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CENSORSHIP OF STUDENT SPEECH

**Minnesota Association of School Administrators and Minnesota Administrators for
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In 1969, the Supreme Court made the now famous statement that “students do not shed their constitutional rights at the school house door.” Tinker v. Des Moines Independent Community Sch. Dist., 393 U.S. 503 (1969). That statement alone, however, is not very helpful in determining what student speech can be restricted. Whether student speech can be restricted depends on an analysis of the following factors: whether the speech will lead to a substantial disruption of or material interference with school activities; whether the speech is lewd, vulgar, offensive, or obscene; and whether the speech could be attributed to the school district itself. More difficult questions arise with regard to regulation of student dress and discipline of students for off-campus speech.

NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel.

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I. THE TINKER STANDARD

A. **Material Disruption or Invasion of Rights of Others**

In Tinker v. Des Moines Independent Community Sch. Dist., 393 U.S. 503 (1969), the U.S. Supreme Court struck down a school rule that prohibited students from wearing black armbands in silent protest of the Vietnam War. The Court considered two things:

1. Is the speech protected under the First Amendment? With regard to this question, courts consider whether the student **intended to convey a particularized message** and whether there is a **reasonable likelihood** that those who viewed it would **understand the message**. If so, the speech is entitled to constitutional protection.
2. Is the speech likely to, or did it actually, cause a **“disruption of or material interference with school activities”** or **“invasion of rights of others?”**

This is the standard used whenever school regulations are directed at specific student viewpoints. Canady v. Bossier Parish Sch. Bd., 240 F.3d 437 (5th Cir. 2001).

Lessons learned from Tinker and subsequent cases include:

- (a) A fear of disruption is insufficient. The District must have specific facts from which it can reasonably forecast substantial disruption.
- (b) The fact that speech might cause discomfort and unpleasantness is an insufficient ground for regulating the speech.

B. **Threats of Harm: Protected Speech or True Threats?**

Threats of violence fall within the realm of speech that the government can regulate without offending the First Amendment. Watts v. United States, 394 U.S. 705 (1969). Although there may be some political or social value associated with threatening words in some circumstances, the government has an overriding interest in protecting individuals from fear of violence, from disruption that fear engenders, and from possibility that threatened violence will occur. R.A.V. v. City of St. Paul, 505 U.S. 377, 388 (1992).

In Lovell by Lovell v. Poway Unified School District, 90 F.3d 367 (9th Cir. 1996), a student threatened to shoot her school counselor if her schedule was not changed. The student was suspended and challenged the suspension. The 9th U.S. Circuit Court of Appeals found that the speech was not protected because it was a true threat. The hallmark of a true threat, the court noted, is whether the **victim had reason to believe that the maker of the threat would follow through with it**. The court found that the counselor did indeed have reason to believe the student might follow through with the threat and that therefore it was not protected speech under the First Amendment.

John Doe v. Pulaski County Special Sch. Dist., 306 F.3d 616 (8th Cir. 2002)

Facts: A student, J.M., was expelled from school for writing terroristic threats to his former girlfriend, K.G., who attended the same school. J.M. wrote the letter in private, at home, during summer vacation. He did not send or show the letter to K.G. He only showed the letter to his friend, D.M., when D.M. discovered it in his bedroom. He refused to let D.M. make a copy of the letter. D.M. took the letter from J.M.'s room without permission and gave it to K.G. One of K.G.'s friends then told a school official that K.G. was worried about the contents of the letter. The school board expelled J.M. for the remainder of the school year. J.M. and K.G. participated in church activities together without any problems after K.G. saw the letter. The prosecuting attorney decided not to take any formal action against J.M. based on the letter.

The district court concluded that J.M.'s letter was not a true threat. A panel of the Court of Appeals also concluded that the letter was not a true threat.

Issue: Whether the school board violated J.M.'s free speech rights when it expelled him for the offensive and vulgar letter that he prepared at home?

Decision: The test that the court applied was whether the recipient of the alleged threat could reasonably conclude that it expressed a determination or intent to injure presently or in the future. The factors that the court considered included: (1) reaction of those who heard the alleged threat; (2) whether the threat was conditional; (3) whether the person who made the alleged threat communicated it directly to the object of the threat; (4) whether the speaker had a history of making threats against the person purportedly threatened; and (5) whether the recipient had a reason to believe that the speaker had a propensity to engage in violence.

First, the court considered whether J.M. intended to communicate the purported threat. The court decided that J.M. did intend to communicate the threat based on the following factors: (1) he permitted D.M. to read the letter and admitted

that he knew there was a good possibility that D.M. would tell K.G. about the letter because they were friends; (2) J.M. discussed the letter with K.G. in more than one telephone conversation and admitted to K.G. that he had written the letter and that he talked about killing her in the letter; and (3) J.M. made similar admissions to K.G.'s best friend who was likely to convey that information to K.G.

Second, the court considered whether a reasonable recipient would perceive the letter as a threat. The court concluded that a reasonable recipient would perceive the letter as a threat based on the following factors: (1) the letter clearly expressed an intent to harm K.G.; (2) the letter was extremely intimate and personal and the violence described in the letter was directed unequivocally at K.G., and (3) there was no indication that J.M. attempted to alleviate K.G.'s concerns about the letter during the period between when he told her about the letter and when she received it..

II. LEWD, VULGAR, OFFENSIVE OR OBSCENE SPEECH

In 1986, the U.S. Supreme Court faced a situation quite different from that in Tinker, because it involved student speech that was offensive and that did not relate to political, religious, or other areas of speech that we normally think of as deserving of First Amendment protection. See Bethel Sch. Dist. v. Fraser, 478 U.S. 686 (1986). In that case, school officials suspended a student for delivering a speech at a school assembly that was replete with sexually explicit metaphors.

Reasoning that the freedom of students to advocate unpopular and controversial views in schools and classrooms must be weighed against society's countervailing interest in teaching students the boundaries of socially appropriate behavior, the Court set the following standard:

- **Schools may regulate and discipline students for speech—including speech that would otherwise be constitutionally protected—if the speech is vulgar, offensive, or obscene, or if it promotes activities or products which are illegal for minors.**
- **A school's actions in this regard must be reasonably related to a legitimate pedagogical concern.**

Fraser, 484 U.S. at 273. This standard has also been used to uphold discipline against students who distributed an “underground” student newspaper that contained profanity and encouraged illegal activity. See Bystrom v. Fridley High School, Independent Sch. Dist. No. 14, 822 F.2d 747 (8th Cir. 1987).

III. STUDENT PUBLICATIONS AND SCHOOL-SPONSORED SPEECH

A. The Standard

When a communication is school-sponsored, the school district has the authority to control the content in order to assure that the views of the speaker are not erroneously attributed to the school. Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 271 (1988). In other words, the school district has the right to exercise editorial control where it is reasonably foreseeable that members of the public would be likely to view the expression as sponsored by or reflecting the views of the school.

In Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988), the school district prohibited the publication of articles on pregnancy and divorce in the school sponsored newspaper. Upholding the district's action, the Supreme Court ruled that public school districts may exercise editorial control of student speech in school-sponsored activities so long as their actions are "**reasonably related to legitimate pedagogical concerns.**" This standard for regulating student speech is applicable whenever speech could be perceived as being sponsored or endorsed by the school district.

B. When can the speech be attributed to the school?

The following types of speech have been attributed to a school district:

- When the speech is **pursuant to a required assignment with specific parameters that is displayed at a school-sponsored assembly.** The Second Circuit Court of Appeals held that a poster created by a kindergartner for a school project could be attributed to the school. Peck v. Baldwinsville Central School District, 426 F.3d 617 (2d Cir. 2005).
- When the speech takes place at a **school-sponsored assembly.** The court held that a performance by a student musical group at an after school assembly was school-sponsored speech. The court stated that a school can exercise editorial control over speech that will likely be ascribed to the school. This includes "school sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." Golden v. Rossford Exempted Village School District, 445 F.Supp.2d 820 (N.D. Ohio 2006).
- When the speech takes place during a **valedictorian's graduation ceremony speech.** Brittany McComb v. Foothill High School. The class valedictorian

had her microphone turned off during her graduation speech because the school thought that multiple references to Jesus and the Lord would be considered proselytizing. The student is currently suing the school, claiming that her First Amendment rights were violated. The Nevada ACLU has stated that it believes the school acted properly because the speech would have been considered school-sponsored speech, and it has sued to prevent such proselytizing by schools in the past.

C. Legitimate Pedagogical Concerns

The following have been found to be legitimate pedagogical concerns that justify reasonable restrictions on student speech:

- Promoting values, whether social, moral, or political. Board of Educ., Island Trees Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 864 (1982).
- Promoting decency and civility among school children. Bystrom v. Fridley High School, Independent Sch. Dist. No. 14, 822 F.2d 747 (8th Cir. 1987).
- Teaching the shared values of a civilized social order. Bethel, 478 U.S. at 683.
- Civility and compliance with school rules. Poling v. Murphy, 872 F. 2d 757 (5th Cir. 1989).
- Assuring that school hours and school property are devoted primarily to education as embodied in the district curriculum. Bystrom, 822 F. 2d at 750.
- Preserving some trace of calm on school property. Bystrom, 822 F. 2d at 750-51.
- Divorcing extracurricular programs from controversial and sensitive topics, such as teenage sex. Henerey, 200 F.3d 1128.
- Limiting student exposure to violence, nudity, and foul language.

IV. STUDENT DRESS AND DRESS CODES

Student dress codes implicate the freedom of speech and expression protected by the First Amendment. As with any constitutionally protected right, school districts must consider how its policies and practice may burden this right.

A. Is Dress Speech?

The manner in which students express themselves through their dress can rise to the level of constitutionally protected “speech.” The U.S. Supreme Court has held that a student’s dress is a constitutionally protected form of speech if:

- (a) he or she dresses with the “intent to convey a particularized message”; and
- (b) “the likelihood [is great] that the message would be understood by those who viewed it.”

Spence v. Washington, 418 U.S. 405, 410-11 (1968).

B. Restrictions on Student Dress that Constitute “Speech”

(a) T-shirt Messages

Usually T-shirt messages will be constitutionally protected speech because they convey a message that the viewer understands. They are therefore analyzed under the Tinker standard set out above. If messages are vulgar or contrary to a school’s educational mission, however, several courts have stated that such messages can be prohibited under the vulgar speech standard. See Pyle v. South Hadley Sch. Comm., 861 F. Supp. 157 (D. Mass. 1994) (holding that school could prohibit T-shirts with the messages “Co-Ed Naked Band: Do It To The Rhythm” and “See Dick Drink. See Dick Drive. See Dick Die. Don’t Be A Dick.” as vulgar and contrary to school’s educational mission). But also see Guiles v. Marineau, 461 F.3d 320 (2d Cir. 2006)(holding that student could wear political t-shirt that referred to President as “Chicken-Hawk-in-Chief,” even though it portrayed alcohol and drugs in contravention of the district’s policy, because no reasonable person could believe that it advocated the use of alcohol or drugs).

(b) Case Study – “Straight Pride”

Chambers v. Babbitt & Independent Sch. Dist. No. 833, 145 F. Supp.2d 1068 (D. Minn. 2001)

Facts: A student was told not to wear a tee-shirt that had the words “Straight Pride” on it, after a student complained to the principal that she was offended by the shirt. There was little evidence of a history of disruption over sexual orientation issues in the district, and the district allowed posters in the school that included pink triangles and messages of

tolerance toward all people, regardless of lifestyle. The student sought an injunction prohibiting the school from not allowing him to wear the shirt.

Issues: (1) Was the t-shirt speech?; (2) Was the school's action constitutional?

Decision: The Court granted the injunction, using the Tinker standard and determining that there was little evidence to support that a disruption due to the t-shirt was reasonably predicted.

C. When Personal Expression is not Speech, Students Have a Liberty Interest in Their Personal Appearance.

The U.S. Supreme Court has recognized that most matters of personal appearance do not amount to speech in any form, but rather involve liberty interests under the 14th Amendment. Kelly v. Johnson, 425 U.S. 238 (1976). This is because a student's desire to merely express his or her individuality is generally not considered to be a particularized message that would be understood by others as such. Olesen v. Bd. of Ed., 676 F. Supp. 820 (N.D. Ill. 1987). This means that a school district does not usually have to meet the standards for restricting speech when restricting personal appearance.

Nevertheless, schools may not pass regulations impacting the liberty interest of students simply because the school has a "personal distaste" for personal appearance. See Bishop v. Colaw, 450 F.2d 1069 (8th Cir. 1971). The 14th Amendment provides that no state shall deprive any person of life, liberty, or property without due process of law. Thus, students generally have a liberty interest in matters of personal appearance such as their hair-length, hair color, and the style of their clothing.

Example: In the Wisconsin case of Breen v. Kahl, 419 F.2d 1034 (7th Cir. 1969) a school attempted to prohibit male students from wearing long hair. The school argued that long-haired boys distracted fellow students and that boys with short haircuts performed better in school. Not surprisingly, the Court rejected the school's justifications as insubstantial, and struck down the policy as unconstitutional. The court also rejected an argument by the school district that it should be able to regulate student appearance like any other conduct.

Other expressions of individuality that might be distasteful to school district administration, such as body piercing or unusual hair color, also may not be regulated unless a school district has a legitimate educational basis for doing so.

V. DISCIPLINING STUDENTS FOR OFF-CAMPUS SPEECH

While the Internet and social networking sites such as MySpace.com present an area of emerging law in the courts, the legal framework for protected and actionable speech in schools is generally the same whether it occurs in the real world or in cyberspace. Generally the Courts have looked at two main factors: (1) whether the conduct was related to a school program, or (2) whether the conduct had any direct and immediate impact on school discipline or on the safety and welfare of students or staff. The courts have also reviewed whether the discipline is reasonable in scope and related to the school's purposes.

A. "Bong Hits 4 Jesus"

During the school day, students were allowed to leave school to watch the Olympic torch travel by the school. A student held a banner on which were written the words "Bong Hits 4 Jesus" across the street from the school as the torch passed. The school suspended the student, and the student sued, claiming his First Amendment rights were violated. The Ninth Circuit Court of Appeals Court held that school could not regulate off-campus speech that did not cause a "material disruption," even though it might have undermined the school's anti-drug message. The case is now being appealed to the U.S. Supreme Court. Frederick v. Morse, 439 F.3d 1114 (9th Cir. 2006).

This case demonstrates that courts are hesitant to regulate off-campus student speech unless the district can show that the speech is likely to materially disrupt school activities. See also E.P. v. Socorro Ind. School District, 432 F.Supp.2d 682 (W.D. Tex. 2006)(holding that school district did not show that a student's diary containing fictional accounts of Nazi activities would materially disrupt school activities, and that his suspension was therefore unwarranted); LaTour v. Riverside Beaver School District, 2005 WL 2106562 (W.D. Pa. 2005) (holding that the school district could not show that a student's rap lyrics created off-campus were true threats or would materially disrupt school activities, and that his suspension therefore violated his First Amendment rights).

B. Off-campus Internet Speech

So how have courts applied this analysis to Internet speech? As the following cases illustrate, courts generally use the "substantial disruption" and "true threat" tests when considering challenges to discipline imposed on students for Internet speech created off-campus. Courts have determined more often than not that student Internet speech created off-campus is protected by the First Amendment. While the Internet speech may have been unsavory or mean-spirited, this is not enough to impose discipline without evidence of a substantial disruption at school or true threat to a student or school employee.

1. Discipline Not Warranted.

Courts in the following cases **overturned** the school’s disciplinary measures for student Internet speech:

- A student created a website using vulgar language that criticized his school and teachers. Witnesses testified that the website did not cause a disruption at school. The court applied the “material disruption” test from the Supreme Court’s language in Tinker. The court overturned the ten day suspension issued by the school stating that while the site may have been vulgar, it did not rise to the level of creating a school disruption. Beussink v. Woodland School District, 30 F.Supp.2d 1175 (E.D. Mo. 1998).
- A student created a website entitled the “Unofficial Kentlake High Home Page” and warned visitors that the site was not sponsored by the school and was created for entertainment purposes only. The student’s creative writing class had given an assignment to students to write their own obituaries. The website included two of the student’s friends’ obituaries and visitors could vote on who would “die” next and have his or her obituary posted. The school imposed a five-day suspension. The court overruled the suspension. The mock obituaries and voting did not intend to threaten anyone, actually threaten anyone, or manifest any violent tendencies. Emmett v. Kent School District No. 415, 92 F.Supp.2d 1088 (W.D. Wa. 2000).
- A student created a website showing an assistant principal advertising Viagra, portrayed as a Nazi, hitting another student, with drugs and guns, flirting with another male teacher, “baked” on drugs, defecating in class, and having intimate relations with Homer Simpson. The school district excluded the student for the remainder of the school year.

The court overturned the exclusion with the following explanation:

“Today the First Amendment protects students’ [Internet] speech to the same extent as in 1979 or 1968 when the U.S. Supreme Court decided *Tinker* . . . Even with the vastly increased opportunity to speak and be heard created by the Internet, the exceptions to First Amendment protection for student speech remain narrowly drawn, even for immature and foolishly defiant students Schools can and will adjust to the new challenges created by such students and the Internet, but not at the expense of the First Amendment.”

Beidler v. North Thurston School District, No. 99-00236 (Wash. Superior Ct. 1999).

- A student created a “Top Ten” list about the school district’s athletic director with derogatory comments about his appearance. The student e-mailed the list to friends, and one of the recipients distributed it on school grounds. The school issued a ten-day suspension to the student who originally e-mailed the list.

The court overruled the suspension on the grounds that there was no evidence that teachers were incapable of controlling their classes because of the list, and the list was not threatening. While the court admitted that the list was rude, abusive and demeaning, “[d]isliking or being upset by the content of a student’s speech is not an acceptable justification for limited student speech under *Tinker*.” Killion v. Franklin Regional School District, 136 F.Supp.2d 446 (W.D. Pa. 2001).

- A student created a website entitled “raymondsucks.org” criticizing his band teacher. The student was suspended for ten days under a general policy prohibiting disrespect of school employees. The student’s grades subsequently plummeted and he went on to fail band. The court overturned the discipline as a violation of the free speech clause of the First Amendment. The school settled the case by paying the student \$30,000, writing him a letter of apology, and expunging the suspension. O’Brien v. Westlake City Schools Board of Educ., Case No. 1:98 CV 64 (E.D. Ohio 1998).
- A student at Maple Place School created a website called “I Hate Maple Place.” The website was only accessible for three days before the student and his father took it down. The page expressly stated that it was protected by the U.S. Constitution. The website expressed the student’s opinions about teachers he liked and didn’t like, and contained a guestbook that the students explicitly requested that individuals who sign it do not use profanity. The students who did sign the guestbook used profanity, however. The student’s discipline included a five-day suspension and exclusion from some extracurricular activities.

The court determined that the website did not create a credible threat of true harm to anyone or a substantial disruption. The student was not responsible for comments posted by other students. The punishment was unjustified. Dwyer v. Oceanport School District, Civ. No. 03-6005 (D. N.J. Mar 31, 2005).

- The student created a website entitled “Satan’s web page.” The page listed “people I wish would die.” The school suspended the student and planned to expel her before the student’s parents withdrew her from the school. The court ruled the discipline violated her free speech rights because the website

did not contain any true threats and did not cause a substantial disruption. The list of people he wanted to die were not threatened to die anymore than people he listed as “cool” were made “cool” by his statements. Mahaffey v. Aldrich, 236 F.Supp.2d 779 (E.D. Mich. 2002).

- A student created a website about a group of student skateboarders. The site contained a “losers” section about other students and some insulting remarks were written about each. The remarks were crude, but not technically obscene. The student was suspended for four days, placed on probation, and banned from extracurricular activities. After a challenge to the discipline based on his free speech rights, the court determined that the student should not have been disciplined for the website because it contained protected speech. Coy v. Board of Educ. of the North Canton City Schools, 205 F.Supp.2d 791 (N.D. Oh. 2002).

2. Discipline Warranted.

Courts in the following cases **upheld** the school’s disciplinary measures for student Internet speech:

- A student created a website containing violent and crude depictions of a school’s teacher and principal. The website was entitled “Teacher Sux.” The site contained a picture of a teacher with her head cut off and blood dripping from her neck and encouraged visitors to donate \$20 for a hitman. Another picture of the teacher morphed her head into a picture of Adolf Hitler. The school permanently expelled the student. The court upheld the student’s expulsion stating that because the website disrupted the entire school community, the school could regulate the speech. J.S. ex. rel H.S. v. Bethlehem Area School District, 807 A.2d 847 (Pa. 2002).
- A student made an online parody profile of his school’s principal from an off-campus computer. The parody answered background questions about the principal using crude language to mock the principal. Students began to access the profile, posted on MySpace, from school computers. The school district suspended the student for ten days, placed him in an alternative education program for the remainder of the school year, and banned him from extracurricular events. The student and his parents sued to overturn the discipline.

The court denied the request for an injunction, because the student “substantially disrupt[ed] school operations [and] interfere[d] with the rights of others.” The number of students accessing the profile caused the school’s computer system to

shut down for five days, and school personnel were forced to spend a lot of time policing students' access of the online profile. Layshock v. Hermitage School District, 412 F.Supp.2d 502 (W.D. Pa. 2006).

3. Factors to consider when determining whether to discipline a student for an Internet site.

- Off-Campus v. On-Campus Computers: Where did the student create or access the Internet speech? Schools have the power to exercise control over what students do on school computers, while their power over off-campus computer use is more limited.
- Conduct v. Speech: Are the problems related solely to the student's Internet *speech*, or has the student engaged in any *conduct* related to the Internet speech? School officials are generally given wide latitude to regulate or punish student *conduct* that could reasonably have an adverse or disruptive effect on school. Off-campus conduct must have some *nexus* with the school to warrant discipline.
- “Substantial Disruption” or “True Threat”: If the student has only engaged in Internet *speech* created and accessed off-campus, the latitude allowed for punishment is narrower. The following are some questions for administrators to ask when determining whether to discipline a student for Internet speech (See Doe v. Pulaski County Special School District, 306 F.3d 616, 622 (8th Cir. 2002)):
 - Does the speech have a *nexus* with the school? The speech must generally involve the school itself, students or employees to implicate a school's power to discipline.
 - Does the website or online content materially and substantially interfere with the operation of the school
 - Did the student seriously encourage other students to violate laws or school rules?
 - Is there specific and significant fear of disruption, not merely some remote apprehension of a disturbance?
 - Is the fear of disruption more significant than a mere fear of discomfort and unpleasantness from an unsavory viewpoint?
 - Is the disruption merely hurt feelings?
 - Were teachers unable to control or teach their classes for a significant period of time?

- Does the website or online content constitute a “true threat”? Threats of physical violence are not protected by the First Amendment whether made inside or outside school.
- Was there a direct threat of physical violence to students or staff?
- What was the reaction of those who heard the threat?
- Was the threat conditional?
- Did the person who made the threat communicate it directly to the person who was the object of the threat?
- Did the speaker have a history of making threats against the threatened person?
- Did the threatened person have a reason to believe that the speaker had a propensity to engage in violence?

4. **RECOMMENDATIONS FOR SUCCESSFULLY DEALING WITH STUDENT INTERNET USE ISSUES.**

a. **Develop a Comprehensive Internet Policy.**

Every school district should develop an Internet use policy that clearly defines for students, parents, and school personnel the confines of acceptable use of the Internet. Administrators should actively address the policy with all students and parents.

- Administrators must ensure that the policy is **not unconstitutionally overbroad and vague** in the speech that is prohibited. In Flaherty v. Keystone Oaks School District, 247 F.Supp.2d 698 (W.D. Pa. 2003), the court overturned the school district’s policy prohibiting offensive speech that was unconstitutionally overbroad and vague.

Overbreadth – The court in Flaherty ruled that the policy was overbroad. The policy authorized discipline for all student speech that was “abusive, offending, harassing, or inappropriate.” The court stated that prohibitions must be linked to speech that substantially disrupts school operations.

Vagueness - The court stated the policy was unconstitutionally vague in part because the terms “abuse, offend, harassment, and inappropriate” were not defined.

b. **Contact Online Service Providers if You Discover That a Problematic Site Violates its “Terms of Use.”**

Online service providers may remove or modify a student's site that violates its "Terms of Use." Thus, if you receive a tip about a worrisome site, check for the site's compliance. For example, MySpace.com requires that its users be 14 years of age or older. If you discover a student under 14 has created a site, the service provider will remove it. The service provider has the power to shut down the site if the content violates its terms. The school district would also be protected from liability for action taken by the company.

c. Forbid the Use of School Computers for Anything Not School-Related.

While school districts may exercise very limited control over what students do on their home computers, they may exercise greater control over the use of school computers. Restricting school computers to school purposes limits some of the potential for student collaboration on Internet misuse. Districts are on sturdier footing for imposing discipline for violating such a prohibition.

d. If Discipline is Imposed Based on a Student's Internet Speech, Back the Decision with Evidence of the "Material Disruption" or "True Threat" Created by the Speech.

As the above cases display, First Amendment rights cause courts to critically evaluate whether discipline for Internet speech is appropriate. Administrators are stuck in a difficult position to strike the appropriate balance. If discipline is imposed, administrators can help protect their decisions by documenting the reasons why the Internet content caused a material disruption at school or posed a true threat.

e. Ensure that Your School's Computers Have Sufficient Firewall, Blocking and Filter Protection.

Discuss your school's computer protection with computer staff and ensure that it complies with applicable laws and protects students.

f. Limit School-Sponsored Learning Activities on the Internet to Registered Users.

Your school can use software applications for school-sponsored forums that are accessible only to registered users.

g. Contact Law Enforcement.

If you are unsure whether troublesome Internet content created by a student is legally grounds for student discipline or protected by the First Amendment, notifying law enforcement is another option. Law enforcement can then take any appropriate action if warranted, and the school is not responsible for those decisions.