

FIRST AMENDMENT AND SCHOOLS

Student Free Expression

How do school officials and the courts apply free-speech standards?

How far may schools go in restricting student speech in the interest of school safety?

May a teacher censor a student's artistic expression?

May schools limit the time, place, and manner of student expression?

May students distribute religious or political literature at school?

What are the free expression rights of students in public schools under the First Amendment?

What limits, if any, may school officials place on student expression that occurs off school grounds?

The U.S. Supreme Court has never ruled on off-campus, online student speech.

There are three types of student speech in Court opinions:

1. Vulgar, lewd, obscene and plainly offensive.
2. School-sponsored
3. All other student speech

The *Tinker* case said student expression may not be suppressed unless school officials reasonably conclude that it will "materially and substantially disrupt the work and discipline of the school." (The students had a First Amendment Right to wear black armbands to protest the Vietnam War.)

Scenarios

Webcam on school issued laptops.

School issues laptops to all high school students. The laptops have webcams that can be activated by school security for the purpose of identifying a user of a laptop reported stolen or missing.

Parents and students are not aware that school officials can activate webcam remotely.

School official called in student for improper behavior at home and showed student photo from webcam.

Student was eating candy at home, not engaging in drug-related activity.

Parents sued school after learning that disciplinary incident would be put in student's school records.

What parents want: class action damages for invasion of privacy, theft of private information, and unlawful interception and access to electronic information, in violation of federal and state law.

Courts, traditionally: There is no greater sanctuary than a person's own home.

Student removed from class by police for refusing to say Pledge of Allegiance.

Thirteen year old girl did not stand for the pledge of allegiance. The teacher yelled at her, demanded that she stand, and sent her to the office for defiance.

The next morning, the student refused to stand for the pledge again. The teacher called two school police officers and she was escorted to the school office.

The student has been teased by her classmates and is too traumatized to return to school.

The school admitted the mistake. The girl and her family wanted an apology, but no one from the school contacted them. The school also refused to meet with the family if the family was going to bring an attorney.

Courts: Students cannot be forced to salute the flag.

Student Handbook: Says students cannot be required to say the pledge, and others may not embarrass a student who chooses not to participate.

MySpace—two similar cases, different Court decisions

Both cases involve school suspensions of students who created fake MySpace pages on home computers to ridicule their principals. Both decisions were issued on the same day, but different panels of judges heard the cases.

One decision said punishing students for exercising first amendment rights violates their rights to free speech. “It would be an unseemly and dangerous precedent to allow the state in the guise of school authorities to reach into a child’s home and control his/her actions there to the same extent that they can control that child when he/she participates in school sponsored activities.” The student had used his grandmother’s computer at his grandmother’s house.

The other decision reached the opposite result, and said that school officials have the power to punish “student speech, whether on- or off- campus, that causes or threatens to cause a substantial disruption of or material interference with school or invades the rights of other members of the school community. The constitution “allows school officials the ability to regulate student speech where, as here, it reaches beyond mere criticism to significantly undermine a school official’s authority in challenging his fitness to hold his position by means of baseless, lewd, vulgar and offensive language.”

The courts distinguished the facts. At one school, there had been actual disruptions to the learning environment (students talking about the page and not paying attention in class), and there was proof of possible future disruption. The MySpace page had posted a photo, alleged that the principal was a pedophile and sex addict. The other student’s page alleged that the principal took drugs and kept beer at his desk, but there was no proof of disruption at the school due to the MySpace page or that it was created at school.

Is a substantial disruption at school required to punish off-campus speech?

Should schools have broad censorship discretion?

Should the principal have a seat at the dining room table?

Will the internet, and the ability of students to access fake MySpace or Facebook pages at school, lead to reconsideration of students’ free speech rights by the Courts?

Facebook Tirade Against Teacher

A high school senior was suspended for “cyberbullying” a teacher by creating a Facebook group called “Ms X is the worst teacher I’ve ever met!” She posted a photo of the teacher and invited others to “express your feelings of hatred”. It was published off-campus and did not cause disruptions at school. It was not lewd, vulgar, threatening, or advocating illegal or dangerous behavior.

The Court overturned the suspension.

Other Scenarios

Can a student wear a confederate flag T-shirt?

A Malcolm X T-shirt?

A T-shirt with a beer company logo?

Should a school use a mascot that is racially derogatory or insensitive, like the Braves or Redskins? Johnny Reb?

An off-campus underground newspaper issue includes a racially offensive story?

If an editor for a student newspaper writes a controversial op-ed, can the advisor “edit” it to be more acceptable?

Can students at school put on “skits” that are derogatory to other groups at school, like making fun of a political party with few followers at the school?

Resources for more information

<http://www.firstamendmentschools.org/freedoms/speechfaqs.aspx>