



Social Media and Student Discipline

By: Jill K. Osborne

The increase of internet usage by students has created new issues for schools concerning a school's ability to discipline students for inappropriate online conduct. One critical aspect in determining if discipline is warranted is if the activity took place on campus, using school resources, or off-campus. In general, schools have the ability to discipline students for their on-campus, online conduct; however, disciplining students for their off-campus online conduct can be deemed a violation of a student's First Amendment rights.

Student Discipline for On-Campus Conduct

Schools are required to regulate student misconduct that takes place on campus, including at school-sponsored events. The obligation to regulate student misconduct includes technology-related infractions that occur on campus or with school resources. Bullying, harassment, cheating, and disruptions to the school environment are examples of some of the issues that have evolved through the use of technology. Bullying and harassment can now take place by using technology such as networking sites, text messaging, phone calls, or emails. Additionally, students can use cell phones to cheat and cause disruptions throughout the school day. It is important that a school incorporates these concerns into their existing code of conduct. The code of conduct a school employs should be flexible enough to address the technological issues that a school may face.

A major concern of regulating a student's online conduct is the First Amendment. Public schools must be careful when attempting to regulate the speech of their students and staff. While students retain their First Amendment rights in a public school, the right is neither absolute nor limitless. In *Tinker v. Des Moines*,ⁱ the Supreme Court held that "[n]either students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." After *Tinker*, school administrators, generally, cannot discipline students for the content of their speech, unless the content is:

Obscene, lewd, or plainly offensive (*Bethel School District v. Fraser*)ⁱⁱ

Promotes illegal activity (*Morse v. Frederick*)ⁱⁱⁱ

Creates a material disruption to the school environment (*Tinker*)

The same principles, seen in *Tinker* and the subsequent cases, are used to assess the use of school-sponsored technology and resources by students to express themselves. Schools have control over when and how school property is used, including school-sponsored technology. It is important for a school to inform students regarding the appropriate use of school-sponsored technology, including email and internet use.

One method of ensuring that students understand appropriate technology use is a clear and comprehensive Technology Use policy. Some examples of items to include in a Technology Use policy can include:

- Users shall be courteous and respectful of others.
- Profanity, vulgarity, obscenity, or language that is harassing, derogatory, or otherwise inappropriate for the school environment is not permitted.
- Users shall not display, send, retrieve, or download any items that are sexually explicit, or contain hate-based or discriminatory material. Users shall notify a teacher or school administrator in the event inappropriate material is inadvertently accessed.
- Users acknowledge that they have no right or expectation of privacy with respect to their use of school technology.
- School administration and IT personnel can retain the right to access and monitor the activities and files of all users, at any time, and for any reason.
- The use of school technology is a privilege and may be revoked at any time by the school administration for violation of this policy or for engaging in any inappropriate use of school technology.

Student Discipline for Off-Campus Conduct

Do schools have the authority to discipline a student for misconduct outside of school?

In *Bunger v. Iowa High School Athletic Association*,^{iv} the Iowa Supreme Court held:

Student misconduct in the classroom obviously affects the operation of the school; misbehavior of a child at home within the family clearly is beyond the concern of the school. Between those extremes lie the cases which more or less affect the operation of the school, and the task is to determine on which side of the line particular conduct falls.

In order for a school to have the authority to regulate off-campus online conduct, there must be a nexus between the misconduct and the education environment. A school administration must be able to connect the student's off-campus conduct with a material disruption to the educational environment. If the nexus does not exist, the school administration may not have the authority to discipline the student.

Student Discipline for Online Conduct

Can you regulate a student's online speech, if the student is at home, and not using school resources?

Even though schools are faced with offensive, inappropriate, and threatening items students create on their web pages, Facebook postings, and blogs, if the items are created at home and without the use of school resources, the school is limited in when they can discipline for these forms of student expression. Schools must make careful consideration of a student's First Amendment rights to free expression. If the off-campus online conduct is offensive or obscene but cannot be linked to a material disruption of the school environment, a school will not have authority to discipline the student.

In a Pennsylvania case, *Layshock v. Hermitage School District*,^v a student was suspended from school because he created a parody profile of the principal. The court held that the student's First Amendment rights were violated because there was insufficient evidence to support justification for disciplining the student for his off-campus online conduct. Although the student's expression was offensive, the district was not able to demonstrate a sufficient nexus between the student's conduct and a substantial disruption of the school environment. Similarly, in two other cases, courts overruled decisions made by schools to discipline students who created personal web pages and internet profiles that insulted and offended students and staff.^{vi} In each of the cases, the court stated that while the content of the online material was offensive, it was not sufficient enough to discipline the students for their off-campus online conduct, unless there was a connection to a disruption of the school environment.

In contrast, a court in Pennsylvania upheld the decision of a school to expel a student for his off-campus online conduct because the material disruption the website caused to the school environment. In this case, *J.S. v. Bethlehem Area School District*,^{vii} the district was able to demonstrate that the off-campus online conduct materially disrupted the school environment. The student in this case was threatening the life of a teacher who was forced to take a leave of absence due to the threats.

A court is more likely to hold that disciplining a student for off-campus online conduct is not a violation of the student's First Amendment rights if the school can articulate a substantial disruption to the school environment. The disruption must go beyond the content of a webpage being offensive. A stronger case for a "substantial disruption" is made when the speech infringes on the rights of others, such as bullying and harassment of other students, or if the speech contains a threat to an individual's safety.

These situations are rarely "clear-cut" or easily evaluated. Schools are encouraged to contact an attorney for advice regarding any specific student discipline issue. This article is intended to be a general discussion about student discipline and social media and is not intended to provide legal advice regarding a particular incident.

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References

ⁱ *Tinker v. Des Moines*, 393 U.S. 503 (1969).

ⁱⁱ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).

ⁱⁱⁱ *Morse v. Frederick*, 551 U.S. 393 (2007).

^{iv} *Bunger v. Iowa High Sch. Athletic Ass'n*, 197 N.W.2d 555, 564 (Iowa 1972).

^v *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011).

^{vi} See e.g., *Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915 (3d Cir. 2011); *Beussink v. Woodland R-IV Sch. Dist.*, 30 F. Supp.2d 1175 (E.D. Mo. 1998).

^{vii} *J.S. v. Bethlehem Area Sch. Dist.*, 800 A.2d 847 (Pa. 2002).