

**CYBERBULLYING, DIREITO EDUCACIONAL E RESPONSABILIDADE CIVIL:
UMA ANÁLISE JURÍDICA E DEONTOLÓGICA DA REALIDADE BRASILEIRA**

***CYBERBULLYING, DERECHO EDUCATIVO Y RESPONSABILIDAD CIVIL: UN
ANÁLISIS JURÍDICO Y DEONTOLÓGICO DE LA REALIDAD BRASILEÑA***

***CYBERBULLYING, EDUCATIONAL RIGHT AND CIVIL RESPONSIBILITY: A
LEGAL AND DEONTOLOGICAL ANALYSIS OF THE BRAZILIAN REALITY***

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RESUMO: O presente artigo tem por objetivo investigar o Cyberbullying e a responsabilidade civil das escolas no Brasil. Buscou-se analisar aspectos da vida digital dos estudantes, relações sociais aceleradas na “sociedade de desempenho”, a competitividade entre as escolas particulares, e como isso propicia um ambiente negativo que facilita o surgimento do Cyberbullying. Concluiu-se que, com o advento das primeiras três leis federais que tratam do bullying e cyberbullying no Brasil (2015-2018), a omissão dolosa das escolas em cumprir as normas descritas nessas leis acarreta prejuízos efetivos para toda a comunidade escolar, que fica desprotegida por não contar com um programa efetivo e permanente de prevenção e controle de atos de Cyberbullying. Utilizou-se de pesquisa bibliográfica e apontamentos doutrinários para a realização deste trabalho.

PALAVRAS-CHAVE: Cyberbullying. Bullying. Direito. Responsabilidade civil. Escolas. Educação.

RESUMEN: *Este artículo tiene como objetivo investigar el ciberacoso y la responsabilidad civil de las escuelas en Brasil. Buscamos analizar aspectos de la vida digital de los estudiantes, relaciones sociales aceleradas en la "sociedad del rendimiento", competitividad entre escuelas privadas y cómo esto proporciona un entorno negativo que facilita el surgimiento del ciberacoso. Se concluyó que, con la llegada de las tres primeras leyes federales que se ocupan del acoso y el ciberacoso en Brasil (2015-2018), la omisión intencional de las escuelas para cumplir con las normas descritas en estas leyes implica pérdidas efectivas para toda la comunidad escolar, que está desprotegida porque no tiene un programa eficaz y permanente para la prevención y el control de los actos de ciberacoso. Utilizamos investigaciones bibliográficas y notas doctrinales para realizar este trabajo.*

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PALABRAS CLAVE: *Cyberbullying. Bullying. Derecho. Responsabilidad civil. Escuelas. Educación.*

ABSTRACT: *This article aims to investigate Cyberbullying and the civil responsibility of schools in Brazil. It sought to analyze aspects of students' digital life, accelerated social relations in the "performance society", the competitiveness between private schools, and how it provides a negative environment that facilitates the emergence of Cyberbullying. It was concluded that, with the advent of the first three federal laws dealing with bullying and cyberbullying in Brazil (2015-2018), the malicious omission of schools to comply with the norms described in these laws entails an effective harm to the whole school community, unprotected for not having an effective and permanent program of prevention and control of acts of Cyberbullying. We used bibliographical research and doctrinal notes to carry out this work.*

KEYWORDS: *Cyberbullying. Bullying. Law. Civil Liability. Schools. Education.*

Introduction

The Internet has come to permanently change civilization. But, like the plane, it can be used for good or for evil. Unfortunately, what you see on a daily basis is that there has been a democratization and an increasing ease of access to the world wide web, but the practice of civil unlawful acts, often encouraged by a false sense of anonymity, has also become common and cause for concern in several countries.

In this context, several judicial condemnations in civil liability actions have been confirmed in second instance in recent years in Brazil, drawing people's attention to the problem, which does not diminish, on the contrary, it has been increasingly present in the academic world.

Schools are directly involved with the problem, given that Cyberbullying has occurred with undesirable frequency and even deaths have already occurred within Brazilian public schools due to conflicts involving students in situations of Cyberbullying.

The present article seeks to present the issue of civil liability of schools for acts of Cyberbullying, and how the disapproval of these cases, in our understanding, has increased a lot with the advent of the first Brazilian federal laws, which regulate the fight against bullying in Brazil

There are a number of difficulties to conceptualize what is bullying and Cyberbullying. There are authors who argue that the term refers only to facts practiced by peers, in a restricted sense, and there are authors, many in English-speaking countries, who use the word bullying for situations that involve different social groups outside or not the school environment.

In this article, we will use the restricted concept of virtual aggression between peers, considering that our object of study will be limited in this case to the civil liability of Brazilian schools, private or public.

The problem that will be faced is the effective difficulty that schools in Brazil have faced to prevent and suppress situations of Cyberbullying in their academic community.

The central theme that will be addressed is how this problem and its treatment, which has been insufficient under Brazilian law, has caused damage to the academic community and can subject schools, as well as principals and coordinators, to heavy legal processes.

The objective that is expected to be achieved is the demonstration that compliance with federal rules, which deal with bullying and cyberbullying, and, in particular, federal laws 13,185/15, 13,277/16 and 13,6663/18, must be fully complied with to ensure a safe academic environment for the entire school community.

This study is justified to the extent that Brazil appears, in several international surveys, as one of the countries with the highest incidence of cyberbullying in the world, and the measures that are being adopted today do not point to a concrete and systemic reduction of acts of Cyberbullying in the school environment.

The technical-legal method with bibliographic and jurisprudential research technique was used.

The theoretical framework chosen for the present research was structured in six topics: Digital life; Educational Law and Cyberbullying: The advent of the first federal laws that regulate bullying and cyberbullying in Brazil; Failure to effectively implement programs to prevent and combat bullying created by federal law 13,185/15 (article 4).

In the event of greater reprehensibility, we therefore defend that the amounts to be paid should be set at levels higher than those set by the Judiciary for so-called “old cases”, that is, those that were practiced before 2015, when there was advent of Federal Law 13,185/15, the first federal law that addressed the topic in Brazil.

Digital life, students and cyberbullying

No one doubts that modern digital life has profoundly changed society and the ways in which we relate. Many positive developments have emerged with the processes of social digitization, including access to knowledge, which has become much easier and more democratic.

Today, we can, in many situations free of charge, attend lectures, courses etc., which are being broadcast online or have been archived and made available on Youtube, Vimeo or through the school's own mechanism, which may be on the other side of the planet, and which we would never have access or would be extremely expensive for the vast majority of the population.

The digital life also brought difficulties, not only due to technological discoveries, but due to the misuse that some people made with access to these new technologies and, among the problems, we cannot fail to register initially the false sensation of anonymity and the ephemerality of the liquid relationships, nomenclature created by Bauman.

In this context, schools were hit hard by these changes, which, at first, could be exemplified as doubts about whether the cell phone (a real microcomputer today) should be banned or not inside the classroom.

The transformations went far beyond that.

Today, due to the speed of digital life, we face new and challenging concepts within the school community, such as the virtual existence of the “*Sala 24 Horas*” (24 hour classroom), where students expand the student relationship circle, through Whatsapp groups, for example, and interact on matters of your school reality, even outside your school's opening hours.

And the interactions between students themselves have undergone profound changes, in which Wendt and Weber (2014, p. 41) warn:

[...] Before the appearance of modern cell phones (smartphones), when access to the internet was more restricted and the popularity of social networks was not so evident, children and adolescents interacted, above all, through close friendships and face to face with neighbors, relatives and schoolmates. Not that this type of interaction has disappeared, but a qualitative change can be seen today. The connections that the virtual world makes possible enhance the number of interactions and make virtual interactions evident. Nowadays, it is not uncommon to hear statements such as "I have more than 80 friends on a given social network" or, even, "I participate simultaneously in dozens of online forums".³

And the increasingly fierce competitiveness of the school environment, which may result in the closing or not of an establishment, due to the failure to deliver results with the

³ [...] Antes da aparição dos modernos telefones celulares (smartphones), quando o acesso à internet era mais restrito e a popularidade das redes sociais não era tão evidente, as crianças e adolescentes interagem, sobretudo, através de amizades próximas e face a face com vizinhos, parentes e colegas de escola. Não que este tipo de interação tenha desaparecido, mas uma mudança qualitativa pode ser observada na atualidade. As conexões que o mundo virtual possibilita potencializam o número de interações e tornam evidenciadas as interações virtuais. Não é raro, hoje em dia, ouvir declarações de tipo “eu possuo mais de 80 amigos em uma determinada rede social” ou, ainda, “eu participo, simultaneamente, de dezenas de fóruns online”.

approval of its students in selections for good courses and public universities, has been increasingly fierce with the speed of students' new social behaviors.

On the importance of speed and acceleration in modern digital social life, Trivinho (2017, p. 21) states:

[...] As we know, the accelerating overwhelming crucible, as intricate as it is open to infinity, of referential metamorphoses, in a kaleidoscope that refuses to let any living person go unpunished, in the web that covers from the sphere of work to that of daily liberated time, and vice versa. Considered any reality, given in some sphere, sector or segment of human activity, when subjected to a continuous wave of acceleration, nothing of them remains as before. The speed, like a fibrous silent and conductive thread, kills and quickens, pulverizes and rebuilds, relativizes and consolidates, surpasses and launches forward, and remains stable in endless cycles of that same operation, remaking the world according to its mirror.⁴

The student and their legal guardians, the teacher, the pedagogical coordinator, the principal, all administrative staff at the school, are also influenced by this acceleration and must even go above and beyond to keep up with them, since, not in a few cases, students dominate these new technologies much more than the adults they interact with.

This social acceleration, which also impacts (and sickens a lot) the school environment, brings positive results, but charges people a high price. And with the issue of values, which in many cases, are not worked in an effective way at school, students end up mistaking negative acts like Cyberbullying with “trolling” or “mere jokes”.

Cyberbullying are acts that are part of microviolences in schools and cannot be tolerated, under any pretext, not only by the board, pedagogical coordination, as well as by all the other characters in the academic community.

And the severity of acts of cyberbullying is much higher, as a general rule, than the acts practiced in traditional bullying, given that due to sharing, offenses or threats can be distributed, in a short time, to thousands of Internet users, crossing states, countries, at ultra-speed in case of viralization of shares, with a clear objective of causing great emotional suffering in the victim, while in traditional bullying, as a rule, they are limited to a room, school, etc..

About the greater concrete severity of Cyberbullying, Rocha recalls (2012, p. 82):

⁴ [...] Como se sabe, a aceleração finca cadinho avassalador, tão intraconexo quanto aberto à infinitude, de metamorfoses referenciais, num caleidoscópio que renuncia a deixar impune qualquer vivente, na teia que abrange desde a esfera do trabalho à do tempo diário liberado, e vice-versa. Considerada uma realidade qualquer, dada em algum âmbito, setor ou segmento de atuação humana, ao ser submetida a onda contínua de aceleração, nada, deles, permanece como antes. A velocidade, qual fibroso fio silente e condutor, mata e vivifica, pulveriza e reconstrói, relativiza e consolida, supera e lança adiante, e se mantém estável em ciclos infindos dessa mesma operação, refazendo o mundo segundo o seu espelho.

The mobility of digital technologies takes away the victims' peace of mind, which makes Cyberbullying a form of invasive violence that threatens individuals in different places. Therefore, and as it did not happen in traditional bullying, the home is no longer a place of refuge for the victim, who continues to receive it by SMS or e-mails wherever he goes.⁵

These social processes of social acceleration and competitiveness find fertile ground for the occurrence of acts of bullying and cyberbullying in schools, which do not work, in particular, with the effective valorization of school life.

Living well is not just giving lectures and posting posters around the school saying that this school values school coexistence. It is much more than that and must be sought daily with a serious, consistent and permanent work of valuing school coexistence and a culture of peace.

Tognetta, Vinha and Bozza (2014, p. 205) warn of this problem of moral values and coexistence in schools:

It is as if there is a symbiotic cause and effect relationship between today's values and violent relationships: it is certain that there is a gradual increase in the forms of violent relationships between young people and adults; thus, violence seems to be a value among people. At the same time, it is also evident that the values to which modern society attaches greater weight are little or not moral at all: quick fame, virility, physical strength, youth, the fact of "getting along in life" no matter the cost, among others. Such values seem to overestimate a selfish culture of the self superimposed on the other. With them, violence is not felt as a disrespect, and values such as humility, generosity and justice are little incorporated.⁶

With the disruption of digital paradigms and the lack of working in coexistence in schools, a negative, extremely competitive, eventually individualistic (and selfish) environment appears, with a greater propensity for the occurrence of acts of Cyberbullying among students.

The performance society and self-coercion in the school environment

Those who do not adapt to these changes are easily outdated, and may have present or future difficulties to enter or even remain in the labor market.

⁵ A mobilidade das tecnologias digitais tira o sossego das vítimas, o que faz do Cyberbullying uma forma de violência invasiva que ameaça os indivíduos em diferentes locais. Portanto, e como não acontecia no bullying tradicional, o lar já não [é um lugar de refúgio para a vítima, que continua recebendo pelo SMS ou pelos e-mails em qualquer lugar que vá.

⁶ É como se houvesse uma relação simbiótica de causa e efeito dos valores de hoje e os relacionamentos violentos: é certo que existe um aumento gradativo das formas de relacionamento violento entre jovens e adultos; assim, a violência parece ser um valor entre as pessoas. Ao mesmo tempos, é também evidente que os valores aos quais a sociedade moderna atribui peso maior são pouco ou nada morais: a fama rápida, a virilidade, a força física, a juventude, o fato de "se dar bem na vida" custe o que custar, entre outros. Tais valores parecem superestimar uma cultura egoísta do eu sobreposto ao outro. Com eles, a violência não é sentida como um desrespeito, e valores como a humildade, a generosidade e a justiça são pouco incorporadas.

The student who does not make an effort, who has some learning difficulty, or who for another reason does not deliver good results, ends up being excluded from the academic circle and goes through a situation of fragility, and may even get sick for not reaching the heavy results and expectations of the community school.

In this context, the market is increasingly competitive and the individual performance of the student can be the difference between joining or not a course, college or university, which will project him socially and can determine the ultimate success or failure of his professional future. There is pressure for results, but, on the other hand, there is also an abyss, considering that the school has difficulty getting students' attention.

Mosé (2015) warns about this, which ends up being a paradox, as there is an infantilization of students, but, at the same time, they are charged to deliver results, and in many situations in private schools, when they do not show good results they are “invited” or encouraged to transfer, so as not to disturb the final grades of the school itself and colleagues:

Schools, in general, are not concerned with what the student has learned, but with what was “taught” by the teachers, they know little or nothing about the student, they often recognize him with a number in the call, they do not accompany him in his singularity and they use disapproval as a model of holding them accountable, exempting themselves from failure, which actually involves those involved in the process. The infantilization of students, even in high school, results from the passivity in which they are placed, as mere reproducers of content with which most of the time they have no type of relation (MOSÉ, 2015, p. 67).⁷

The pressure for the school to deliver results is immense. The advertisements of private schools, almost always, praise the positive results of their students and this reflects financially on more enrollments and the attraction of new students with the potential to lead the school to better results in the short term.

On the reality of this “performance society” and the model of irrational and individual overcoming, which pressures the individual to seek to produce more and more and deliver results even above his physical and psychological conditions, Han (2017, p. 70-71) warns:

In contrast, the performance society and the active society generate excessive tiredness and exhaustion. These psychic states are characteristic of a world that has become poor in negativity and is dominated by an excess of positivity.

⁷ As escolas, em geral, não se preocupam com o que o aluno aprendeu, mas com o que foi “ensinado” pelos professores, pouco ou nada sabem do aluno, muitas vezes o reconhecem com um número na chamada, não o acompanham em sua singularidade e usam a reprovação como um modelo de responsabilizá-lo, isentando-se do fracasso, que na verdade envolve os implicados no processo. A infantilização dos alunos, mesmo no Ensino Médio, resulta da passividade em que são colocados, como meros reprodutores de conteúdos com os quais na maioria das vezes não têm nenhum tipo de relação (MOSÉ, 2015, p. 67).

They are not immunological reactions that would presuppose a negativity of the other immunological. On the contrary, they are married due to an excess of positivity. Excessive performance increases lead to a heart attack of the soul.⁸

On the other hand, new concrete problems have arisen, such as the relationship between members of the academic community in the digital environment. Acceleration inhibits reflection and problems multiply in the academic relation of the community in the digital field⁹.

Either the student adapts to these new times or his future may be dark due to not overcoming in this tireless struggle to overcome his performance, break goals and achieve better results, also extolling his entire school community.

And both bullying, and, in particular, Cyberbullying, are elements increasingly present in the lives of young people and can emotionally unbalance students and hinder (and a lot) performance, and even put their professional future at risk.

It is a reality that brings uneasiness to schools, and that cannot be put aside by the management or have its gravity underestimated, in order to avoid some momentary wear and tear with the name of the school because it is involved in a possible situation of Cyberbullying.

It is a fact to be faced permanently and not just after its occurrence. Combating Cyberbullying is a process, it demands a serious, effective program and not just isolated and disorganized acts.

About the coping of bullying situations in Brazil by schools, Costa teaches (2011, p. 132-133):

Bullying seems to be inherent in the social process in schools, studies report its occurrence at various school levels. Its causes are diverse and have as a fundamental perspective the power relations between people, individual and ethnic differences and the moral and character formation of the young person and his family. The consequences are bad for the school, for society, as well as for victims and those who practice bullying. Nowadays, with the application of Web access and the emergence of virtual social networks, Cyberbullying appears as yet another form of expression of attacks and constraints on people. Brazil lacks public policies that allow a more objective confrontation of the problem. Society and the school are becoming aware of the process of violence that develops inside the classrooms, and research is already emerging, discussing and deepening the subject, enabling preventive

⁸ Como contraponto, a sociedade do desempenho e a sociedade ativa geram um cansaço e esgotamento excessivos. Esses estados psíquicos são característicos de um mundo que se tornou pobre em negatividade e que é dominado por um excesso de positividade. Não são reações imunológicas que pressuporiam uma negatividade do outro imunológico. Ao contrário, são casadas por um excesso de positividade. O excesso da elevação do desempenho leva a um infarto da alma.

⁹ We can mention the well-known school conflicts, which arise, due to thoughtless actions by users, in the well-known Whatsapp groups of parents of students of a certain school. Inappropriate or abusive comments, occasionally leave that environment directly to the police station.

policies and actions. More than anything, the best policy will always be the search for quality education, which favors citizen education in line with the ethical and moral principles of society.¹⁰

In this context, it is the mission of Law and Education, together with Psychology, Social Work, Computer Science, etc., to come together, interact, act in a transdisciplinary way, bringing each knowledge, its look, its perception and its contribution for the school to be rescued, the school coexistence is valued (and not just the results) and the culture of peace is effective, generating a positive environment, so that everyone, without exception, can exercise their potential and, with the help of the school, achieve your goals.

Educational law and cyberbullying

A recent survey by the international consultancy IPSOS (2018) pointed out that Brazil has one of the highest rates of cyberbullying in the world. The country was in second place, second only to India, in the number of cases of Cyberbullying.

Both Bullying and Cyberbullying present great challenges for the school community, as well as for civil society itself. Along with indiscipline, incivilities, harassment of various kinds (moral, sexual, etc.), they are part of the violence that hinders and brings harmful results to all members of the school community.

On violence in schools, Cabral and Lucas (2010, p. 70) warn:

Between advances and setbacks, the school is being conducted in the midst of our perplexity, in the search for understandings that enable its coexistence with the new paradigms that present themselves in the form of challenges, configured in the daily teaching practice, which illuminates the real gaps between the what you want and what you can, between what you should do, but it is not feasible.¹¹

¹⁰ O bullying parece ser inerente ao processo social nas escolas, estudos reportam sua ocorrência em vários níveis escolares. Suas causas são diversas e têm como perspectiva de fundo as relações de poder entre as pessoas, as diferenças individuais e étnicas e a formação moral e de caráter do jovem e de sua família. As consequências são ruins para a escola, para a sociedade, assim como para as vítimas e para aqueles que praticam o bullying. Na atualidade, com a aplicação do acesso à Web e a emergência das redes sociais virtuais, o Cyberbullying surge como mais uma forma de expressão dos ataques e dos constrangimentos às pessoas. O Brasil carece de políticas públicas que permitam enfrentamento mais objetivo do problema. A sociedade e a escola estão tomando consciência do processo de violência que se desenvolve no interior das salas de aula, e já surgem pesquisas discutindo e aprofundando o assunto, possibilitando políticas e ações preventivas. Mais do que tudo, a melhor política sempre será a busca por uma educação de qualidade, que privilegie a formação cidadã em consonância com os princípios éticos e morais da sociedade.

¹¹ Entre avanços e retrocessos, a escola vai sendo conduzida em meio à nossa perplexidade, na busca de entendimentos que possibilitem sua coexistência junto aos novos paradigmas que se apresentam sob a forma de desafios, configurados na prática docente cotidiana, que ilumina os hiatos reais entre o que se quer e o que se pode, entre o que se deve fazer, mas não é viável.

Educational Law faces this powerful obstacle and Cyberbullying is a significant factor in disrupting peace in the school community. Any student is, to a greater or lesser degree, afraid of being the victim of violent attacks by social networks and having his social reputation axed before his social group.

Educational law cannot get away from that either. It deals with the norms and principles that affect the school reality, being distributed among constitutional norms, laws, decrees, ordinances and a series of administrative acts, which regulate, with less or greater amplitude, the work of all who deal in the school environment and their respective students.

The Federal Constitution of 1988 contains several rules that ensure education as a social right¹², with its article 205 determined that education, the right of all and the duty of the State and the family, will be promoted and encouraged with the collaboration of society, aiming at the full development of the person, their preparation for the exercise of citizenship and your qualification for the job.

The interpretation of the rules of Educational Law, distributed either at the federal, state or municipal level, cannot avoid dealing the constitutional precepts that deal with the subject.

In addition, Educational Law must be interpreted in balance with other legal instruments, which affect the functioning of schools in their daily lives, including the Civil Code, Consumer Protection Code, Child and Adolescent Statute, among others.

One of the major problems faced by schools is the false perception of anonymity, which many students have when browsing the Internet. Anonymity is prohibited by the Federal Constitution and this false feeling generates, in some people, an erroneous perception of living in a “no man's land” when browsing the internet.

On the question of anonymity in digital life, Han (2018, p. 14) warns:

Respect is linked to names. Anonymity and respect are mutually exclusive. The anonymous communication that is provided by the digital media greatly deconstructs respect. She is co-responsible for the culture of indiscretion and lack of respect [which is] widespread. Shitstorm is also anonymous. That is what their violence consists of. Name and respect are linked to each other. The name is the basis for recognition, which always occurs in a nominal way [*namentlich*]. Also related to nominality [*namentlichkeit*] are practices such as responsibility, trust or promise. Trust can be defined as belief in names. Responsibility and promise are also a nominal act. The digital media, which

¹² Article 6. Education, health, food, work, housing, transportation, leisure, security, social security, maternity and child protection, assistance to the helpless are social rights, as provided Constitution. (Wording given by Constitutional Amendment no. 90, 2015)

separates the message from the messenger, the message from the sender, annihilates the name.¹³

And perhaps, like one of the other big problems, there are thoughtless acts, which not all adults can control, but which young people, moreover, end up practicing in the digital environment and get involved in situations of Cyberbullying.

Cyberbullying is, in this context, a civil act of great gravity for those involved and capable of causing serious harm to its victims. It has caused great social unrest within and outside schools. And it cannot be admitted, as it is an act that seriously damages the dignity of human persons.

With the advent of Federal Law 13,185/15¹⁴, the Brazilian legislator chose to use the expression “systematic intimidation” for bullying in Brazil, a term not used by national doctrine, which prefers to continue referring to the topic only as bullying. About Cyberbullying (article 2, sole paragraph of the same law), there is systematic intimidation in the world wide web (Cyberbullying), when using the instruments that are proper to depreciate, incite violence, adulterate photos and personal data with the intention to create means of psychosocial constraint.

This law dealt with Cyberbullying only in its concept, but it is undeniable that all the rules of the same law for schools also apply to situations of Cyberbullying, as there would be no sense in that law to include the concept of Cyberbullying in its core if the legislator did not wanted the rules of bullying to also apply to cyberbullying.

An unsuspecting reader may be tempted to think that this law only addresses traditional bullying, but a systematic interpretation of this point in conjunction with the Federal Constitution, the Child and Adolescent Statute and the Consumer Protection Code itself points out that the rules of Law 13,185/15 applies to traditional bullying and Cyberbullying.

Cyberbullying, selfies, narcissism and the digital behavior of young people

¹³ O respeito está ligado a nomes. Anonimidade e respeito se excluem mutuamente. A comunicação anônima que é fornecida pela mídia digital desconstrói enormemente o respeito. Ela é corresponsável pela cultura de indiscrição e de falta de respeito [que está] em disseminação. Também o Shitstorm é anônimo. É nisso que consiste a sua violência. Nome e respeito estão ligados um ao outro. O nome é a base para o reconhecimento, que sempre ocorre de modo nominal [namentlich]. Também estão ligados à nominalidade [namentlichkeit] práticas como a responsabilidade, a confiança ou a promessa. Pode-se definir a confiança como a crença nos nomes. A responsabilidade e a promessa também são um ato nominal. A mídia digital, que separa a mensagem do mensageiro, o recado do remetente, aniquila o nome.

¹⁴ BRASIL. Lei Federal n. 13.185, de 6 de novembro de 2015. Institui o Programa de Combate à Intimidação Sistemática (Bullying). **Diário Oficial da União**, Brasília, 09 nov. 2015. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113185.htm. Access: 13 Apr. 2019.

Cyberbullying is today one of the greatest challenges facing schools in the world and, also, in Brazil. There are countless cases of attacks by social networks and cell phone messages with threats, slander, defamation, injury, etc., which cause a lot of pain for the victims and anxiety and perception of chaos in the school environment, which hinders students' performance and it serves as a disintegrator of the quality of the environment.

In the United States of America, most states already have laws that address the issue, but there is still no federal law on the problem. Each country tries, within its reality and culture, to combat the problem. There is no longer any room for omission on the part of school authorities, governments and parents.

About the difficulty that the topic is dealt with in the USA, say Bauman and Meter (2019, p. 41):

There are no federal laws against cyberbullying, but the existence of the First Amendment of the constitution makes legal issues somewhat muddied. While students have the right to free speech guaranteed by the First Amendment, the Supreme Court has upheld some restrictions on free speech in the school setting to protect students from harm caused by disruptive speech (HOFHEIMER, 2013). Lawsuits have challenged the courts to specify what types of off-campus speech can be restricted and under what conditions. That is, some school rules might be in conflict with the First Amendment rights of students. The legal precedent cited in these cases is that of *Tinker v. Des Moines Independent Community School District* (n.d.), in which the court concluded that, when speech causes a “material and substantial disruption” of the learning environment at school, the school has the authority to impose disciplinary consequences on the creator of the speech. Another standard that has been applied in legal challenges is that there must be a “nexus” between the speech and the school when the speech is created off-campus.

Dealing with Cyberbullying requires the adoption of new patterns of behavior and initiatives to solve this challenge. It is not a problem for Brazil, but for all nations. While bullying started to be discussed and studied in the 70s in Scandinavia, in Brazil we only started to deal with the problem more effectively in the mid-nineties.

The first Brazilian federal law appeared only in 2015, when, with more than forty years of delay, we found an environment of great uneasiness in Brazilian schools, aggravated, in recent years, by notorious acts of violence and attacks in schools, with people involved in bullying situations in their past.

Digital life imposes on all of us rights and duties, including respect for the dignity and emotional integrity of others. One of the factors that has contributed to the occurrence of Cyberbullying in schools is the situation when the victim himself publishes posts that can be used against him even in the future.

Unfortunately, individualism on the part of a considerable group of students is rife in schools. Competition, a certain disenchantment with the future and the desire to quickly reach the goals without questioning the form, has provided an individualism among the students, which not only alienates them, but also provides deeply selfish ideas and a certain contempt for the figure of the other.

When we open students' social networks, in many cases, we find an unreal world and a cult of the self, which comes close to a private religion. This type of scenario in the school environment not only favors the occurrence of Cyberbullying but also aggravates it, because if the community itself lives with this level of individualism with intensity, there is no room for empathy, solidarity, social pacification, detachment and the search of Justice.

It is terribly a situation of "each one for himself", which only tends to deteriorate social relations in the school environment, since the Self will be the king of everything in the individual's life and community problems like Cyberbullying will not be of interest to people, who will not be involved for a variety of reasons to prevent or end a bullying or cyberbullying situation.

About this cult of the self, Roudinesco (2006, p. 52) warns:

As a psychic formation that is socially translated by the cult of narcissism, obsession with oneself always bears a rejection of the other, transformed into hatred of oneself and, therefore, hatred for the presence of the other in oneself. In this perspective, this cult would be the modern form of both a consummation of the decline of the patriarchal family and a challenge to psychoanalysis. The latter had effectively fought the sovereignty of the self embodied by the father of the primitive horde, before being, in turn, overcome by Narcissus. If Oedipus is the tragedy of his father's murder and confrontation with the truth, Narcissus is the drama of a self that gradually evades any encounter with the truth by replacing the weight of traditions with the delight of the self and the punishment of the law for care therapeutic.¹⁵

Many Cyberbullying situations at school could be stopped or minimized if the first students did not share or disapproved effectively the negative posts; but, on the contrary, even if they do not agree, they share them and they end up going viral and causing great pain and damage to the moral and psychological integrity of the victims and their families.

¹⁵ Enquanto formação psíquica que se traduz socialmente pelo culto do narcisismo, a obsessão por si mesmo é sempre portadora de uma rejeição do outro transformada em ódio de si e, portanto, em ódio pela presença do outro em si. Nessa perspectiva, esse culto seria a forma moderna tanto de uma consumação do declínio da família patriarcal quanto um desafio lançado à psicanálise. Esta havia efetivamente combatido a soberania do eu encarnada pelo pai da horda primitiva, antes de ser, por sua vez superada pelo Narciso. Se Édipo é a tragédia do assassinato do pai e do confronto com a verdade, Narciso é o drama de um eu que se subtrai progressivamente a qualquer encontro com a verdade ao substituir o peso das tradições pelo deleite de si e a punição da lei pelo cuidado terapêutico.

This is very visible with the posture of selfies published by the students, which is done, in many cases, without the preventive care of modulating the access of the privacy configuration of their profile on the social network. The excess of selfies or posts, in many cases, without due reflection and self-criticism, in the fast-paced world of young people at the beginning of the 21st century, only contributes to increase the problem.

On selfies and the attitude of most adolescents on social networks, Aiken teaches (2017, p. 165):

Selfies bring new meaning to the world self-conscious. These quick, seemingly innocent self-portraits - typically taken with a smartphone or webcam and shared via social media - serve many functions. They can be a preened vision of a public self, a bragging moment of accomplishment, a display of humor, or a declaration of irony to the world, almost a performance. The ubiquitous mobile phone with its mirror-image camera technology makes self-portraits easy to take, delete filter, or fix, and even easier to share.

The teenager, in the heat of youth, does not expect that photos of him/her, drunk on public roads or even of private scenes can, eventually, be manipulated or even distributed to hundreds of thousands of people, after a slight editing, causing damage to his/her reputation.

When the school simply fails to bring this information to its own academic community, the results can be even more disastrous.

Commenting on what suggests a global epidemic of cyberaggression, Scheff (2017, p. 59) warns that the victim can also contribute to these virtual aggressions:

Why do we post things that we know could get us in trouble? Are we not thinking it through in the heat of the moment, or do we think no one is paying attention? Are we simply naive, thinking that what we say is only among friends? Or are we the opposite, craving the approval of all those likes or retweets? As we will see, so many times, these messes are entirely of our own making. Your online behavior should be the best reflection of who you are off-line, but so many of us don't live up to that ideal.

When a person practices Cyberbullying this person violates rights and damages the dignity of the victims.

Such acts are more serious than traditional bullying, as the offenses can be spread over the internet and reach the knowledge of thousands of people, increasing the suffering of the victims and the reprehensibility of the acts practiced by the authors.

According to Calhau (2019, p. 120-121):

The internet is a very important tool for the development of humanity and, like the plane, it can be used for both good and evil. The attacks by electronic means (internet, messages via cell phone or other electronic devices) are an

evolution of the old graffiti on walls of schools, houses or even in the bathrooms of schools. They were done in the dead of night and caused great pain to the victims, in addition to impunity for their practitioners. Today, the “wolves” have changed the instruments, but not the practices. They open up, for example, fake accounts on social networks and start spreading defamatory messages or threats against victims with great damage to their honor, emotional health and moral integrity.¹⁶

If parents have a responsibility to educate their children and are held responsible by the Civil Code in the event of negligence and omission on their part, there is no doubt that the school has legal duties to prevent, restrain and deal with situations of bullying and cyberbullying and it cannot get away from that obligation.

Civil liability of educational establishments for acts of cyberbullying of their students

The Civil Code (Federal Law 10,406/02), in Article 186, provides that anyone who, by voluntary action or omission, negligence or imprudence, violates the right and causes harm to others, even if exclusively moral, commits an unlawful act. The initial question is: how to fit responsibility in these cases of Cyberbullying, given that they are practiced, in large part, by the disabled?

The same Civil Code, later¹⁷ in its article 932, when establishing situations of true objective responsibility, with the objective of increasing the legal protection of the victims, it brings us answers to these cases, by establishing that both parents are also responsible for the acts of their minor children who are under their authority and in their company (I), how educational establishments are responsible for the actions of their students.

In this context, schools are also doubly responsible under Article 14 of the Consumer Protection Code (Federal Law 8078/90), because if a person enrolls a minor, son or daughter, in a college, there is an expectation that the service will be provided with quality and efficiency.

¹⁶ A internet é um instrumento muito importante para o desenvolvimento da humanidade e, tal qual o avião, pode ser utilizada tanto para o bem como para o mal. As agressões por meio eletrônico (internet, mensagens via celular ou outros dispositivos eletrônicos) são uma evolução das antigas pichações em muros de colégios, casas ou até nos banheiros das escolas. Eram feitas na calada da noite e causavam grande dor às vítimas, além da impunidade para os seus praticantes. Hoje, os “lobos” mudaram os instrumentos, mas não as práticas. Abrem dolosamente, por exemplo, contas falsas em redes sociais e passam a espalhar mensagens difamatórias ou ameaças contra as vítimas com grande prejuízo para sua honra, saúde emocional e integridade moral.

¹⁷ Article 932. The following are also responsible for civil reparation: I - parents, for minor children who are under their authority and in their company; II - the tutor and the curator, for the pupils and the cared, who are in the same conditions; III - the employer or principal, for their employees, servants and agents, in the exercise of the work that is their responsibility, or because of it; IV - the owners of hotels, inns, houses or establishments where they stay for money, even for educational purposes, by their guests, residents and students; V - those who have freely participated in the proceeds of crime, up to the competing amount.

And if virtual aggressions occur, precisely because of a defective service contract, the responsibility to compensate the victim arises again.

In other words, there may be specific cases that both parents and/or schools will be held responsible at the same time, each for failing with their specific legal duty: one under Article 932, I, of the CC (parents), and the school on account of article 932, IV, of the CC and article 14 of the CDC.

In other words, several Brazilian laws already provided for a legal duty on the part of schools, for the acts of their students, several years ago, and the judicial decisions in damages actions complied with these precepts and, in particular, Article 932, IV, of the Civil Code, and Article 14, I, of the CDC.

In this sense, the warning of Schreiber (2018), that if respecting the causal nexus, the school can be held civilly responsible for acts of Cyberbullying of its students:

Another path that has been taken in our judicial practice is the civil liability of the school. There are several legal provisions that can support this option, ranging from Article 37, 6th, of the Constitution to Article 14 of the Consumer Protection Code, going on, already in the case of private schools, to Article 932, IV, of the Civil Code. The civil liability of the school is a path that has been followed in many cases of traditional bullying because systematic intimidation occurs in the physical environment of the school, making it easier, in these cases, to identify a failure of the institution's inspection and, therefore, its responsibility. In Cyberbullying, on the other hand, the discussion seems to be much more complex because the damage does not occur within the physical limits of the school, but in social networks or whatsapp groups created, often by the students' initiative and without any effective participation by the school. The aforementioned legal provisions portray hypotheses of strict civil liability, but do not dispense with the identification of the causal link between the activity of the student and the damage suffered, and it should be verified in specific cases whether there is an actual causal link.¹⁸

It turns out that, in 2015, the situation of civil liability for schools became even worse in the field of law. And that is what we will explain in the next topic.

¹⁸ Um outro caminho que tem sido percorrido na nossa prática judicial é a responsabilização civil da escola. Há diversos dispositivos legais que podem amparar essa opção, que vão desde o artigo 37, 6º, da Constituição até o artigo 14 do Código de Defesa do Consumidor, passando, já aí no caso das escolas privadas, pelo artigo 932, IV, do Código Civil. A responsabilização civil da escola constitui via que tem sido seguida em muitos casos de bullying tradicional porque a intimidação sistemática ocorre no ambiente físico da escola, sendo mais fácil, nessas hipóteses, identificar uma falha de fiscalização da instituição de ensino e, portanto, a sua responsabilidade. No Cyberbullying, por outro lado, a discussão afigura-se bem mais complexa porque o dano não ocorre nos limites físicos da escola, mas sim em redes sociais ou grupos de whatsapp criados, muitas vezes, por iniciativa dos alunos e sem qualquer participação efetiva da escola. Os dispositivos legais mencionados retratam hipóteses de responsabilidade civil objetiva, mas não dispensam a identificação do nexos de causalidade entre a atividade do educandário e o dano sofrido, devendo-se verificar nos casos concretos se há efetiva presença de nexos causal.

The advent of the first federal laws that regulate the fight against bullying (and cyberbullying) in Brazil in the period 2015-2018

As discussed in the previous item, *general legal duties* already weighed against schools, especially the Civil Code (CC), the Consumer Protection Code (CDC) and the 1988 Federal Constitution (CF), which demonstrated the objective responsibility of schools for acts of their students and, in this context, we understand that the aggressions practiced among students through the internet or cell phone messages fit perfectly.

From 2015 to 2018, three new federal laws were approved that deal with the subject and, in short, created new specific legal duties for schools, reinforcing previous obligations to combat bullying, Cyberbullying and all forms of violence at school.

They are the federal laws 13,185/15, 13,277/16 e 13,663/18.

Federal Law 13,185/15 created programs to prevent and combat bullying in Brazil and reinforced, in its Article 5, that it is the duty of the educational establishment, clubs and recreational associations to ensure measures of awareness, prevention, diagnosis and fight against violence and systematic intimidation (bullying). It added this specific legal obligation to the already existing legal obligations of the CC, CDC and CF of 1988.

Federal Law 13,277/16 creates the national day to combat bullying, raising awareness to the problem.

And Federal Law 13.663 / 18¹⁹ reinforces (once again) the obligations of schools, by inserting in the LDB - Law of Directives and Bases of National Education (article 12) the determination that educational establishments, respecting the common norms and those of their education system, will have the task of promoting measures to raise awareness, prevent and combat all types of violence, especially systematic intimidation (bullying), within schools (IX), and to establish actions aimed at promoting a culture of peace in schools.

With the advent of these three federal laws, which regulated the treatment of bullying and Cyberbullying in Brazil, occurring concrete cases, in our view, the reprehensibility is greater than the acts practiced before the period of 2015 - 2018.

In many cases, this situation of intentional omission is discovered at the worst moment for the company, just when the occurrence of acts of cyberbullying is made public, which is

¹⁹ Law 13,663/18 is broader than Law 13,185/15, which deals exclusively with bullying and cyberbullying, as it increases the legal duty of schools to prevent and combat all forms of bullying and also determines the establishment of the promotion of measures awareness, prevention and combating all types of violence and the promotion of a culture of peace among educational institutions. Combining the "three federal bullying laws" with the Civil Code, the Consumer Protection Code and the Federal Constitution (article 5, protection of the dignity of the human person), we see that the legal protection framework for victims of bullying and cyberbullying is immense and brings great responsibilities to schools and their legal guardians.

intensely reflected on social networks, tarnishing the reputation of the educational establishment and weakening the school itself, which can be prosecuted and sentenced to heavy indemnities, and will have little chance of presenting solid arguments in its defense, given that at some point in the past, some pedagogical coordinator or principal chose to reduce expenses, disregarding the legal duties of federal anti-bullying laws and not implementing anti-bullying programs, as required by Brazilian law.

The non-effective implementation of programs to prevent and combat bullying created by law 13,185/15 (article 4)

With the advent of Federal Law 13,185/15, programs to prevent and combat bullying were instituted in schools throughout Brazil ²⁰.

There is no doubt that these programs, with all the requirements outlined in its article 4 (nine items in all), were created to foster a positive educational environment and an effective culture of peace in schools.

In our understanding, the occurrence of cyberbullying in schools that have not effectively implemented these anti-bullying programs is an effective loss for students, educators and administrative staff.

It also demonstrates a greater reprehensibility on the part of the educational establishment, a concrete case of negligence and willful omission, which has not fulfilled its legal duty, to use all the necessary instruments (and required by law) for the culture of peace to be installed effectively.

Many schools, in order to reduce costs, launch poorly made programs, or just formalists, conduct some lectures and isolated anti-bullying and cyberbullying campaigns, which are not just an absurd attempt to deceive the authorities, but openly defy the requirements of Federal Law 13,185/15 in its article 4.

It is obvious that the reprehensibility of a Cyberbullying situation that occurs in a public or private school, after the year 2015, where the school did not effectively implement the anti-bullying program with all the requirements of Article 4 of Federal Law 13,185/15, is greater than compared to cases of Cyberbullying previous to this law and where the school did not yet have a specific legal obligation to implement these programs.

²⁰ Although Federal Law 13,185/15 has not set a deadline for the implementation of these programs, we understand that it hurts any reasonableness parameter, that in 2019, four years after the advent of that law, they are not being implemented by all schools, public and private, in the country.

The damage to students, in schools that do not respect the provisions of Federal Law 13,185/15, is evident.

By failing to implement effective and permanent programs, not offering quality formation to educators and administrative staff on how to implement a culture of peace, by not offering psychological, social and legal assistance to victims and alleged aggressors, the school management, in our understanding, and intentionally, provides a defective educational service (article 14, I, of the CDC).

And, even more, it is clear that there is still a concrete situation of Cyberbullying that already aggravates another previous failure, which is the failure to implement the anti-bullying program of Law 13,185/15.

Greater reprehensibility for not implementing the anti-bullying program of federal law 13,185/15 generates greater condemnation for moral damage. If not, Cyberbullying cases where schools were under two different legal situations would lead to the same amount of moral damages on condemnation, which would be profoundly unfair and unreasonable.

Reprehensibility and civil liability in cyberbullying acts

Doctrine and jurisprudence have focused on the responsibility of Cyberbullying²¹, practiced, most of the time, by students, and which has already been the subject of several judicial convictions in Brazil.

The problem is becoming more and more common in society and a series of other condemnations have arisen across the national territory. A number of new problems have emerged in the courts recently with the judicialization of education.

The legal discussions about problems involving the school reality were reduced thirty years ago, and with the progress of the increasingly intense constitutionalization of rights, which affected areas such as health, public policies, etc., Education also became the object of more controversies in the legal field.

In the present case, the occurrence of situations of Cyberbullying involving schools, which after the advent of Federal Law 13,185/15, deliberately omitted the legal duty to prevent and combat Cyberbullying through the implementation of the anti-bullying programs of that

²¹ Trabalhamos com um conceito limitado de Cyberbullying, seguindo parte da doutrina que entende que bullying e cyberbullying são "agressões entre pares". Para os demais casos de agressões pela internet entendemos que o termo adequado são cyberagressões.

law, is the case of apply civil liability in amounts higher than those practiced in the same situation prior to 2015, due to the greater reprehensibility on the part of these schools.

The situation is even more aggravated when we remember the spirit of competition that private schools disseminate among their students, seeking high marks and approval on ENEM - National High School Exam, results that turn in more enrollments and more money for the school safes.

The figure of the neighbor (or the Other) in this environment of extreme Brazilian school competition, especially in private education, and in the search for high performance vacancies, such as approvals in medical courses at federal universities, ends up generating a toxic environment, conducive to the emergence of Cyberbullying actions, when part of the students, mistakenly, sees the colleague as an obstacle or a potential competitor of his place in a good university.

It is obvious that there is a concrete damage to the entire school community when the school management or its pedagogical coordination, in the year 2019, that is, four years after the advent of Federal Law 13,185/15, is deliberately omitted, alleging lack resources or even “ineffectiveness” of the norms of article 4 of the aforementioned law, but which, objectively, causes an effective loss for students, educators, parents and the entire school community, as it has breached a legal duty, which should be fulfilled with the preventive bias for situations of bullying and cyberbullying, with an injury to the subjective right of the school community (damage-event).

Final considerations

Cyberbullying are aggressions practiced among students over the internet or by cell phone messages (SMS) and are illegal civil acts in Brazil.

This is a major problem for schools around the world, and Brazil has a high rate of occurrences in the student environment, which brings suffering to victims and can generate a very negative school environment, impairing the learning of the entire community.

The unruly digital life, the false perception of anonymity, the competitiveness of schools (in particular, private ones), individualism and the lack of investment in preventive and concrete actions to curb Cyberbullying have, unfortunately, led to the emergence of a favorable environment for abusive behaviors on social networks among students at a school.

The Educational Law, in addition to regulating the relations of the academic community, must be applied and interpreted with the Civil Code, Statute of Children and Adolescents, Consumer Protection Code and Federal Constitution, to regulate the subject.

Unfortunately, in order to reduce costs, principals and pedagogical coordinators in the vast majority of schools do not meet the legal requirements of federal laws that deal with bullying and Cyberbullying, contributing to a student environment prone to committing acts of Cyberbullying among students.

The legal duties of protection of students with the objective responsibility of educational establishments for the acts of their students, proven the causal link, provided for in article 932, IV, of the Civil Code and article 14, I (defective service) of the Consumer Protection Code, with the advent of the three federal laws of bullying (13,185/15, 13,277/16 and 13,663/18), have greater reprehensibility, and should be sanctioned, in view of willful omission by schools that do not implement the effective anti-bullying programs of article 4 of Federal Law 13,185/15, with greater intensity by the Judiciary, in view of the legal rules that regulate Civil Liability in Brazil.

The failure to implement anti-bullying programs, after the advent of Federal Law 13,185 / 15 (article 4), demonstrates disdain and willful omission on the part of the school management, as they bring concrete damage to the school environment and disrespect a specific legal duty created to protect students against bullying and cyberbullying attacks.

It is totally out of reason, violating the principle of legality and even the fundamental rights of members of the school community (educators, students, administrative staff, parents of students, etc.), that four years after the advent of Federal Law 13,185/15, a large part Brazilian schools ostensibly disregard this law and have not implemented effective anti-bullying and anti-cyberbullying programs throughout the Brazilian territory.

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