

# **Cyberbullying, Section 160.775 R.S.Mo., and the 1<sup>st</sup> Amendment**

**Emily Omohundro  
Kristen O'Neal**



# Scenario

The morning after the boys basketball team lost the state championship in overtime, Ms. Smith overheard Patty and Penny discussing the loss and a new "campaign" on social media. Ms. Smith did not hear their entire conversation but did hear them mention Vicky. Vicky is captain of the cheerleading squad and is dating Brad, the co-captain of the boys basketball team. Curious about what is going on, Ms. Smith gets on social media. After reviewing some posts, Ms. Smith learned Brad caught Vicky canoodling with Billy, the other co-captain, the night before the championship game. Brad was heartbroken and upset with both Vicky and Billy. By tipoff time, half the boys were not speaking to each other. The tension spread to the floor. Brad and Billy refused to pass the ball to each other. Brad only had 6 points compared to his usual 20 points and gave up 10 turnovers. Billy stats were equally underwhelming. The students were now blaming Vicky for the loss and were posting photographs and comments about Vicky using #VickytheSLUT. By the time Ms. Smith reported the issue to administration, the hashtag was trending on Facebook and Twitter.

# Bullying – § 160.775 RSMo

Bullying of students is prohibited on school property, at any school function, or on a school bus.

Bullying - intimidation, unwanted aggressive behavior, or harassment that:

1. is repetitive or is substantially likely to be repeated and causes a reasonable student to fear for his or her physical safety or property;
2. substantially interferes with the educational performance, opportunities, or benefits of any student without exception; or
3. substantially disrupts the orderly operation of the school.

Bullying may consist of physical actions, including gestures, or oral, cyberbullying, electronic, or written communication, and any threat of retaliation for reporting of such acts.



# Cyberbullying – § 160.775 RSMo

- Cyberbullying - Bullying through the transmission of a communication including, but not limited to, a message, text, sound, or image by means of an electronic device including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager.
- Notwithstanding any other provision of law to the contrary, any school district shall have jurisdiction to prohibit cyberbullying that originates on a school's campus or at a district activity if:
  - the electronic communication was made using the school's technological resources
  - there is a sufficient nexus to the educational environment
  - the electronic communication was made on the school's campus or at a district activity using the student's own personal technological resources
- The school district may discipline any student for such cyberbullying to the greatest extent allowed by law.



# Bullying – MSBA Policy JFCF

- Bullying - intimidation, unwanted aggressive behavior, or harassment that
  - is repetitive or is substantially likely to be repeated and causes a reasonable student to fear for his or her physical safety or property
  - substantially interferes with the educational performance, opportunities or benefits of any student without exception
  - substantially disrupts the orderly operation of the school



- Bullying includes, but is not limited to:
  - physical actions, including violence, gestures, theft, or property damage
  - oral, written, or electronic communication, including name-calling, put-downs, extortion, or threats
  - threats of reprisal or retaliation for reporting such acts

# Cyberbullying – MSBA Policy JFCF

- Cyberbullying - bullying committed by transmission of a communication including, but not limited to, a message, text, sound or image by means of an electronic device including, but not limited to, a telephone, wireless telephone or other wireless communication device, computer or pager.
- The district has jurisdiction over cyberbullying that uses the district's technology resources or that originates on district property, at a district activity or on district transportation.



# Cyberbullying – MSBA Policy JFCF

- Even when cyberbullying does not involve district property, activities or technology resources, the district will impose consequences and discipline for those who engage in cyberbullying if:
  - there is a sufficient nexus to the educational environment
  - the behavior materially and substantially disrupts the educational environment
  - the communication involves a threat as defined by law
  - the district is otherwise allowed by law to address the behavior.



# Bullying – MCE Policy 2655



- Bullying - the intentional action by an individual or group of individuals to inflict intimidation, unwanted aggressive behavior, or harassment that:
  - is repetitive or is substantially likely to be repeated and causes a reasonable student to fear for his or her physical safety or property
  - substantially interferes with the educational performance, opportunities, or benefits of any student without exception
  - substantially disrupts the orderly operation of the school
- Bullying may consist of physical actions, including gestures, or oral, cyberbullying, electronic, or written communication, and any threat of retaliation for reporting acts of bullying

# Cyberbullying – MCE Policy 2655

- Cyberbullying - bullying through the transmission of a communication including, but not limited to, a message, text, sound, or image by means of an electronic device including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager.
- The District may prohibit and discipline for cyberbullying that originates on any District campus or at a District activity if:
  - the electronic communication was made using the school's technological resources
  - there is a sufficient nexus to the educational environment
  - the electronic communication was made on the District's campus or at a District activity using the student's own personal technological resources.
- Students who engage in significant acts of misconduct off campus which materially and adversely impact the education of District students will be subject to discipline.



# First Amendment

- "Congress shall make no law . . . abridging the freedom of speech, or of the press. . ."
- Made applicable to the States via the Due Process Clause of the 14<sup>th</sup> Amendment
- Does not include:
  - Incitement
  - Obscenity
  - Fighting words
  - Fraud/Perjury
  - Defamation
  - Integral to Criminal Conduct



# First Amendment

- Students do not check their First Amendment rights at the door of the school building
- *Tinker v. Des Moines Independent Community School District* (1969) – arm bands
  - Schools are allowed to forbid conduct that would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school"



# First Amendment

- *Bethel School District v. Fraser* (1986) – student council speech
  - Limits *Tinker* by prohibiting speech that is sexually vulgar



# First Amendment

- *Hazelwood School District v. Kuhlmeier* (1988) – school newspaper
  - Schools are allowed to exercise prior restraint of school-sponsored expression, such as newspapers and assembly speeches, if the censorship is "reasonably related to legitimate pedagogical concerns"
  - Schools do not have to endorse speech by students that can be attributed to the school
  - Speech involving sexually charged, vulgar language, inappropriate for school aged children

## THE SPECTRUM

Hazelwood School District

HAZELWOOD EAST HIGH SCHOOL

- May 1983

### HAZELWOOD V. KUHLMEIER



In May of 1983, Hazelwood East High School's Principal, Ryan Reynolds, was asked to review the final draft of Hazelwood's student newspaper, *The Spectrum* before it was printed and distributed.

In his reading, he discovered two student articles which he found to be inappropriate for younger readers.

Under the impression that there was insufficient time to edit the articles before printing, he cut them out.

The students who wrote the articles felt that their First Amendment right to freedom of the press had been violated by Reynolds' censoring of *The Spectrum's* contents.

They decided to take Reynolds and the school district to court over the matter.

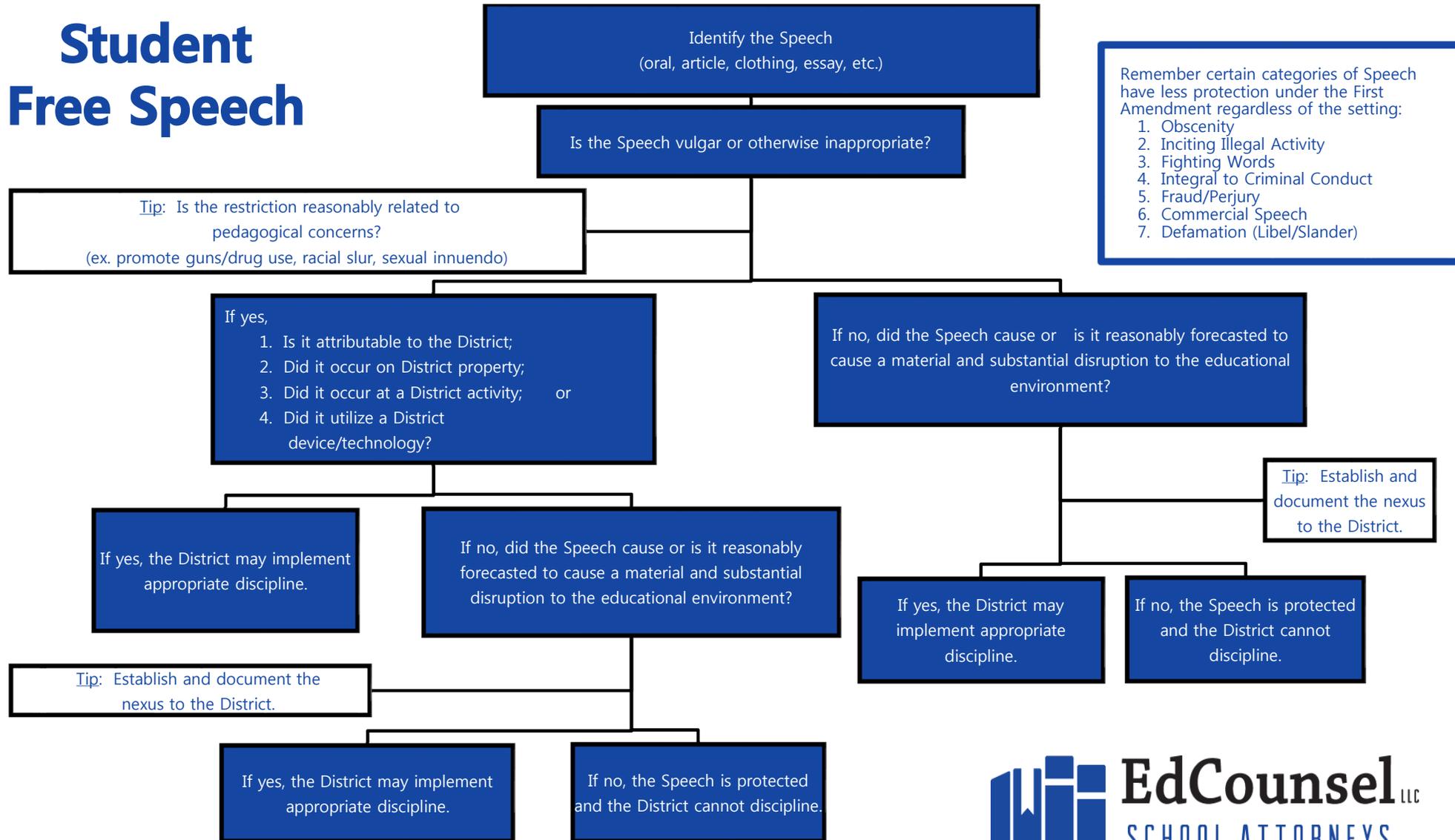
The case began in District Court, and was afterward brought to the Court of Appeals, then finally moving to the Supreme Court.

# First Amendment

- *Morse v. Frederick* (2007) – “bong hits 4 Jesus”
  - The First Amendment does not prevent educators from suppressing, at or across the street from a school-supervised event, student speech that is reasonably viewed as promoting illegal drug use.



# Student Free Speech



# Investigation

- Building Coordinator (likely a building principal) must initiate within 2 school days of receiving a report of bullying
- Investigation must be completed within 10 school days of receiving the report
- Possible consequences
  - MCE Policy 2655 - loss of privileges, classroom detention, conference with teacher, parents contacted, conference with principal, in-school suspension, out-of-school suspension, expulsion, and law enforcement contacted
  - MSBA Policy JFCF - detention, in-school suspension, out-of-school suspension, expulsion, removal from participation in activities, exclusion from honors and awards, and other consequences deemed appropriate by the principal or superintendent. The district will also contact law enforcement when required by law or notify social media companies of inappropriate online activity when appropriate.

# When Can You Discipline Students For Off-Campus Misconduct



- Nexus to the school environment.
- Material and substantial disruption in the school environment
  - Current or foreseeable
  - Documentation is key

# Tips

- Discuss limitations with parents upfront
  - FERPA
  - First Amendment
- Document how the conduct falls outside First Amendment protection
  - Using school laptop
  - While at school
  - The substantial disruption it did or reasonably forecasted to cause



# Tips

- If the District cannot formally discipline consider alternatives
  - Conferences with students
  - Additional training
  - MSBA Policy JFCF - Even in situations where the district does not have jurisdiction to discipline a student for bullying, such as when the acts take place off campus and there is an insufficient nexus to the district, the principal or designee will take appropriate actions to assist student victims. Such actions may include, but are not limited to, contacting the parents/guardians of the victim and the alleged perpetrators, communicating that this behavior is not allowed on district grounds or at district activities, notifying the appropriate district staff to assist the victim, and taking additional action when appropriate, such as notifying law enforcement or social media companies of inappropriate online activity.





## Tips

- Track complaints and investigations by both alleged perpetrator and alleged victim
- Media inquiries
  - Take complaints of bullying seriously
  - Investigating pursuant to Board Policy
  - Cannot share any additional information due to confidentiality laws

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