra* Part IV.A.2.

63. CAL. EDUC. CODE § 48900 (amended by Chapter 419).

64. CAL. EDUC. CODE § 234.2 (amended by Chapter 419).

65. *Id.*

66. CAL. EDUC. CODE § 48900(R)(2)(A)(III) (amended by Chapter 419).

67. CAL. EDUC. CODE § 48900(R)(2)(A)(III)(I) (amended by Chapter 419) (defining cyber sexual bullying as “the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described in subparagraphs (A) to (D), inclusive, of paragraph (1). A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.”).

68. CAL. EDUC. CODE § 48900 (R)(2)(A)(III)(II)(amended by Chapter 419). *See also* Miller v. California, 413 U.S. 15, 39 (1973) (establishing test to determine whether depictions have prurient value).

69. CAL. EDUC. CODE § 48900 (R)(2)(A)(III)(II)(amended by Chapter 419).

70. *Id.*

including electronic communications for cyber sexual bullying, it thereby allows school administrators to intervene.⁷¹ School administrators, principals, or school superintendents can decide to suspend or expel the infringing student for cyber sexual bullying of another student.⁷²

B. Educating Students about Sexual Bullying

Second, Chapter 419 requires the California Department of Education to include information about cyber sexual bullying on state funded websites.⁷³ The information would “specifically address bias-related discrimination, harassment, intimidation, cyber sexual bullying and bullying” all found on various state run department websites.⁷⁴ Furthermore, it would require the state to inform school districts annually when updating the information.⁷⁵ It also encourages schools to “inform pupils regarding the available information” about the dangers and potential outcomes and consequences of engaging in cyber sexual bullying.⁷⁶

Amended Education Code Section 234.2 will require the Department of Education to provide online resources and information regarding the identification of symptoms of student-on-student bullying and educate students on the deplorable behavior of bullying.⁷⁷ Education Code Section 234.2 requires the Department of Education to display current information and periodically update information, specifically addressing bullying and other types of aggressive negative school behavior between students.⁷⁸

IV. ANALYSIS

Student victimization through cyber sexual bullying forms a dichotomy between the victim and the offender.⁷⁹ The victims are bullied by peer groups in schools and online, leading to academic failure, depression, and suicide.⁸⁰ The other side involves the offenders: those who send, receive, or forward sexual photos and are later charged criminally with child pornography, facing a future of possible imprisonment and being labeled as a sex offender.⁸¹ Chapter 419

71. *Infra* Part IV.A.2.

72. CAL. EDUC. CODE § 48900 (amended by Chapter 419).

73. CAL. ED. CODE § 234.2(A) (amended by Chapter 419)

74. *Id.*

75. *Id.*

76. CAL. EDUC. CODE § 234.2(C) (amended by Chapter 419).

77. CAL. EDUC. CODE § 234.2(A) (amended by Chapter 419).

78. *Id.*

79. *Infra* Part IV.A.1 and Part IV.A.3.

80. *Supra* Part I.A.

81. *Supra* Part II.A.

importantly creates the opportunity to affect both sides of cyber sexual bullying.⁸²

This section examines whether the addition of cyber sexual bullying to Education Code Section 48900 will curb the offense.⁸³ It will further discuss the possible effects of Chapter 419 on the public-school system.⁸⁴ Finally, it will discuss how Chapter 419 might have provided more protection before significant language revisions were made by the Legislature.⁸⁵

A. *Envisioned Effect of Chapter 419 on California Schools*

Chapter X's purpose is clear: to provide clarity to the Education Code and include cyber sexual bullying in the definition of bullying.⁸⁶ The California School Boards Association, Los Angeles County Sheriff's Department, San Bernardino County District Advocates for Better Schools, Small School Districts' Association, and The Audrie Pott Foundation all support Chapter 419⁸⁷ Part IV.A.(i)-(iii) outline the possible effects of Chapter 419 on California public schools.⁸⁸

1. *Chapter 419 May Not Stop Students from Sexually Bullying Other Teenagers*

Bullying is a common problem in schools, and research shows more students in school are also sending sexually explicit and nude photos to each other.⁸⁹ Psychologists from the University of Texas Medical Branch found sexting to be a normal aspect of growing up.⁹⁰ However, it is the combination of sexting and bullying together in schools that leads to cyber sexual bullying.⁹¹ Since sexting and bullying are not disappearing, cyber sexual bullying appears to also be a continuing problem for administrators in schools.⁹²

82. *Infra* Part IV.A.1–A.3.

83. CAL. EDUC. CODE §§ 234.2, 48900 (amended by Chapter 419).

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 4.

88. *Infra* Part IV.A.1–A.3.

89. *Supra* Part I.A.

90. Tara Culp-Ressler, *Why Parents Should Stop Freaking out About Teens Sexting*, THINK PROGRESS (Oct. 7, 2014), <http://thinkprogress.org/health/2014/10/07/3576718/experts-teen-sexting-public-health>.

91. Todd A. DeMitchell & Martha-Parker-Magagna, *Student Victims or Student Criminals? The Bookends of Sexting in a Cyber World*, 10 CARDOZO PUB. L. POL'Y & ETHICS J. 1, 15 (2011).

92. *Id.* at 4.

Amending the statute to include cyber sexual bullying also might prove futile because teens are often unaware of the consequences of their actions.⁹³ The University of Utah's Department of Psychology found that 33 percent of teenagers sending or receiving sexual messages "did not think about the legal ramifications or consequences of their actions."⁹⁴ While the teens studied only represent a sample size of the teen population in Utah, it would not be overreaching to conclude this represents teens' viewpoints across America.⁹⁵

A statute addressing cyber sexual bullying will not stop teenager tendencies: "[c]riminalizing sexting [i.e. cyber sexual bullying] will likely not stop teens from sexting; students are likely to be unaware that criminal penalties for such actions even exist."⁹⁶ Statutes already exist prohibiting bullying and cyberbullying in schools,⁹⁷ thus Chapter 419 will likely not eliminate the problems of cyber sexual bullying through an electronic medium with the addition of new language in Education Code Section 48900.⁹⁸

2. Chapter 419 Will Encourage Teachers to Become More Involved in Student's Cell Phone Activity

Throughout the late 1990s and early 2000s, courts across America did not hold school districts or the school administration liable for failing to intervene to stop bullying.⁹⁹ Courts are reluctant to hold school districts accountable for teen bullying suicide because there are "intentional intervening acts that break the chain of causation."¹⁰⁰ It is possible more clarity in that Education Code will contribute to school administrators intervening more—reducing the amount of students victimized by cyber sexual bullying and reducing student suicides.¹⁰¹

AB 9, commonly known as Seth's Law, represents the California Legislature's attempt to provide guidance to teachers and administrators about preventative measures to protect student safety.¹⁰² Since the passage of AB 9,

93. Raychelle Cassada Lochmann, *The Dangers of Teen Sexting*, PSYCHOLOGY TODAY (July 20, 2012), available at <https://www.psychologytoday.com/blog/teen-angst/201207/the-dangers-teen-sexting> (on file with *The University of the Pacific Law Review*).

94. *Id.*

95. *Id.*

96. Kathleen Conn, *Sexting and Teen Suicides: Will School Administrators Be Held Responsible?* 261 EDUC. L. REP. 1, 24–25 (2010).

97. *See supra*, Part II.B.

98. CAL. EDUC. CODE §§ 234.2, 48900 (amended by Chapter 419).

99. Kathleen Conn, *Allegations of School District Liability for Bullying, Cyberbullying, and Teen Suicides after Sexting: Are New Legal Standards Emerging in the Courts?*, 37 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 227, 234 (2011).

100. *Id.* at 241–42.

101. *See generally* CAL. EDUC. CODE §§ 234.2, 48900 (amended by Chapter 419) (more definition and what is bullying in schools will allow teachers and administrators to intervene more to stop bullying, including stopping cyber sexual bullying).

102. 2011 Cal. Legis. Serv. 723 (West).

classrooms across California are instituting new programs to create a welcoming environment and reduce violent and aggressive behavior among students.¹⁰³

Chapter 419 may provide further clarification for teachers trying to prevent bullying by providing a clearer definition of bullying and the available remedies for school administrators.¹⁰⁴ Further, additional language suggests a clear legislative intent to have teachers and school administrators become proactive in discussing cyber sexual bullying.¹⁰⁵

3. Chapter 419 May Lead to Less Teenagers Being Prosecuted for Child Pornography

With no criminal statutes covering cyber sexual bullying¹⁰⁶ in schools, and teachers not actively stopping cyber sexual bullying in schools, the only form of justice for the victim of cyber sexual bullying is through criminal prosecution under a comparable statute.¹⁰⁷ For teenagers who cyber bully other teens on and off-campus, the only remedy for a victim is having the District Attorney's Office charge the offender with a felony for possession or distribution of child pornography.¹⁰⁸ Applying a zero tolerance policy towards cyber sexual bullying can produce draconian and life-long consequences for the offender, an outcome counter to fairness within justice system.¹⁰⁹ The legislative history of child pornography laws shows intent to prevent the damaging sexual exploitation of minors, not persecute minors.¹¹⁰ For some cyber sexual bullying cases where the offender is later charged for distribution or possession of child pornography, the "immediate and violent harm that . . . is the foundation of the child protection rationale [for child pornography] is decidedly absent."¹¹¹

However, there are glimpses of the legislative intent through the amending of the definition of bullying to include cyber sexual bullying within the Education Code.¹¹² While the perpetrator is not immune from criminal prosecution, including the new language in the Education Code shows the Legislature's intent

103. Jane Adams, *One in Three California Student Reported Being Bullied in Previous Year*, EDSOURCE (Mar. 9, 2015), available at <https://edsources.org/2015/one-in-three-california-students-reported-being-bullied/75516> (on file with *The University of the Pacific Law Review*).

104. *Supra* Part III.A–III.B.

105. CAL. EDUC. CODE §§ 234.2(c) (amended by Chapter 419) (stating "school districts are encouraged to inform pupils" about cyber sexual bullying).

106. *Supra* Part II.B.

107. *Supra* Part II.A.

108. *Id.*

109. Todd A. DeMitchell & Martha Parker-Magagna, *Student Victims or Student Criminals? The Bookends of Sexting in a Cyber World*, 10 CARDOZO PUB. L. POL'Y & ETHICS J. 1, 29 (2011) (stating teens prosecuted for sexting are typically found to have possessed and distributed child pornography, resulting in a criminal record and being placed on the registered sex offenders list).

110. *Id.*

111. *Id.* at 34.

112. *See supra* Part II.B.

to give more power to school administrators and school districts.¹¹³ Education Code section 48900 specifically lacks any language of criminal prosecution, and the only language about punishment discusses suspension or expulsion.¹¹⁴

The next Section discusses the problems with Chapter 419 and why the language might not change the bullying epidemic in California schools.¹¹⁵

B. Arguments by Opponents of Chapter 419

Chapter 419 currently has no public opposition,¹¹⁶ but some critics speculate Chapter 419 will grant schools and the school administration more authority over children.¹¹⁷ Part IV B(i)–(iv) discusses the potential negative effects of Chapter 419 on current California law and student’s rights.¹¹⁸

1. By Defining Cyber Sexual Bullying, Chapter 419 May Lead to More Misdemeanor Prosecutions

Other states, including Colorado, are proposing to create additional criminal statutes to give prosecutors options for charging minors with cyber sexual bullying.¹¹⁹ The additional cyber sexual bullying statutes have caused concern because they give the government “the option to [charge a minor with] a misdemeanor or a petty offense” leading to “more prosecutions for consensual sexters.”¹²⁰ However, California’s cyber sexual bullying statute is found in the Education Code and might lead to fewer criminal prosecutions because of the existence of Chapter 419.¹²¹

2. Chapter 419 Does Not Alter Existing Law

Critics of Chapter 419 are suspicious of the actual change to the Education Code.¹²² Critics are skeptical as to whether Chapter 419 gives school

113. *Id.*

114. CAL. EDUC. CODE § 48900(s) (amended by Chapter 419).

115. *Infra* Part IV.B.

116. SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 2536, at 5 (Aug. 17, 2016).

117. *See generally* Ben Boychuk, ‘Sexting’ is Stupid, but it Shouldn’t be Felony for Teens, SACRAMENTO BEE (Mar. 10, 2016), available at <http://www.sacbee.com/opinion/op-ed/ben-boychuk/article65137827.html> (on file with *The University of the Pacific Law Review*) (stating AB 2536 may give school administrators discretion in reporting sexual bullying to the police).

118. *Supra* Part IV.B.1–IV.B.2.

119. Emma Sarran Webster, *Why These Proposed Sexting Laws for Teens are Totally Missing the Point*, TEEN VOGUE (Apr. 5, 2016), available at <http://www.teenvogue.com/story/colorado-teen-sexting-law-bill> (on file with *The University of the Pacific Law Review*).

120. *Id.*

121. *Supra* Part IV.A.3.

122. SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 2536, at 4 (Aug. 17, 2016).

administrators or principals more power because the language of Chapter 419 explicitly adds the phrase cyber sexual bullying to the list of activities that allow for school suspension or expulsion.¹²³ According to the critics, current law already covers sexual bullying in schools because the California Legislature has already defined both sexual harassment¹²⁴ and bullying.¹²⁵ Violating either of these statutes allows for a school principal or superintendent to suspend or even expel a student.¹²⁶

Enacting Chapter 419 would not bring any more oversight power for school authority to recommend suspension or expulsion for a student who commits sexual bullying.¹²⁷ However, even the critics suggest passing Chapter 419 might help “provide clarity and guidance for schools” teachers, administrators, and school districts unsure if a student’s act is sexual harassment, bullying, or a middle ground not cited by any current statute.¹²⁸ There is, therefore, little harm in amending the California Education Code to add cyber sexual bullying to the list of reasons that allow for suspension or expulsion.¹²⁹

3. Chapter 419 May Increase School Costs

With 1,022 school districts in California¹³⁰ and the rise of teenage sexting, school administrators might be required to spend more time reviewing allegations of cyber sexual bullying.¹³¹ The time and costs extrapolated across 1,022 school districts means a potential of thousands of extra hours conducting research into cyber sexual bullying.¹³² The cost would mostly increase in middle schools and high schools.¹³³ Furthermore, it is extremely difficult to calculate the cost of policing and enforcing cyber sexual bullying off-campus.¹³⁴

However, the required costs of complying with the second half of Chapter 419 are minimal.¹³⁵ The only burden placed on the Department of Education will

123. *Id.*

124. CAL. EDUC. CODE § 212.5 (West 2016).

125. *Supra* Part II.A.

126. *Id.*

127. SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 2536, at 4 (Aug. 17, 2016).

128. *Id.*

129. *Supra* Part IV.A.

130. *Fingertip Facts on Education in California CalEdFacts*, CAL. DEP’T OF EDUCATION, available at <http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp> (last visited June 12, 2016) (on file with *The University of the Pacific Law Review*).

131. *Supra* Part IV.A.2.

132. *Id.*

133. Jane Meredith Adams, *One in Three California Student Reported Being Bullied in Previous Year*, EDSOURCE (Mar. 9, 2015), <https://edsources.org/2015/one-in-three-california-students-reported-being-bullied/75516> (on file with *The University of the Pacific Law Review*) (on finding 34 percent of students in grades 7, 9, and 11 were bullied at least once in school).

134. *Infra* Part IV.B.4.

135. SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 2536, at 3 (Aug. 17, 2016).

be updating any and all state-run websites, which include information on cyber sexual bullying, including the California Healthy Kids Resource Center website.¹³⁶ A slightly more burdensome cost will be the periodic updating of the website with new information on cyber sexual bullying and informing school districts when changes are made; however, these costs still remain minimal, if not absorbable by the Department of Education.¹³⁷ Finally, small additional costs might arise from any school district wishing to inform students about the dangers and consequences of cyber sexual bullying through medians other than online.¹³⁸

4. Chapter 419 Invades Students' Privacy and Blurs the Line of School Boundaries

One of the most difficult areas of enforcement for school officials is balancing the schools' authority over children engaging in off-campus bullying.¹³⁹ Current case law only addresses non-disruptive, political, and symbolic student speech.¹⁴⁰ The beacon of student expression comes from *Tinker v. Des Moines Independent Community School District*, where the Supreme Court of the United States only allowed schools to forbid conduct that would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."¹⁴¹ This reasoning was elaborated upon in *Hazelwood School District v. Kuhlmeier*, where the Court declared a school can regulate student expression so long as its rationale is "reasonably related to legitimate pedagogical concerns."¹⁴² In essence, student speech can only be regulated for legitimate educational reasons.¹⁴³

However, off-campus cyber sexual bullying presents a similar lack of judicial oversight.¹⁴⁴ The Supreme Court has not heard a single case involving off-campus student expression.¹⁴⁵ Furthermore, the only guidance school administrators have are four Supreme Court cases which dealt with student expression occurring on-campus.¹⁴⁶ School officials are left in a quagmire: they

136. *Id.*

137. *Id.* at 3–4.

138. *Id.* at 4.

139. Joe Dryden, *It's a Matter of Life and Death: Judicial Support for School Authority over Off-Campus Student Cyber Bullying and Harassment*, 33 U. LA VERNE L. REV. 171, 173–74 (2012).

140. *Id.* at 185.

141. *Tinker v. Des Moines Indep. Cmty Sch. Dist.*, 393 U.S. 503, 505, 509, 513 (1969).

142. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 272–73 (1988).

143. *Id.*

144. *Emmett v. Kent Sch. Dist. No. 415*, 92 F. Supp. 2d 1088, 1090 (W.D. Wash. 2000); Joe Dryden, *It's a Matter of Life and Death: Judicial Support for School Authority over Off-Campus Student Cyber Bullying and Harassment*, 33 U. LA VERNE L. REV., 171, 173 (2012).

145. Dryden, *supra* note 144, at 173.

146. *See generally* *Morse v. Frederick*, 551 U.S. 393 (2007) (involving the display of a banner stating "BONG HiTS 4 JESUS" which advocated drug use at a school sponsored event); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988) (involving two articles on pregnancy and divorce in the school's newspaper).

may intervene and open themselves to personal liability and lawsuits, or refuse to intervene and risk more students facing cyber sexual bullying.¹⁴⁷

Off-campus cyber bullying and cyber sexual bullying can be enforced through the First Amendment and school districts under certain circumstances.¹⁴⁸ The offending speech can be regulated if there is a “sufficient nexus between the web site [or other online speech] and the school campus.”¹⁴⁹ For example, when a student accesses a computer during school or a posting was aimed at the school or a student at school.¹⁵⁰ This allows school administrators to potentially “provide [,] facilitate [,] . . . [and] maintain order” by restricting student speech off-campus under the veil of maintaining an educational environment on-campus.¹⁵¹

Unfortunately there is a clash between off-campus free speech rights and protecting the victims of cyber sexual bullying.¹⁵² Under the second prong of the *Tinker* test,¹⁵³ if the victim is an individual student, the likelihood of a material and substantial disruption is minimal.¹⁵⁴ Even more problematic is the essence of cyber sexual bullying.¹⁵⁵ Since traditional off-campus bullying typically occurs through speech, it is subject to possible protection under the First Amendment.¹⁵⁶ However, cyber sexual bullying presents dual considerations: traditional challenges of bullying which can be protected by free speech principles and the criminality of transmitting child pornography to others.¹⁵⁷ Therefore, school administrators and teachers wishing to avoid a potential lawsuit protect victims of cyber sexual bullying through using criminal statutes.¹⁵⁸ The criminal statutes prohibiting sending or distributing child pornography may become the only way to police cyber sexual bullying with criminal prosecution.¹⁵⁹

During the Assembly’s Third Reading of AB 256,¹⁶⁰ Sophia Kwong Kim, Consultant for the California State Assembly Committee on Education, wrote

which the principal ordered removed over concerns about suggestions to use birth control and general student privacy); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986) (involving elaborate, graphic and sexual metaphors during a nominating speech given at a school assembly); *Tinker v. Des Moines Indep. Cmty Sch. Dist.*, 393 U.S. 503 (1969) (involving students who wore black armbands to school as a form of silent, political, and symbolic speech against the Vietnam War).

147. *Supra* Part I.A.

148. *J.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847, 865 (Pa. Cmwlth. 2000).

149. *Id.*

150. *Id.*

151. *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243, 252–53 (3d Cir. 2002).

152. Dryden, *supra* note 144, at 171.

153. *Tinker v. Des Moines Indep. Cmty Sch. Dist.*, 393 U.S. 503 (1969) (discussing the substantial disruption test).

154. Dryden, *supra* note 144, at 186.

155. *Supra* Part IV.

156. *Supra* Part IV.B.4.

157. *See supra* Part II.B.

158. *See supra* Part II.B.3.

159. *Id.*

160. *Supra* Part II.B.2.

that the purpose of the bill was not to give school administrators new responsibilities or to monitor a student's off-campus online use of electronic devices.¹⁶¹ Furthermore, she addressed the importance of off-campus free speech and stated:

The courts have ruled that disciplinary action as a result of bullying via a social network is contingent on whether the action causes a substantial disruption to school activities or work of a school, regardless of where the action took place. If a student is suspended or expelled and the activity is not found to have caused substantial disruption, it can then constitute a violation of freedom of speech.¹⁶²

Kim is suggesting off-campus cyber bullying, and potentially cyber sexual bullying with the passage of Chapter 419, will create a *Tinker* analysis and invoke free speech issues, which will be difficult for school administrators to monitor students bullying behavior.¹⁶³

C. Revisions to Chapter 419

Before reaching the Senate, the language of Chapter 419 changed in two ways.¹⁶⁴ Part one discusses the language revisions and redefinition for bullying.¹⁶⁵ Part two examines the now defunct requirements for schools to present education on the social, criminal, and moral problems of cyber sexual bullying in the short and long term.¹⁶⁶

1. The Expansion of Bullying: Choosing Between Sexting, Sexual Bullying, or Cyber Sexual Bullying

First, the State Senate altered the language to redefine the definition of sexting to prohibit sexual bullying.¹⁶⁷ It was later amended under California Education Code 48900 to cyber sexual bullying.¹⁶⁸ The changes do not appear significant because the definition of cyber sexual bullying remained consistent

161. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 256, at 4 (May 8, 2013).

162. *Id.*

163. *Id.*; *Supra* Part II.B.2.

164. Complete Bill History of AB 2536, available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2536 (last visited July 13, 2016) (on file with *The University of the Pacific Law Review*).

165. *Infra* Part IV.C.1.

166. *Infra* Part IV.C.2.

167. See e.g., Current Bill Status of AB 2536, https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201520160AB2536&cversion=20150AB253696AMD (last visited Nov. 30, 2016) (on file with *The University of the Pacific Law Review*).

168. CAL EDUC. CODE § 48900 (amended by Chapter 419).

throughout all the changes.¹⁶⁹ While the changes appear superficial, they represent the Legislature's trouble with characterizing this new type of online bullying.¹⁷⁰

2. *Teachers Cannot be Forced to Instruct on Cyber Sexual Bullying in the Classroom*

However, the State Senate also removed the requirements for schools to provide sexual educational instruction to students regarding the legal, social, moral, and emotional problems with cyber sexual bullying.¹⁷¹ Even though Chapter 419 provides an important first step in California recognizing the problems with cyber sexual bullying in schools, Chapter 419 could have provided much more for the growing epidemic of cyber sexual bullying in schools.¹⁷²

California's "first line of defense against primary and secondary" cyber sexual bullying between minors or young adults "should be funding preventive education programs for minors, young adults, parents, and school faculty and administrators."¹⁷³ High schoolers and young adults do not fully understand the short-term and long-term consequences of cyber sexual bullying and the impact their actions have on the victim.¹⁷⁴ In a recent study of minors and young adults,¹⁷⁵ 46 percent of young adults have received a semi-nude or nude picture or video from someone, 17 percent have shared a semi-nude or nude picture or video with someone other than for whom it was originally intended, and 32% have had a semi-nude or nude picture or video "originally meant to be private" shared with them.¹⁷⁶

With an established program in schools, minors and young adults would better understand the consequences of their reckless behavior.¹⁷⁷ Middle schools and high schools are the prime educational areas to offer an orientation on the subject and consequences of cyber sexual bullying.¹⁷⁸ Receiving education about

169. See e.g., Complete Bill History of AB 2536, available at https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201520160AB2536&cversion=20150AB253692CHP (last visited July 13, 2016) (on file with *The University of the Pacific Law Review*).

170. *Infra* Part II.B.

171. *Id.*

172. CAL EDU. CODE § 234.2 (amended by Chapter 419).

173. Elizabeth M. Ryan, *Sexting: How the State Can Prevent a Moment of Indiscretion from Leading to a Lifetime of Unintended Consequences for Minors and Young Adults*, 96 IOWA L. REV. 357, 376 (2010).

174. THE NAT'L CAMPAIGN TO PREVENT TEEN & UNPLANNED PREGNANCY, SEX AND TECH: RESULTS FROM A SURVEY OF TEENS AND YOUNG ADULTS 1-2 (2008), available at https://thenationalcampaign.org/sites/default/files/resource-primary-download/sex_and_tech_summary.pdf (on file with *The University of the Pacific Law Review*).

175. *Id.* at 1, 5.

176. *Id.* at 11.

177. Mary Graw Leary, *Self-Produced Child Pornography: The Appropriate Societal Response to Juvenile Self-Sexual Exploitation*, 15 VA. J. SOC. POL'Y & L. 1, 42-43 (2007).

178. *Supra* Part IV.A.1.

the psychological, educational, and potentially criminal consequences of cyber sexual bullying may not completely stop the bullying but might diminish the prevalence of cyber sexual bullying.¹⁷⁹ By opening up a dialogue between students and schools, parents can also become involved.¹⁸⁰ In fact, parental and school involvement is sought by government prosecutors¹⁸¹ and prosecutors charging students with distribution or possession of child pornography.¹⁸²

Chapter 419 allows students the possibility of learning about the dangers of cyber sexual bullying and its consequences through California public schools, but it places the burden on teachers and school administrators to be proactive and create the education programs or explain to students the lasting consequences of cyber sexual bullying.¹⁸³

V. CONCLUSION

While Chapter 419 initially offered a significant step forward for the state and public schools by requiring school instruction on cyber sexual bullying, Chapter 419 represents an important first step in addressing the new issue of cyber sexual bullying.¹⁸⁴ For instance, the perpetrator might find protection from over-zealous law enforcement and be punished solely through the Education Code instead of through the Penal Code.¹⁸⁵ The inclusion of cyber sexual bullying in the Education Code allows school administrators to punish a student through suspension or expulsion instead of needing to use criminal statutes.¹⁸⁶

As for the victims of cyber sexual bullying, the expanded definition signifies the state's growing concern with bullying in schools,¹⁸⁷ as well as an acknowledgement from the state of the different ways in which bullying may occur.¹⁸⁸ Despite Chapter 419 not providing the adequate protection for minors in schools, it brings more attention and provides more clarification to students,

179. *Id.*

180. See generally Melody Sabedra, *Teens, Technology, and Sex: Finding the Appropriate Balance and Symmetry when Seeking to Punish the Modern Child Predator*, MICHIGAN STATE COLLEGE OF LAW 1, 7 (2010) (finding that parents, teachers, and school administrators remain largely uneducated about the consequences of sexting between minors, and even when these adults learn about the alleged sexting, they lack the technological skills to effectively discourage the behavior).

181. 'Sexting': *Racy Teen Messaging Could Be Illegal*, TALK OF THE NATION, NATIONAL PUBLIC RADIO (NPR radio broadcast Feb. 18, 2009), transcript, available at <http://www.npr.org/templates/story/story.php?storyId=100826247> (on file with *The University of the Pacific Law Review*) (stating "I think most prosecutors . . . would prefer that the schools and the parents take care of [sexting]. But a lot of times, they can't, or they are the ones bringing it to our attention.").

182. *Supra* Part II.A.

183. CAL EDUC. CODE § 234.2 (amended by Chapter 419).

184. See *supra* Part IV.A.

185. *Id.*

186. *Id.*

187. Wegman, *supra* note 1.

188. *Id.*

teachers, and administrators regarding the illegality of cyber sexual bullying in schools.¹⁸⁹ Within the past decade, California passed significant legislation on bullying and expanded the definition, and with each new amendment, the Legislature has shown an awareness of a growing problem and passed legislation.¹⁹⁰ Chapter 419 is another step towards creating a safe environment for students and creating a better learning environment.

189. *See supra* Part IV.

190. *Supra* Part II.B.