

Social Media, the Schools, and Individual Rights

Student Rights

Although still an emerging issue, so far the precedent-setting cases are these four:

<i>Tinker v. Des Moines ISD (1969)</i>	protects students' political or ideological speech that doesn't cause a substantial disruption
<i>Bethel SD #403 v. Fraser (1985)</i>	allows schools to limit lewd speech when acting <i>in loco parentis</i>
<i>Hazelwood v. Kuhlmeier (1987)</i>	allows school censorship when materials are inconsistent with curricular message
<i>Morse v. Frederick (2006)</i>	better known as the "Bong Hits 4 Jesus" case; allows schools to limit anti-curricular messages at school-sponsored activities

In more recent rulings, lower courts have used these cases as the guide for whether students' online behaviors warranted school disciplinary intervention. Courts have shown wide latitude for students' free speech, especially when the students are off-campus. For example, using the *Tinker* standard, courts ruled in *Layshock v. Hermitage School District (2005/2011)* that a student was within his rights to create a parody MySpace page of his principal, even though he used a copyrighted image from the district website and the profile included many lewd and offensive comments.

Teacher Rights

Again, recent rulings have relied on pre-Internet precedents for guidance:

<i>Pickering v. Board of Education (1968)</i>	established guidelines for determining whether teachers' speech is protected: Does it jeopardize the relationship with superiors or coworkers? Does it impede school operations? Does it impair classroom performance?
<i>Mt. Healthy v. Doyle (1977)</i>	protects right of schools to dismiss teachers, with cause, even if they're engaged in protected speech activities
<i>Connick v. Myers (1983)</i>	protects rights of government employers to limit their employees' free speech when it is disruptive to the workplace and relates to an employee's personal, rather than the public's, interest

More recently, citing *Pickering*, *Munroe v. Central Bucks School District (2014)* affirmed a school division's right to fire a teacher who wrote defamatory entries about her students on the teacher's personal blog. The court reasoned that the teacher's comments undermined her ability to build a relationship of trust with students and, therefore, to do her job, and the school was within its rights to terminate her.

Cyberbullying

The courts have had very few opportunities to weigh in on this new issue, but two rulings to date may preview the direction courts are headed:

<i>Kowalski v. Berkeley County Schools</i> (2005)	upheld schools' right to discipline students for off-campus posting of a defamatory MySpace page that caused a substantial disruption at school
<i>JC v. Beverly Hills Unified School District</i> (2008)	protected students' right to post a defamatory video on YouTube from an off-campus computer because it did not create a substantial disruption at school

A recent Supreme Court ruling also opens the doors for greater freedoms for private citizens, even when they make threats against schools. In *Elonis v. United States* (2015), the Supreme Court overturned lower courts' convictions, finding that the lower courts had inappropriately applied the statutes regarding threats. The lower courts had convicted Elonis on the grounds that a reasonable person would find his Facebook remarks—which included graphic and specific threats against his ex-wife, an FBI agent investigating the case, and local elementary schools—legitimately threatening. Instead, the Supreme Court held that the state needed to have shown some indication that Elonis had an intent to carry out the threats; since this burden of proof was not met, Elonis's speech was ruled protected.