



New bullying policy reaches kids at home



APRIL 21, 2013 6:00 AM • [JENNIFER NAYLOR GESICK](#)
JOURNAL STAFF

As Rapid City schools prepare to wade into the murky waters of policing students' use of social media, one critic says a new cyberbullying policy might be unconstitutional, and others say it will be difficult to enforce and may waste valuable resources.

The new get-tough-on-bullying policy was approved Thursday night by the school board at a time when schools across the

nation are looking for ways to confront cyberbullying, which has been cited as the cause of recent teen suicides, school shootings and other violent acts by young people.

The policy, which is based on state law, defines bullying and cyberbullying and allows school officials to investigate and discipline students no matter where an incident is initiated — even in the student's home.

Adam Goldstein, an attorney for the Student Press Law Center, a non-profit that advocates for the First Amendment rights of students, said the policy may not survive a legal challenge.

"But in its current form, the state law and the model policy it espouses have some serious constitutional defects," Goldstein said after studying it. "I'm not sure how the legislature got the idea it can authorize school districts to patrol what students do at home, but the right to free expression comes from the First and Fourteenth Amendments to the U.S. Constitution. A state legislature can't just decide its students — who are citizens under the law — are not entitled to be free of government oversight in their bedrooms."

"It may come as a shock to the South Dakota legislature and the school board here that there are already people in charge of what students do at home," Goldstein said. "I hope it does not."

For the time being, however, students will face serious consequences if it is determined they are cyberbullies, according to the policy.

Principals, assistant principals and city police officers and sheriff's deputies, known as liaison or resource officers in the school district, will be charged with enforcing the policy. Penalties will include suspension, expulsion or even arrest.

When the Rapid City Area School District approved the new policy, it joined a national movement to address cyberbullying.

From 1999 to 2010, state legislatures across the nation enacted more than 120 bills that either introduced or amended bullying statutes in their education or criminal codes, according to a U.S. Department of Education analysis.

Until 2011, South Dakota, Hawaii, Michigan and Montana were the only states that did not have bullying laws on the books. But in the 2012 session, the South Dakota legislature passed Senate Bill 130, which requires each school district to adopt a policy prohibiting bullying.

RCAS Board of Education President Sheryl Kirkeby, who was on the three-person committee that crafted the local policy, said the school district now expects to be able to better combat bullying and the growing problem of cyberbullying.

She said the committee closely followed the model policy in the state law passed in 2012 and then made adjustments to fit what they see happening locally with increased reports of cyberbullying.

According to a U.S. Department of Education study, In 2010, one in five adolescents said that they had been cyberbullied at some point in their lives, and about the same number admit to having been a cyberbully. One in 10 adolescents had been both a cyberbully and a victim

But what constitutes cyberbullying and even basic bullying is often misunderstood, according to experts in the field.

Definitions

One of the trickiest aspects of creating a cyberbullying policy is agreeing on the magnitude of the problem and how it is defined. Some educators, including North Middle School Principal Danny Janklow, contend that the nation and Rapid City are not facing a bullying crisis.

Janklow believes the word "bully" is too easily used, and many times the bullying reported to his office is simply a conflict between parties. As a result, he said, school officials are wasting a lot of time investigating each and every claim. His office serves the nearly 600 students at East Middle School, and he said maybe one or two out of every 10 complaints is actual bullying.

"We don't have a major bullying problem," Janklow said. "We have an overuse of the word bullying. Kids act pretty much the same as they did 30 or 40 years ago. I had a mom who said her daughter was being bullied on Facebook, and she brought in the page and her child's comments were just as vicious and damaging as the others."

Janklow said the key to knowing whether a situation is actual bullying is "the power dynamic."

"Bullying is intentional, target specific, repetitive and about power and control," he said, citing experts. Psychologists have defined bullying as repeated physical or verbal abuse that involves one person using physical, social or other power to control or harm others.

Emily Bazelon, author of "Sticks and Stones: Defeating the Culture of Bullying and Rediscovering the Power of Character and Empathy," said the overuse of the word bullying is becoming a problem in its own right.

"But when every bad thing that happens to children gets called bullying, we end up with misleading narratives that obscure other distinct forms of harm," Bazelon wrote while commenting on the deaths of Bailey O'Neill a 12-year-old Pennsylvania boy, and Amanda Todd, a 15-year-old Canadian girl, in a March 11 opinion piece in The New York Times.

"State laws don't help: a wave of recent anti-bullying legislation includes at least 10 different definitions, sowing confusion among parents and educators," Bazelon wrote.

Policy questioned

RCAS's new policy gives this definition to bullying:

"Bullying consists of repeated physical, verbal, non-verbal, written, electronic or any conduct directed toward a student(s) that is so pervasive, severe and objectively offensive that it:

- 1) has the purpose of creating or resulting in an intimidating, hostile or offensive academic environment, or
- 2) has the purpose or effect of substantially or unreasonably interfering with a student's academic performance which deprives the student access to educational opportunities.

In defining cyberbullying, The policy says, "The use of electronic communication including, but not limited to, transmission of information over the Internet or other forms of electronic communications including, but not limited to, computers, tablets and cell phones will not be tolerated. This would include, but not be limited to, harassing, teasing, intimidating, threatening or terrorizing another person by sending or posting inappropriate and/or hurtful emails, instant messages, text messages, picture or images, or website postings."

Goldstein said the school district's definition of cyberbullying and bullying are too vague, which could make enforcement and implementation difficult.

The wording of the RCAS cyberbullying policy includes the word, "teasing," and it says bullying can be conduct that is "objectively offensive." And that could be construed to mean a lot of things and puts RCAS in a difficult situation, Goldstein said.

"The school district takes this basic constitutional overreach and makes it exponentially worse by asserting the power to act as Internet police," he said. "And it purports to prohibit teasing, as if a two-generations-removed principal was even capable of identifying what constitutes teasing, let alone understanding the relationship between the students involved well enough to distinguish between bullying and ribbing among friends."

A local police officer agreed that it is a challenge to investigate claims of cyberbullying. Sgt. Matt Sergeant, school resource officer supervisor with the Pennington County

Sheriff's Office, said they often pull students' Facebook pages and other electronic communications but no one can be certain about who is on the keyboard.

"When you receive a text message, instant message and things like that, you can't see the face of the person who it is sending it," said Sergeant, adding that someone can claim they left their account opened on a public computer or that someone else took their phone.

Janklow said the policy is part of a larger multi-faceted solution that includes education, parental involvement and enforcement.

"I don't believe it's the schools' goal to get involved in cyberspace," Janklow said. "I believe it's an opportunity for us to use the information at hand to investigate something that could potentially have negative effects inside the school."

Parents' role

Jim Hansen, RCAS board of education member and former school liaison officer at Central High School, said one reason that cyberbullying is on the rise is that parents are not monitoring their children's use of social media.

"Because both parents are working, lives have changed," Hansen said. "With social media, Facebook, Twitter and everything, parents just can't keep up with what is happening."

And most experts agree that parents are the key to helping their children who find themselves in bullying situations.

"The greatest suggestion I can give any family member when it comes to cyberbullying or texting is disable your Facebook, take it down, unfriend the person," Janklow said. "It's almost impossible for officials to police the Internet. I always tell parents to police their own kids."

He said parents can also help combat the bullying problem by setting good examples and using every opportunity to teach children how to treat other people.

"The most important thing we do is teach empathy, compassion and respect for other people," Janklow said. "It helps significantly by putting a person in another person's shoes."

[This story has been changed to reflect a correction. Danny Janklow is principal at North Middle School.]