

**The Internet, Schools, and the Constitution: A Historical Analysis of Court Decisions**

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**Published Date: 5/7/08**

## **Introduction**

The Internet is a valuable educational tool being utilized in many classrooms today. Courses related to web design and computers are educating students to be cyber-savvy in a way unfamiliar to many. However, with a tool like the Internet, school districts are implementing Internet and computer policies that restrict and limit how the Internet and computer can be used in a school. An Internet and computer policy typically limits students to use the Internet and computer for educational purposes. If a student violates this policy he/she will receive some type of disciplinary action. Courts have consistently ruled in favor of school districts policies that limit student use. However, there is inconsistency in courts with regard to punishment of students for improper use of the Internet at home. Improper use of the Internet by students in a broad sense is any creation or use of the World Wide Web that causes a substantial disruption to the operation of the school, or is a real threat to any person at the school. When examining the authorities of schools to punish students for Internet actions, the courts have focused mainly on three monumental case decisions. These cases are Tinker v. Des Moines Independent Community School District (1969), Bethel School District No. 403 v. Fraser (1986), and Hazelwood School District v. Kuhlmeier (1988).

Each one of the above cases set a precedent for school districts to follow when disciplining students for actions thought to be protected by the First Amendment right to freedom of speech or expression. The Tinker precedent states that the First Amendment does not protect speech that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” This is the standard that most courts use to evaluate cases of Internet free speech. As well, the Fraser standard is referenced because it gives the school authority to

discipline students for harsh, vulgar, or lewd language. The Kuhlmeier standard can also be used because it gives educators the right to censor student speech in school sponsored activities and publications as long as their actions are based on “legitimate pedagogical concerns.” Unfortunately, there have been no recent Supreme Court rulings’ dealing specifically with student speech in regards to Internet use. The uniqueness of Internet related free speech requires that a new standard be created for courts to use so that misinterpretation of past precedents will not unconstitutionally restrict the rights of students online.

### **Analysis**

One of the first legal cases having an impact on student Internet use was Beussink v. Woodland R-IV School District (1998). Brandon Beussink was a high school student who was suspended for ten days because of a webpage that he posted. This webpage contained harsh language criticizing school faculty members. The webpage was discovered by the principal after one of Beussink’s friends, acting in retaliation, informed a teacher of the webpage. Once the teacher informed the principal of the webpage, Beussink was suspended for five days and ordered to remove the website immediately. Although Beussink complied and removed the website once he was home, the principal increased his suspension to ten days. Since the school had a policy of dropping student’s grades by one letter grade for each unexcused absence in excess of ten days, Beussink ended up failing all of his classes after the suspension. Beussink decided to file suit against the school for violating his First Amendment right to freedom of speech.

The case itself would be based on the Tinker standard, meaning, did the speech materially disrupt or interfere with the school’s operation? There was no evidence that Beussink created

this page at school or used school resources for the creation of his webpage. Determining if the speech was on or off campus is vital for the school district because courts give schools more power to limit free speech that occurs on campus. On campus speech could then be brought under the Fraser standard, which prohibits vulgar and lewd speech at school sponsored functions or on school campus. Since the school district had no way of proving that Beussink's actions occurred on campus, the Tinker standard would be used and the school district would have to prove that Beussink was disciplined because the content of his website caused a substantial disruption at school. The courts determined that Beussink was disciplined for the content of his website and not because it caused a substantial disruption at school and therefore his First Amendment rights were indeed violated by the school.

Another case that demonstrates the confusing nature of Internet free speech censorship is Boucher v. School Board of Greenfield (1998). In this case, a high school student published an article in an underground school paper entitled, "So You Want To Be A Hacker." The student's article explained directions on how to hack into the school district's computer system and how to see lists of every file on the computer. Written under the name of "Sacco and Vanzetti," the article encouraged other students to hack into the system and warned potential hackers about the dangers of getting caught. Once the school determined that Boucher was the author of the article, they suspended him and recommended expulsion, which was later confirmed by the school board. Boucher filed suit claiming violation of his First Amendment rights to free speech and also sought to have the expulsion removed effective immediately.

Boucher would be granted an injunction by a district judge on the grounds that the Board failed to present evidence that proved the student's continuing enrollment created a threat to the school district. However, the Board successfully appealed this decision to the 7<sup>th</sup> Circuit court

on the grounds that the student's article "purports to be a blueprint for the invasion of Greenfield's computer system along with encouragement to do just that." Although Boucher's article only gives directions for hacking into the district's system, there was no indication that he actually did break into the districts computer files. So how did he lose his case? The appeals court found that the article advocated on-campus activity that would be disruptive to the school and a reasonable forecast of disruption was all that would be needed by the school to discipline Boucher. The importance of this decision for educational policy is that schools do not need to wait for the substantial disruption caused by a student's speech to occur if they can prove that there is a reasonable forecast of disruption.

Perhaps the biggest victory for school districts in regards to student use of the Internet is in the case of J.S. v. Bethlehem Area School Dist. (2000). In this case, an eighth grade student created a website at his home computer and posted it on the Internet. This site was entitled "Teacher Sux" and contained "derogatory, profane, offensive and threatening comments" about the student's algebra teacher and his principal. The principal, taking the threats on the website as real, notified the local police and the Federal Bureau of Investigation but neither organization decided to file any criminal charges against J.S. Mrs. Fulmer, the algebra teacher targeted by the website, claimed to suffer from anxiety, stress, and headaches which lead to her taking a medical leave of absence for the remainder of the year. J.S. continued to attend classes for the remainder of the school year, free from punishment, until the end of the year when the school district decided to suspend and ultimately voted to expel J.S. from school. The ensuing court case would be argued over the school district's violation of J.S. First Amendment rights.

The case itself would be decided by the Pennsylvania Supreme Court. Their decision was based on two different things, did the website constitute a true threat and did it cause a

substantial disruption to the school. Since the website was targeted at two school employees and one of which had to take a medical leave of absence, the courts found that the website was in violation of the Tinker and the Fraser standards. This is unique in cases involving student use of the Internet because most courts only apply the Tinker standard. The J.S. court decided that the school districts punishment for the website was justifiable under the Fraser standard because it was vulgar speech that diluted the basic purpose of the school. Using the Fraser standard gives school districts case law to defend its discipline of student Internet use for material that is “vulgar, lewd, or plainly offensive.” Substantial disruption of the school was based on the fact that Mrs. Fulmer, the algebra teacher targeted on the website, had to take a leave of absence for the year and three substitutes were utilized to fill her position. It is noteworthy to mention that some educational law scholars find this decision to be incorrect because they do not believe that replacing one teacher, who might be overly sensitive, constitutes a substantial disruption to the learning environment.

Although school districts have had some success early on in disciplining students for Internet related violations, most recently the courts have ruled against the school’s authority. Emmett v. Kent School District No. 415 (2000) is a prime example of this trend. In this case, a high school student created a website with mock obituaries of students at his school. There was also a place for visitors to vote for who would “die next” on the web page. A news report claimed that his website contained a “hit list” of students being targeted at the school, even though these words were nowhere to be found on the website. Emmett removed the web page immediately after the airing of the news story. School administrators decided to place Emmett on emergency expulsion, which was later reduced to a five day suspension. Emmett filed suit on

the basis that his Internet website was totally off campus and the school's suspension violated his First Amendment rights.

The U.S. District Court decided to base their decision on the Fraser and Kuhlmeier standards. Since Emmett's website did not occur at a school assembly as in Fraser (on-campus speech) or in a school sponsored newspaper as in Kuhlmeier, the student's speech was entirely off-campus. This means that the courts determined Emmett's "speech was entirely outside the school's supervision or control." The problem for the school district was that they could not prove that the Emmett's website caused a substantial disruption to the school, nor could they prove that the mock obituaries were a true threat to anyone. Also, the courts found no evidence that the voting on the web page "were intended to threaten anyone, did actually threaten anyone or manifested any violent tendencies whatsoever." This court decision limits school districts on disciplining students for Internet related violations because it makes Internet speech entirely off-campus and thus gives students greater protection under the First Amendment.

When dealing with student Internet use and discipline, schools not only need to be aware of the students First Amendment rights, but also their Fourth Amendment rights as well. In the case, Killion v. Franklin Regional School Dist. (2001), the courts set a precedent for due process rights of students protected by the Fourth Amendment. Zachariah Paul was a high school student who created a "top ten list" about the schools athletic director. This list was created at his home and it basically ridiculed the athletic director's appearance and genital size. Paul then emailed this list to some of his friends at school, one of whom printed copies of the list and distributed it at school. School officials then met with Paul and his mother and informed them that he would be suspended for ten days for "verbal/written abuse of a staff member" in accordance with the district's policy against abuse of teachers and administrators. A written notice, requested by the

mother, was mailed out the day after the meeting as an official documentation of the school district's charges against Paul. Paul sued under violation of his First and Fourth Amendment rights.

The school district in this case is faced with quite a burden. They had to prove that the speech in question substantially interfered with the learning environment and "with requirements of appropriate discipline in the operation of the school." Unable to prove this, the courts found that the district violated the students First Amendment rights because he was punished based on the content of his speech alone, not because it caused any disruption to the school. The courts also decided that the district's policy on preventing abuse against teachers and administrators was unconstitutionally broad and vague; giving the district the right to punish students for constitutionally protected activities. Paul's Fourth Amendment rights to due process were violated because he received no written notice of the charges until after his suspension and he had insufficient time to prepare for a hearing to refute the accusations against him. An important lesson for district's to learn from this case is that student Internet speech must meet multiple requirements before a school can legally discipline them. Also, school's should recognize the importance of due process rights and make sure to give the student sufficient notice of the charges against them, in writing, and not rush disciplinary action because of the content of the student's Internet speech.

A final case to analyze in determining a school district's authority to punish students for Internet related violations is Mahaffey ex rel. Mahaffey v. Aldrich (2002). This case features a high school student who, with the help of another student in the district, created an Internet site entitled, "Satan's Web Page." The site included a list of people who the students wished would die, who was cool, Satan's mission instructions for viewers to kill someone, and also included a

request that viewers not really follow through and do any of this. School officials discovered the website from the local police, who were informed of the web page by another student at the school. Administrators suspended Mahaffey for intimidation and threats through his website. Mahaffey countered by stating that the site was created “for laughs” because he and his friend were bored, not because they truly wanted to hurt anyone. He filed suit against the school for violating his First Amendment rights.

Even though Mahaffey admitted that he may have used a school computer to create some of the website, the courts still considered his speech to be off campus because the school could not prove his usage of school property. The court used the Tinker standard to determine if Mahaffey’s speech caused a substantial disruption to the school’s operation. They decided that the website did not substantially interfere with the learning environment, nor did it infringe on the rights of other students. Therefore, the school district’s suspension of Mahaffey was found to be in violation of his First Amendment rights. Much like in the case of Killion v. Franklin Regional School Dist. (2001), Mahaffey also had his Fourth Amendment due process rights violated by the school district. The school district’s code of conduct allows students the opportunity to cross examine witnesses before disciplinary action is taken, an opportunity that was never offered to Mahaffey before he was suspended for an entire semester. Again, this case indicates the importance of school district’s to only punish Internet speech that clearly disrupts the learning environment or is a true threat to infringe on the rights of other students.

### **Institutional Policies/ Practices**

As the above cases indicate, there is some confusion as to what exactly school districts can and cannot punish students for in regards to Internet use. The first step that needs to be taken

to protect school districts from lawsuits stemming from violating student's First and Fourth Amendment rights is a detailed Internet use policy for the district. This policy will need to contain detailed descriptions about what is appropriate use of the Internet and what punishment students will receive for violating this policy. However, it is important for school districts to keep in mind when constructing this policy that the writings cannot be too broad or vague and it can only restrict student Internet access on campus for legitimate educational concerns. Having a lawyer present when developing this policy, will help districts make sure that they are not overstepping their boundaries and unconstitutionally limiting a child's First Amendment rights to freedom of speech. The policy should also clearly define the procedures the school will follow when disciplining students for violations of the Internet use policy. As Killion v. Franklin Regional School Dist. (2001) indicated, improper procedures on the school's part can result in a violation of the student's due process rights.

The best way for school districts to keep from violating a student's First Amendment rights to freedom of speech through the use of the Internet is to make sure that there is a substantial disruption to the learning environment of the school. In the few cases that the school districts have won regarding student Internet use, the districts were successful in proving that the material posted on the web substantially interfered, or had the potential to significantly disrupt, the operation of the school. In nearly every case mentioned above, the district's lost their case because they could not prove that the student's Internet speech substantially disrupted the learning environment. It is vital that administrators remember that students do not shed their constitutional rights when on school ground and that discipline can not be handed out simply because the material posted on the Internet is considered vulgar, rude, or unpopular with the

administration. Disciplining of students regarding Internet speech can only be done if the speech disrupts the operation of the school or is a real threat to someone at the school.

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