

What can I do if my child has been harassed by another student on the phone or internet?

As with any problem your child has at school, you can talk to teachers and school officials. When another student is harassing your child you should consider talking to the other child's parent. Often the other student's parent is not aware of his or her child's behavior and will voluntarily take measures to stop it.

What if I've talked with teachers, school officials, and the other child's parents, and it doesn't stop the harassment?

There is a Texas law specifically addressing harassment of a child by phone or the internet but the new law applies only if the harassment meets the definition of "cyberbullying." If the cyberbullying law does not apply to your child's situation, there may be another more general law that does apply. If you can, you should see an attorney about other laws because it will be difficult to find and use them on your own.

What is "cyberbullying"?

"Cyberbullying" is defined under Texas law to be harassment of one student by another student (1) by using, or threatening to use, a phone or the Internet, (2) when the bullied student is younger than 18 at the time of the harassment, and (3) when the harassment is related to school or affects the bullied student's education. The law applies to an alleged cyberbully of any age as long as he or she was a student *at the time of the cyberbullying*.

A "student" is someone enrolled in public or private school or being home-schooled. The law does not define what is related to school or affects a child's education. The "Internet" includes, for example, text messages, instant messages, email, postings on social media, and photographs posted on a web page.

The student who has been bullied must have been younger than 18 *at the time of the bullying*. This means that an older child can still sue for harassment that occurred before he or she turned 18. Once your child becomes an adult at age 18, he or she must complete and sign the Petition

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and Declaration. Although these instructions say “your child,” if you are now an adult, the instructions are directed to you.

The cyberbullying law does not apply to an Internet service provider, such as Facebook, or to a library or school. For anyone not covered by the cyberbullying law, there might be another law that offers some protection. You will have to consult a lawyer about that.

How does the law work?

The law prohibits cyberbullying and gives you the right to ask a court to issue orders intended to stop it. Again, you should first try to resolve the problem informally. Sometimes you can reach a resolution that not even a judge could grant because of limitations on what a judge can do. If you are able to reach an agreement, you can avoid the time, perhaps missed work, and stress of going to court.

How do I ask a court to stop cyberbullying?

You can start the process in court by filing a Petition and Declaration. A form Petition and Declaration are attached. The Petition and Declaration begin a lawsuit to determine if your child has been cyberbullied.

Who can complete and sign the Petition?

You do not have to hire a lawyer to complete the Petition, but you should if you can. Whether you hire a lawyer or not, anyone you sue might hire a lawyer. If you do not hire a lawyer you must complete and sign the Petition yourself.

Who can complete and sign the Declaration?

Only a parent of the minor or a person acting as a parent to the minor can complete and sign the Declaration. A person acting as a parent may be a legal guardian or, for example, a grandparent who is raising the minor.

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Who do I sue?

If the alleged cyberbully is under 18 at the time the Petition is filed, the Respondent (the person sued) is a parent of that child or a person acting as a parent to that child. If the alleged cyberbully is 18 or older at the time the Petition is filed, the Respondent is the alleged cyberbully. The Petition itself guides you in completing it for a cyberbully who is a minor and for a cyberbully who is 18 or older.

Completing and signing the Petition and Declaration

At the top of the Petition, fill in your child's name. The clerk of the court will provide the case number, the court number, and the county. Provide the information requested in the Petition and sign it. Answer the questions in the Declaration. You must sign the Declaration "under penalty of perjury," which means you can be prosecuted for perjury if you purposely give false information.

The Petition and Declaration will be public

Before you decide to file a Petition and Declaration, be aware that all documents filed with the clerk, including any screen shot of a message bullying your child, are public records available to anyone who requests them from the clerk. The documents may also be available through the clerk's web site. When you see a judge, you can ask the judge to make documents unavailable to the public, and the judge will consider whether it is appropriate to do so. Even a judge, however, cannot make some documents confidential, like orders of the court, and the courtroom itself is open to the public.

Where to file the Petition

You or someone acting on your behalf must deliver the Petition and Declaration to the Court Clerk of the county or state district court where you live. If you do not know where the courthouse is, you can call the main number for your county. You also may find information on the County or District Clerk's web site.

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Is there a charge to file the Petition?

When you file the Petition, you are required to pay the standard fee charged by the county in which you file. You should find out the amount of the fee and whether you can pay by cash, check or credit card by calling the clerk of the court. If you believe the filing fee should be waived because of your income, ask the clerk how you can get the paperwork you will need to file. A request for a waiver cannot be made over the phone. It must be made in writing and under oath.

What happens after I file the Petition and Declaration?

When you file your Petition and Declaration ask the clerk to explain the next steps. The Court Clerk can explain the next step in the process, but the clerk cannot give you legal advice or tell you what a judge might do in your case. Different courthouses have different procedures for these Petitions. In some courthouses, at the time you file the clerk may tell you wait to see a judge or to return at another time. In others you may have to talk to other courthouse staff or the judge's staff. Whatever the procedure, in every courthouse a judge has the final word on when you will go before the judge.

When do I go before a judge?

Holding any type of court proceeding without notifying the person sued is rare because in our system of justice every person is entitled to explain his or her side of the story. So, the judge has to consider whether your Petition is so urgent that an exception should be made. After reading your Petition and Declaration, the judge may decide that the hearing should wait until the other student's parents are notified.

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What happens when I go before a judge?

The judge will give you an opportunity to explain what has happened to your child and why you believe it was cyberbullying. You may be required to testify in court under oath, which means you can be prosecuted for perjury if you purposely give false information. The judge has the authority to decide if it is likely that your child has been cyberbullied or not. The judge may instead delay his or her decision.

What can the judge do if the judge finds it is likely that my child has been cyberbullied?

If the judge finds it is likely that your child has been cyberbullied, the judge has authority to issue a "Cyberbullying Restraining Order. The judge also has authority, for various reasons, not to issue a restraining order. The order is an official document signed by a judge instructing an adult to take measures to stop cyberbullying. The restraining order is "served," which means delivered in-hand by an authorized person. A person who violates a restraining order may be subject to the judge's power to enforce the order.

If the judge grants the order, when is it effective and how long does it last?

The order is effective as soon as the person restrained by the order receives a copy of it, and it remains in effect for only two weeks. During those two weeks you or your attorney can talk with the other child's parents, and you may reach an agreement that ends the case without going to court again. If you don't reach an agreement, to continue your case you will have to set a hearing and notify the other parent. At this hearing, the court will require you and the other parent to testify under oath. If the court grants an order at that hearing, the

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judge decides how long it will be effective.

What if the judge decides not to issue a restraining order?

If the judge denies the restraining order, you still do have the right to ask for that hearing and again request an order. These instructions cannot and do not provide any guidance on whether or how to do that.