

# REGULATING STUDENT CREATED WEBSITES: FREE SPEECH IN CYBERSPACE\*

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## Abstract

This article examines the application of First Amendment principles to web sites that were created by students. Schools sometimes attempt to regulate the speech of students on such web sites by imposing disciplinary sanctions on the students who create the sites. The ability of schools to take such action depends on the interplay of a variety of factors, including the location at which web site was created (on or off campus), whether the web site was disseminated on campus, the extent to which the site caused disruption at the school, and the nature of the expression on the website. The article discusses the applicable case law and concludes with some practical guideline that can be applied by school administrators who find that they are considering disciplinary action against students with regard to student created web sites.

In 1986, a high school student spotted a teacher in a restaurant parking lot and showed the teacher his middle finger (*Klein v. Smith*, 1986), fulfilling the fantasy of many children. Today, technologically savvy students sometimes use the Internet to mock, parody, and even threaten teachers and other school personnel. Examples of such material include a “Top Ten” list about a school official containing, inter alia, derogatory remarks regarding the penis size of a school official (*Killion v. Franklin Regional School Board*, 2001), mock obituaries of classmates (*Emmett v. Kent School District #415*, 2000), and a solicitation for \$20 to help pay a “hitman” to terminate a teacher (*J.S. v. Bethlehem Area School District*, 2002).

This article discusses the constitutional right of students to produce such web sites and the corresponding ability of public schools to regulate student expression. The United States Supreme Court has not yet ruled regarding the limits of school regulation of the Internet expression of students. The lower courts, therefore, must apply traditional First Amendment concepts to a new form of speech. Complicating matters further, the seminal cases involving student expression concerned on campus speech, while recent Internet cases typically involve web sites created away from the school site that have not been actively distributed at school. This leaves school administrators and courts in the position of extrapolating rules from case law that do not necessarily apply to off campus speech. In this article, the holdings of the relevant cases are synthesized to describe how the law protects student expression and permits some regulation by schools.

The paper is organized as follows. The first section discusses the three Supreme Court cases that form the basis for any discussion regarding the regulation of student expression. The following section applies the standards set in these cases to web sites created on campus. The third section addresses the issue of web sites created off campus that are disseminated on campus. The fourth section discusses the issue of web sites created off campus in which the material is not disseminated on campus by the author. The fifth

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section discusses the issue of threats. The final section sets forth recommendations regarding the regulation of student Internet expression.

#### Supreme Court Precedent

Three U. S. Supreme Court cases, *Tinker v. Des Moines Independent Community School District* (*Tinker*), *Bethel School District No. 403 v. Fraser* (*Fraser*), and *Hazelwood School District v. Kuhlmeier* (*Kuhlmeier*), form the starting point for any discussion of the First Amendment rights of students. While none of these cases involved the Internet, the principles set forth therein guide each court that considers issues related to student created web sites.

#### Tinker

The primary case discussing the First Amendment rights of students is *Tinker*. The *Tinker* case involved three students who wore black armbands to school to protest the Vietnam War, despite knowing that wearing such armbands violated school policy. School officials suspended the students until they agreed to stop wearing the armbands. The students refused to cut short their protest and insisted on wearing the armbands until the scheduled end date of their protest. The students sought an injunction in federal court prohibiting the school from disciplining them for wearing the armbands to school.

The Supreme Court recognized the tension between the First Amendment rights of students and the need for school officials to control student conduct in the schools. The Court held that school officials cannot restrict passive, non-disruptive, student expression that does not infringe on the rights of other students. In *Tinker*, the Court determined that the school officials banned the armbands because they opposed letting the students protest the war at the school, not due to a fear of educational disruption or an infringement on student rights. Therefore, the Court held that the school violated the First Amendment rights of the students when it disciplined them.

The crucial point made in the *Tinker* decision is student expression can be restricted if it disrupts school activities or affects the rights of other students. Schools cannot discipline students based on the content of the speech, unless the speech is disruptive. However, the disruption standards means that the First Amendment rights of students are less extensive in the school setting than outside of the school. The Court was very clear that “students . . . [do not] shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” (*Tinker*, 1969, 506)

#### Fraser

*Fraser* placed more restrictions on the free speech rights of students. *Fraser* involved a student who nominated a peer for an elected office during a school-wide assembly. The nominating speech contained innuendo that “glorify[ed] male sexuality” (*Bethel School District No. 403 v. Fraser*, 1986, p. 683) and was deemed lewd and obscene under the rules of the school. The speech apparently caused no disruption at the school, but school officials nevertheless suspended the speaker for three days, after which the student sued the school district for injunctive and monetary relief.

The Supreme Court held that schools can regulate vulgar and lewd student speech without showing either the threat or the existence of a disruption. *Fraser* limited the *Tinker* speech protections by permitting school officials to regulate obscene, on campus speech unconditionally. Under *Fraser*, obscenity can be barred because it “is wholly inconsistent with the ‘fundamental values’ of public school education.” (*Bethel School District No. 403 v. Fraser*, 1986, p. 685-686)

Two important points should be noted about *Fraser*. First, the case permits schools to regulate lewd and obscene speech more restrictively than other forms of speech. Second, *Fraser* involved on campus speech and made no mention of whether schools could regulate the lewd and obscene speech of its students if such speech occurred off campus.

#### Kuhlmeier

*Kuhlmeier* placed an additional restriction on the First Amendment rights of students when speech involves part of the school’s educational function. *Kuhlmeier* involved a school newspaper that was run by the students in a journalism class. The students planned to publish an edition containing two stories that the principal found objectionable: one involved the pregnancy experiences of students at the school and the other concerned the impact of divorce on students. The principal demanded that the newspaper be printed without the two pages containing these stories. The students sued the school district seeking monetary and

injunctive relief.

The Supreme Court ruled that the principal was entitled to place restrictions on speech that involved "an integral part of the school's educational function," (*Hazelwood School District v. Kuhlmeier*, 1988, p. 264) such as the newspaper published by the journalism class that was the subject of this case. The Court noted that the journalism teacher and the principal inspected the newspaper before it was published. In addition, School Board policy stated that the newspaper was an opportunity for the students to practice what they were learning in class. Therefore, the court held that the newspaper's purpose was to provide a learning experience, not a public forum. This meant that school officials could regulate the contents of the newspaper "in any reasonable manner." (*Hazelwood School District v. Kuhlmeier*, 1988, p. 270) The court made it clear that schools can more tightly regulate school sponsored speech, such as newspapers, plays, etc., than student speech that just happened to take place at the school outside of an academic setting. Part of the reasoning underlying this decision is such sponsored speech might be viewed as having been endorsed by the school, justifying the need for heightened editorial control. The court determined that the principal had acted reasonably in editing the newspaper, so the school district prevailed.

Thus, the *Kuhlmeier* case further narrowed the First Amendment rights of students. *Kuhlmeier* permitted school officials to restrict the free speech rights of students in activities related to the school's curriculum or that the school could be regarded as having endorsed. As with *Tinker* and *Fraser*, *Kuhlmeier* involved First Amendment issues that took place in the school environment, though not necessarily in the classroom.

#### Constitutionally Permissible Regulation

As noted above, the Supreme Court has not ruled on a case involving the regulation of a student created web page or blog. Therefore, the lower courts must decide such cases based on their interpretations of the three cases discussed in the previous section. This section will analyze the approach lower courts have taken when deciding such cases.

An analysis of the few legal decisions involving restrictions placed on student created web sites shows that the rulings turn on four key issues: where the site was created, where the site was disseminated, whether the site disrupted activities at the school, and the nature of the expression on the site, with obscenities, school sponsored speech, and true threats being important categories to consider. This section considers the impact of these factors on the regulatory power of the schools.

#### Web Sites Created On Campus

The published case law does not discuss the regulation of web sites created at school. Nevertheless, this scenario appears to present a fairly straightforward analysis because such web sites fall cleanly within framework of the *Tinker*, *Fraser*, and *Kuhlmeier* cases, each of which involved on campus speech. *Fraser* permits schools to regulate against lewd and obscene web sites, while *Kuhlmeier* enables schools to adopt restrictions reasonably related to its curriculum. The *Tinker* standard of a substantial disruption of the educational process or a violation of the rights of other students applies in all other circumstances.

The case law grants schools great discretion in terms of regulating all web sites that are created on campus, but that discretion has limits. A recent case involving an off campus web site discusses, in dicta, the reach of the schools with regard to web sites created on campus. In *Mahaffey v. Aldrich*, a boy was suspended from school because of his contributions to a non-obscene web site that was created off campus (2002). The school district justified its suspension because it claimed that some of the material on the web site was added from an on campus computer during the student's free time. The court rejected the district's argument that the site was created on campus, but, in dicta, it applied the *Tinker* criteria and stated that even if the boy had conducted his activities at the school site, he could be suspended only if the speech caused a disruption in the activities of school or invaded the rights of another student. The *Mahaffey* court expressed a willingness to permit a student to create a web site at school during his free time and outside of the scope of the curriculum, when the web site could not be identified as being endorsed by the school.

It seems probable that schools cannot regulate the on campus creation of a web site if each of the following is true: the student creates the web site on his/her own time (such as at recess or lunch), the web site cannot be identified with the school (i.e., the web address does not include the school's address, no school logo is present, etc.), the web site is not obscene, and the web site does not disrupt the educational process or infringe upon the rights of others. The student's position would be especially strong if s/he did not tell other

students about the web site. Regulation would be likely to be upheld if any one of the above factors was not present in the case.

Another important restriction on the discretion of school officials arises in states that provide students with free speech protections beyond those guaranteed by the First Amendment. An example of such a state is California, which provides students with the same free speech rights in school as they have out of school, with certain exceptions such as being required to use proper English and produce quality journalism (even these requirements cannot be enforced through the use of prior restraint). (Cal. Ed. Code Sections 48907 and 48950, 2006). In brief, California nullified the Kuhlmeier decision and provided its students with greater free speech protection than the federal Constitution. Thus, school officials in California are less able to justify regulations on Internet speech based on curricular grounds than schools in most other states.

#### Off Campus Web Sites Disseminated On Campus

Web sites that are created off campus and disseminated on campus fall squarely within the Tinker paradigm involving materials created off campus coming onto the campus. Fraser would apply only if a site was obscene, while Kuhlmeier would be applicable only if the material created off-site was part of the school's curriculum. The 2002 cases *Coy v. Board of Education (Coy)* and *J.S. v. Bethlehem Area School District* explore the scope of regulation of off campus web sites that are viewed on campus, when courts apply Tinker.

Coy involved a boy (Coy) from Ohio who created a web site while at home. The web site mostly concerned skateboarders, but it also contained certain vulgar, though not obscene, language and images. One day while Coy was supposedly doing schoolwork in the computer lab, a teacher noticed him switching back and forth between various computer screens. Coy conducted this activity privately, without drawing the attention of other students. The teacher later informed the principal about Coy's activities. A district technology expert examined the history of the web sites viewed from the computer and discovered that Coy had been viewing his own site. Coy was suspended and expelled from school for 80 days, though the expulsion was subsequently changed to probation. The district claimed that the expulsion was based on its policy against viewing unauthorized web sites from campus computers. Coy appealed the expulsion and both sides moved for summary judgment. The District Court denied both motions, finding that a triable issue of material fact existed regarding whether Coy was expelled based on the content of the web site or for violating the district's policy regarding viewing unauthorized web sites.

An interesting aspect of the Coy case was the court's decision to apply Tinker rather than Fraser even though the case involved a web site containing vulgar language. The court distinguished the Fraser case because the policy considerations underlying the school's authority to regulate expression made before "a captive audience" were absent in Coy (*Coy v. Board of Education*, 2002, p. 800). Instead, Coy was looking at his own webpage in a manner that would not attract attention to himself or his actions. The Coy case shows the judge's willingness to grant greater First Amendment protection when a student kept the material to himself rather than broadcasting it to others. The court wisely drew a distinction between cases involving expression to which many other students are exposed and that which a student keeps more private. In addition, the court noted that the policy against viewing unauthorized web sites had never been enforced, with the implication being the policy might be a pretext for a content based disciplinary decision.

*J.S. v. Bethlehem Area School District* points in the opposite direction. That case involved a student who created a web site at home, which contained derogatory information about his school. Among a variety of items, the web site contained a picture in which the head of a teacher morphed into that of Adolph Hitler, cursing language directed at the teacher, and a solicitation of funds to cover the costs of a hit man to kill that teacher. The student accessed the web site while at school, showed it to another student, and told other students about it. Another teacher learned of the web page through an anonymous e-mail and forwarded the information to the principal, who notified the school staff of a problem at the school, without specifically mentioning the web site. The local police department and the FBI were notified about the threat on the web site and identified the student as the creator of the site, but declined to press charges. The targeted teacher was so distraught that she was unable to finish the school year and took a medical leave of absence for the following school year. The student was allowed to finish the school year, but the school district decided to expel the student before the start of the next term.

The Pennsylvania Supreme Court upheld the discipline against the student. The court was reluctant to permit the school to regulate off campus speech, but found that the web site could be regarded as on campus expression once the student showed the web site to another child and told others about it while at school. The court held that the student's web page caused a material disruption of the educational process, largely because the school needed to replace the teacher who was unable to return to teaching due to her emotional distress. The court also ruled that the obscenities present on the web site violated Fraser after the web site had been viewed on campus. However, the court ruled that, the web site did not constitute a true threat despite the teacher's fear of the student's solicitation to hire a hit man. The school's decision to let the student complete the school year played a major part in the court determining that the web site did not threaten anyone. However, the court ruled that the school's disciplinary action did not violate the student's First Amendment rights because the web site caused a material disruption of the education process and was obscene.

A comparison of Coy and J. S. shows the fine line between protected and unprotected speech. A key distinction between these two cases seems to be the extent to which the web site was "distributed" on campus. The importance of this factor derives from cases dealing with underground newspapers printed off campus and brought on campus (Baker v. Downey City Board of Education, 1969; Boucher v. School District of Greenfield, 1998); Bystrom v. Fridley High School, 1987; Pangle v. Bend-Lapine School District, 2000). Coy and J.S. were judged differently in part because Coy did not show his web site to other students, while J.S. showed and mentioned his web site to others. By way of analogy, Coy would be comparable to a student bringing an obscene magazine to school and reading it by himself or herself, while J. S. would involve a situation where the student showed such a magazine to some friends. The school possesses greater latitude to discipline students in the latter scenario.

Another important distinction between the cases involved the degree of disruption caused at the school. The disruption caused by Coy was negligible, as the student was the only one impacted by his own viewing of the web site. J. S., however, caused a far greater disruption, including the loss of a teacher, due to some extent to the fact that the web site was disseminated more widely at the school, including coming to the knowledge of the affected teacher.

#### Web Sites Created and Disseminated Off campus

The majority of the case law in this area involves web sites in which both the creation and the dissemination of the material took place off campus. The following examination of the cases will illustrate two main points. First, the courts applied Tinker, Fraser, and Kuhlmeier when deciding off campus student web site cases. Second, the courts gave the schools less deference with regard to predictions of disruption when all of the activity occurred off campus. For that reason, the student is more likely to prevail in this category of cases, as in the above-referenced Mahaffey case.

Before considering the case law, one of the few journal articles discussing this issue should be mentioned. Calvert (2001) argued that the school should have no power to regulate web sites that involve neither creation nor dissemination on the school campus. Calvert based his position on two arguments. First, he argued that the Tinker, Fraser, and Kuhlmeier cases do not constitute precedent for cases involving web sites that were neither created nor disseminated on campus because each of those cases involved on campus activities. Second, he claimed that sufficient remedies to regulate off campus web sites exist in the criminal and civil justice systems, making action by the schools both unnecessary and undesirable. For these reasons, Calvert argued that the courts should apply a clear standard: that schools cannot act against students who create web sites off campus. As will be seen, Calvert's argument in favor of a bright line rule has been rejected by the courts.

#### Beussink v. Woodland R-IV School District.

The first student web site case to be decided was Beussink v. Woodland R-IV School District (1998). Beussink involved a student (Beussink) who created a web site at his home without using any school resources. The web site used vulgar language in reference to teachers, the principal, and other aspects of the school. Beussink showed the page to a friend who subsequently became angry at him and downloaded the page on a school computer to get him in trouble. The school's principal and its computer teacher saw the web site on the school's computer. The principal immediately decided to suspend Beussink because he did not like

the content of the web site, even though the site did not cause any disruptions in the classroom or at the school library, where it was accessed. Beussink sought a preliminary injunction to prevent the school from suspending him.

The court granted the preliminary injunction because it regarded Beussink as likely to prevail on the merits of the case. The court first decided that the Tinker standard of a material disruption of education applied in the case, even though Beussink created the web site off campus and was not involved in downloading the page onto a campus computer. The principal admitted that the suspension was based on his disapproval of the content of the web site, not because of any disruption of the educational process. As discussed above, Tinker did not allow a school to impinge upon a student's First Amendment rights absent a showing of a material disruption of learning, so the court determined that principal acted outside the scope of his powers when suspending Beussink.

Calvert (2001), agreed with the result in Beussink, but argued that the court was not required to treat Tinker as precedent because it involved on campus activity. He also argued that future trial courts facing this issue could distinguish Tinker, et al, and fashion new legal rules to better handle the new form of expression made possible by the Internet. This has not happened, however.

Beussink has become an important case because it first extended the reasoning of Tinker to web sites created off campus. Every subsequent court that has faced the issue of student web sites created off campus has applied Tinker to the facts of the case before it. As the following cases will show, this approach leaves a great deal of room for student expression, because only in a relatively rare case would the off campus publication and viewing of material would disrupt education on campus. However, Tinker gives school officials room to operate if a substantial disruption results.

*Emmett v. Kent School District #415.*

*Emmett v. Kent School District #415* (2000) involved a student (Emmett) who created a web site at home that contained tongue-in-cheek mock obituaries of two of his friends and invited people to vote on who would "die next." (p. 1089) The page was inspired by a creative writing assignment at school in which students had to write their own obituaries. Somehow, the web page was featured on a news program and presented as containing a "hit list," even though the page never mentioned the words "hit list" (*Emmett v. Kent School District #415*, 2000, p. 1089). Emmett was placed on emergency expulsion (later modified to a 5 day suspension) for intimidation and the disruption of the educational process, among other reasons. Emmett sought a temporary restraining order preventing the school from implementing the suspension.

The court granted the temporary restraining order because Emmett was likely to prevail on the merits of the case. The court decided that neither Fraser nor Kuhlmeier applied because the expression took place entirely off campus. It regarded Tinker as controlling the case and held that the suspension violated the student's rights for two reasons. First, the evidence did not show that the web site caused any disruption to the educational process, while the school's "undifferentiated fears" of disruption were not enough to justify depriving a student of his First Amendment rights (*Emmett v. Kent School District #415*, 2000, p. 1090). Second, the court rejected the school's argument that the web page was not protected by the First Amendment because it constituted a threat to students, ruling that the page was meant to be humorous and that no one had felt threatened by it.

*Killion v. Franklin Regional School District.*

The final case to be discussed in this section is *Killion v. Franklin Regional School District* (2001). *Killion* involved a student (Killion) who was unhappy about certain school rules, especially those pertaining to the track team, of which he was a member. In apparent retribution, Killion created a web page at his home and compiled on it a "Top Ten List" about the athletic director (*Killion v. Franklin Regional School District*, 2001, p. 448). The list was extremely derogatory with regard to the athletic director's appearance, including references to his genitals. The list made its way to campus, but the student apparently did not bring it there. Killion was suspended 10 days for verbal abuse of a staff member, after which his parents took the case to court to have their son reinstated.

The court granted summary judgment in favor of the student on First Amendment grounds. The disciplinary action violated the student's constitutional rights for two reasons. First, the school failed to show that web site caused a material disruption of the learning environment under the standards set forth in

Tinker or that it threatened anyone. Second, even though web site contained lewd material, the school could not discipline the student because the list was created off campus and the student did not transport it to campus. The court ruled that Fraser only applies if the expression occurred on campus or if the student is involved in the transportation of the lewd material to the campus. Therefore, the student's speech was protected under the First Amendment.

The foregoing analysis illustrates that Calvert's position against the punishment of off campus expression was misguided. Although Calvert was correct that Tinker, et al, did not involve off campus speech, he ignored the fact that Tinker and its progeny have been applied to off campus student expression cases not involving the Internet. For example, a court applied Tinker when it ruled that a student giving the "middle finger" to a teacher while off campus would not adversely affect discipline at the school (*Klein v. Smith*, 1986). In *Fenton v. Stear* (1976), the court used Tinker to uphold a school's suspension of a student who called a teacher a "prick" in a loud voice, in front of other students, at a public parking lot on a Sunday night (*Klein v. Smith*, 1986, p. 769). Since the courts have long applied Tinker to non-Internet expression that occurred off campus, it seems logical that Tinker should apply to student web site cases as well.

#### Threats

An in-depth discussion of true threats goes beyond the scope of this article. It will suffice to say that a true threat is a statement that, considered as a whole, would cause a reasonable person to regard the statement as showing an immediate, unequivocal attempt to cause harm (*Lovell by and Through Lovell v. Poway Unified School District*, 1996). The important point for school officials to understand is true threats are not protected speech under the First Amendment. The limitations on the regulation of free speech set forth in the Tinker, Fraser, and Kuhlmeier cases do not apply to threats because they are not protected speech under the Constitution. Therefore, the location at which a threat is made is irrelevant to the issue of whether a school can discipline a student for uttering a true threat.

*Lovell by and Through Lovell v. Poway Unified School District* (Lovell), demonstrates this point. In Lovell, a high school student (Lovell) angered by her inability to obtain certain changes to her class schedule told her counselor that she could kill someone. The counselor claimed that Lovell also threatened to kill her personally, but Lovell denied that claim. Lovell was suspended by the school, after which she pursued a Section 1983 claim against the school district.

The Ninth Circuit noted, as discussed in Section IIIA, that California students, while on campus, possess state law free speech rights that are coextensive with their free speech rights off campus. However, the court held that "[t]hreats of physical violence are not protected by the First Amendment under either federal or state law, and as a result, it does not matter to our analysis that Sarah Lovell uttered her comments while at school." (*Lovell by and Through Lovell v. Poway Unified School District*, 1996, p. 371) The court then stated that since Lovell had the burden of proof, it had to accept the counselor's version of the incident because the trial judge had been unable to determine which version was accurate. The counselor testified that Lovell had made the direct threat to kill her, which rose to the level of a true threat. Therefore, the court ruled that Lovell was not entitled to relief under Section 1983 because the school district had not violated her free speech rights by suspending her for uttering an unprotected threat. Schools can restrict true threats no matter the location from which they originate because a threat is not speech for purposes of the First Amendment.

*Sherrell v. Northern Community School Corporation* (2004) also supports the notion that a student can be punished for making a threat even if he is off campus. In that case, a student (Sherrell) told two friends while off campus that he would "get his dad's gun in Indianapolis, bring it to school, start with the seventh grade, and work his way up." (*Sherrell v. Northern Community School Corporation*, 2004) School officials found out about the statement and questioned Sherrell, who admitted to making it. The authorities were notified, but declined to press charges. Nevertheless, Sherrell was suspended from school. Sherrell went to court to seek recourse, but his suspension was upheld because it was deemed an unprotected threat.

Statements qualify as threats, however, only if there is a clear and direct threat of harm to the person. In the *J. S.* case, the student's discussion of murdering his teacher and solicitation of funds to do so was not regarded as a true threat, mainly because these words were not communicated to the teacher and, as mentioned above, the school did not appear to take them seriously, since it allowed the student to finish the

school year. Similarly, the mock obituaries in the Emmett case were not regarded as direct threats against anyone, but were attempts at humor. The standard for considering expression to be a true threat is very high, meaning that many forms of expression that could be regarded as threatening would not rise to the level of being a true threat.

Calvert's position regarding the specific issue of threats also differs from the established case law. Threats have been clearly determined to lack Constitutional protection, so a school, by definition, cannot be violating the First Amendment rights of a student if it suspends a student for uttering a true threat. Thus, it makes no difference whether the threat is made on or off campus because it is not protected speech. It also makes no difference how the threat was communicated, so students making threats on a web site are not immune from consequences at school.

Calvert's assertion that criminal and civil remedies exist in cases of threats ignores the special status of schools in First Amendment jurisprudence. Certain threats might be regarded as unimportant in the criminal and civil forums, but make a significant impact at a school site. The potential availability of other options does not present a convincing case for schools not to be allowed to enforce their own restrictions on threats.

#### Recommendations for Schools

The foregoing discussion permits the formulation of a few guidelines that can help schools cope with the issues related to student created web sites.

- Web sites created at school as part of the curriculum are subject to reasonable restrictions under Kuhlmeier. This rule would apply to web sites made for a class, a school sponsored club, etc.
- Web sites containing obscenities can be prohibited if they are created and/or disseminated at school. Schools cannot regulate obscene web sites that lack a connection to the campus. Moreover, Coy shows that at least one court was hesitant to permit a school to discipline a student for looking at his own lewd web site when he did so privately and when his action did not violate a school policy regarding looking at unapproved web sites.
- A school that creates a policy against looking at unapproved web sites must draft it clearly and enforce it consistently. The Coy court looked with disfavor on the school's claim that it disciplined the student for looking at an unapproved web site when it could not show that it had ever enforced the policy. The importance of a written policy against looking at unapproved web sites was underscored recently when the state of Delaware had to stop blocking access to a web site that permitted students to rate their teachers, due to the lack of a state policy regarding blocking web sites (Brown, 2004).
- Schools can discipline students for threats regardless of whether the site was created or disseminated on campus. However, a threat only exists if it involves an unequivocal intention to harm someone. A general statement, such as "I'm so angry that I could kill someone," does not constitute a threat. Also, threatening statements that are made in jest or as a parody retain First Amendment protection.
- Other student created web sites can be regulated only if they cause a material disruption to the educational process or impinge upon the rights of other students. The threat of disruption can be very difficult to prove, meaning that prior restraint is difficult. Documentation of the disruption is an important element of proof in these cases, so the school should record the amount of counselor time, computer teacher time, etc. was spent dealing with the web sites in order to show a substantial disruption. Regulation seems more likely to be upheld if the school can show a connection between the web site and the campus.

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