

When MySpace Invades Your Space: Internet Safety and Cyber Bullying



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AUTHORITY TO DISCIPLINE STUDENTS

School Board may establish rules to govern student conduct

Reasonableness

- The extent to which the behavior will affect what happens in school
- The nature of the offense that is committed off school grounds



CONSTITUTIONAL LIMITS ON SCHOOL DISTRICT RULES

- ✓ First Amendment prohibits rules that suppress freedom of speech because the speech is offensive or disagreeable
- ✓ Fourth Amendment prohibits unreasonable search and seizure



WHAT CONCERNS GOVERN A STUDENT SEARCH?



A student search must be:

1. Justified by reasonable suspicion that the search will result in information connected with violation of a school rule
2. Reasonable in its scope and nature

WHAT CONCERNS GOVERN A STUDENT SEARCH?



Example:

- Search standards that apply at school do not justify seizure of student's personal computer at home

WHAT CONCERNS GOVERN AN EMPLOYEE SEARCH?



An employee search must

1. Be justified by reasonable suspicion that the search will result in information connected with violation of an employment rule
2. Be reasonable in its scope and nature
3. Not violate an employee's reasonable expectations of privacy

WHAT CONCERNS GOVERN AN EMPLOYEE SEARCH?



Example:

- If reasonable basis for belief of work-related malfeasance exists, employer has right to search employer-provided computer in private office.

ELECTRONIC SURVEILLANCE



- Reasonable expectation of privacy
- Entrances to school buildings
- School hallways
- Parking lots
- Entrances to locker rooms and rest rooms

FIRST AMENDMENT LIMITS



Courts balance student speech rights against school's right to be free from speech that

- Substantially disrupts or materially interferes with school activities—*Tinker*
- Is vulgar, lewd, sexually explicit or obscene—*Bethel*
- Is inconsistent with its "basic educational mission" and is reasonably related to legitimate pedagogical concerns—*Hazelwood*

WHAT SPEECH IS PROTECTED?



- Speech is constitutionally protected if:
 - It intends to convey a particularized message that is likely to be understood by those who view it
- Student speech that is not political or does not touch on a matter of public concern is not protected by the First Amendment.

WHAT SPEECH IS UNPROTECTED?



- “Fighting words”
- Obscenity
- Defamatory statements
- “True threats”

IS THREATENING SPEECH PROTECTED?



- Viewpoint-specific speech restrictions (that don't fall within the discussed exceptions) remain a serious violation of the First Amendment.
- However, where “true” threats are involved, there usually is no First Amendment protection.

WHAT IS A "TRUE" THREAT?



Objective Test:

- ✓ Would a reasonable person—usually the person receiving the purported threat—interpret it as a serious expression of an intent to cause a present or future harm?

(There is no requirement that the speaker had the ability or actually intended to carry out the threat.)

WHAT IS A "TRUE" THREAT?



Factors to Consider:

- ✓ The reaction of those who heard the threat
- ✓ Whether the threat was conditional
- ✓ Whether the person making the threat made it directly to the victim of the threat
- ✓ Whether the person making the threat had a history of making threats against the victim
- ✓ Whether the victim of the threat had reason to believe the maker of the threat was violent

WHAT IS NOT A "TRUE" THREAT?



- "The end is near" on computer screen
- You are "going down"
- Your "day has come"

WHAT IS A NOT A "TRUE" THREAT?



- Speech with "violent overtones" may not constitute true threats for constitutional purposes
- However, even if not a "true" threat, a student making any threat still is subject to discipline if speech falls within *Tinker*, *Bethel* or *Hazelwood* exceptions

DOE v. PULASKI SPECIAL SCHOOL DISTRICT



- Student Doe at home wrote violent and "obscenity-laden rants expressing desire to rape and murder his former girlfriend, another student
- Student-friend of Doe found letters; Doe at first stopped friend from reading them; later permitted friend to read them
- Friend later took letters and gave them to Doe's former girlfriend

DOE v. PULASKI SPECIAL SCHOOL DISTRICT



- After investigation, student expelled for violating anti-threat rules
- Lawsuit claimed free speech violation
- Supreme Court found "true" threat not protected by First Amendment
- Reasonable recipient would perceive letter as serious expression of intent to harm

WHEN IS DISCIPLINE WARRANTED?



- Where a student "directly and unambiguously threatens physical harm" against another student or employee

Discipline upheld:

- "If you don't give me this schedule change, I'm going to shoot you"
- "There's a bomb in this school, bang bang!!"

WHEN IS DISCIPLINE WARRANTED?



- No threats of violence at school should be permitted regardless of true intent
- A threat made in jest is not less serious at the time it is made just because it later is shown there was not intent to carry out the threat

CAN SCHOOLS LIMIT STUDENT INTERNET SPEECH?



To limit student speech away from school, such as on MySpace.com or other internet sites, schools need a nexus.

- > Did the speech create a substantial disruption to the school community or was it reasonable to believe such a disruption would occur?
- > Did the speech create a danger to students, staff or the school community?

CAN SCHOOLS LIMIT STUDENT INTERNET SPEECH?



- Home computer webpage entitled "Teacher Sux," with comments soliciting contributions for a hit man to kill the teacher and a diagram with the teacher's head cut off
- Threat taken seriously by teacher – suffered stress and anxiety
- Expulsion upheld, finding reasonable person could be disturbed and disturbance was disruptive enough to justify suppression of student's speech

WHEN IS INTERVENTION WARRANTED?



WHEN IN DOUBT, TAKE ACTION TO PROTECT THOSE WHO ARE THREATENED

- Courts have "give[n] full support and approval to actions of school administrators who take appropriate action . . . to protect and educate their students in a disciplined environment what is safe and conducive to learning."

WHEN SHOULD YOU TELL THE STUDENT OR STAFF WHO ARE TARGETS OF THE THREAT?



- Assess the seriousness of threat

FBI: *The School Shooter: A Threat Assessment*

LOW LEVEL THREAT



- > Vague and indirect
- > Inconsistent, implausible information lacking detail
- > Lacks realism
- > Content suggests unlikely to be carried out

MEDIUM LEVEL THREAT



- > More direct and concrete
- > Wording suggests some thought given to how threat will be carried out
- > General indication of possible time and place
- > No strong indication of preparatory steps; veiled reference or allusion to book or movie showing planning; vague statement about weapons
- > Maybe an "I'm serious" statement

HIGH LEVEL THREAT



- > Appears to pose imminent and serious danger to safety of others
- > Direct, specific and plausible
- > Suggests concrete steps have been taken to ward carrying it out, such as statements indicating threatener has acquired or practiced with a weapon or has had victim under surveillance

WHEN SHOULD YOU TELL THE STUDENT OR STAFF WHO ARE TARGETS OF THE THREAT?



- Inform law enforcement
- Data privacy considerations
- Who do I tell and how do I tell them
 - target of the threat
 - school community
