

MICKES O'TOOLE

IN MY SOCIAL MEDIA ERA

MANAGING STUDENT BEHAVIORS, COMMUNITY EXPECTATIONS AND KEEPINGS SCHOOL SAFE

PRESENTED BY
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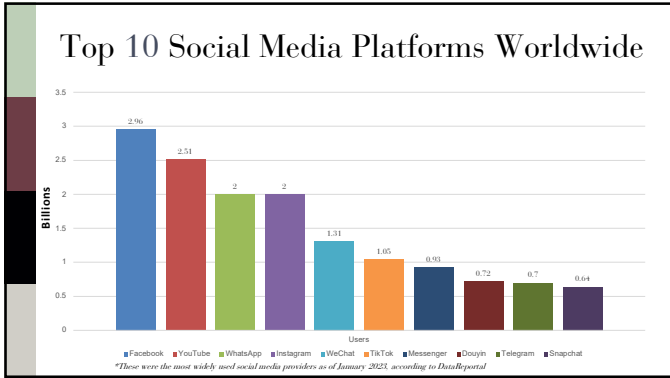
Today's Agenda



- Student Rights & Discipline
- Confidentiality and Community Transparency
- Recent Developments



Student Rights & Discipline



How Much Time Do People Spend on Social Media?

Internet users ages 16 to 64 worldwide spent a daily average of **2 hours and 31 minutes** on social media as of late 2022.

Four in every 10 minutes spent online is now attributable to social media activities.

*11DataReportal. "Digital 2023: Global Overview Report."

Consider

Off Campus Conduct

First Amendment

Discipline Procedures

Privacy & Transparency

Social Media & Schools

Off Campus Conduct



MCE Policy 2610

- *“Students who engage in significant acts of misconduct off campus which materially and adversely impact the educational environment of district students to the extent allowed by law will be subject to discipline up to and including expulsion.”*

MSBA Policy JC-R1

- *“The district may also discipline students for off-campus conduct that negatively impacts the educational environment, to the extent allowed by law.”*

Test for Off Campus Conduct

Tinker decision:

- Students can be disciplined for speech that occurs off-campus when a relationship or nexus to the school can be established.
- Practical Application: Connection between off-campus speech and **material** and **substantial** interference with efficient school operations.



Establishing a Connection/Nexus

- Where did the conduct occur?
- Did any contributing act occur on campus?
- Is the conduct reasonably likely to cause a disruption at school?
- What is the likely impact on the school?
- Did the student intend to disturb the educational process?
- Does action need to be taken to protect students or staff?



Mahanoy Area S.D. v. B.L.

- Supreme Court decision regarding student off-campus speech.
- Court ruled 8-1 in favor of student B.L.
- Held B.L.'s off-campus speech was protected by the First Amendment.



Mahoney – The Snapchat

- B.L. tried out for varsity cheer team but made the junior varsity cheer team.
- Over the weekend, B.L. used her personal cell phone while at a convenience store and posted to her Snapchat stories.
- B.L. had about 250 “friends” on Snapchat including students.
- Coaches made aware of post.
- Cheerleaders and others “visibly upset”.
- Post discussed by a cheer coach in class for 5-10 minutes on a couple of days.
- Coaches suspended B.L. from JV cheer team.



“P*** school P*** softball P*** cheer P*** everything.”

“Love how me and [another student] get told we need a year of JV before we make varsity but that [] doesn't matter to anyone else? 🤔”

Mahoney – The Opinion

A school's interest to regulate student speech remains significant in some off-campus circumstances.

- Serious or severe bullying or harassment targeting particular individuals.
- Threats aimed at teachers or other students.
- The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities.
- Breaches of school security devices, including material maintained within school computers.



Mahoney – The Opinion

- Schools DO have interests in SOME circumstances to regulate off-campus student speech.
- Left Tinker in place but added three features that reduce school's interests to regulate off-campus student speech.



Mahoney – The Opinion

Three features of off-campus speech that often distinguish schools' efforts to regulate off-campus speech:

Feature #1

A school will rarely stand in the place of the student's parents with off-campus speech.

Feature #2

From student speaker's perspective, regulation of off-campus and on-campus speech would include all speech the student utters in a 24-hour period.

Feature #3

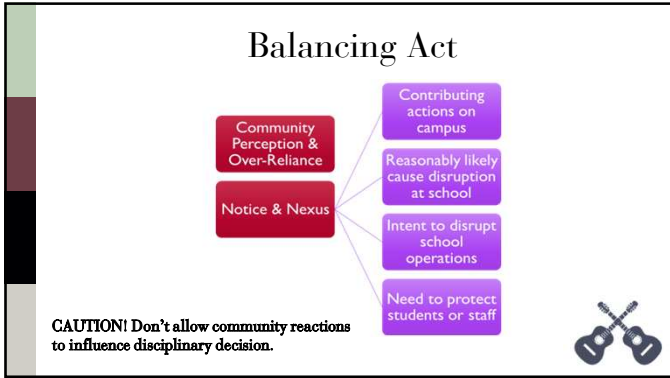
School has an interest in protecting a student's unpopular expression, especially when expression takes place off-campus.

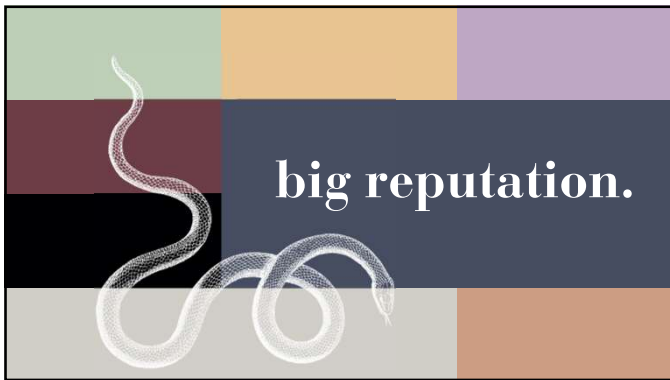
- Representative democracy only works if we protect the marketplace of ideas.
- Free exchange facilitates an informed public.

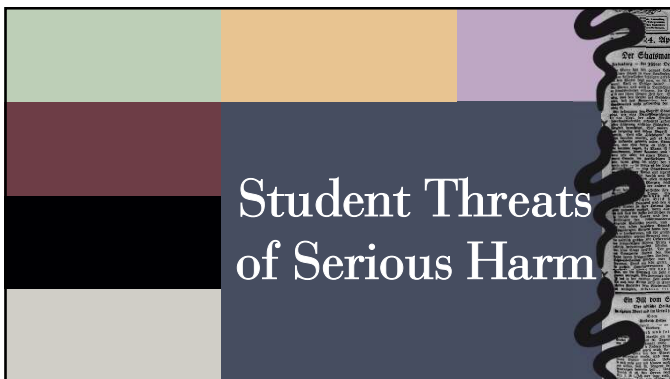
Mahoney – Takeaway

- Fact specific inquiry in each situation.
- Must balance disruption/school's interests vs student's rights.
- Heightened protections when protected speech is involved.









“True Threats”

- True threat is a “statement that a reasonable recipient would have interpreted as a serious expression of an intent to harm or cause injury to another.”
- Must have intent to communicate statement to another
- Not protected by First Amendment and can be disciplined



D.J.M. v. Hannibal Public School District (8th Circuit)

“True Threat” Test



Did the speaker intend to communicate statement?



Would reasonable recipient of communication view as a threat?

- Student IM'd death threats against five other students to a friend, discussed getting a gun, shooting himself, and making the Hannibal known for something
- The classmate emailed parts of the conversation to the principal
- Placed in protective custody
- Student claimed First Amendment rights were violated by District's long-term suspension



D.J.M. v. Hannibal

Communication met true threat standard:

- Communicated threat to a classmate
- Mentioned suicide in connection with a shooting
- Identified a specific type of gun student could use and listed a specific number of individuals he planned to shoot
- Admitted depression

Communication met true threat standard because:

- Expressed access to weapons
- Statement that student wanted Hannibal “to be known for something”
- No one thought student was joking



D.J.M. v. Hannibal

- Communication caused substantial disruption:
 - Parents and students notified school expressing concerns about student safety
 - Parents asked about rumored “hit list”
 - School officials took lots of time to handle situation

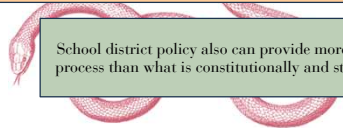


Due Process

The Fifth and Fourteenth Amendments of the United States Constitution guarantee that no person shall be deprived of life, liberty, or property without due process of law.

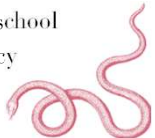
The Missouri Constitution also has a due process provision. Missouri Constitution Article 1, Section 10.

School district policy also can provide more, but not less, due process than what is constitutionally and statutorily required.



Suspension for Weapons Violation

- Per statute 160.261, a student who brings a weapon to school shall be suspended for not less than one year or expelled, except:
 - The superintendent may modify this requirement on a case-by-case basis
 - May allow student to attend alternative school
 - “Weapon” will be defined by Board policy



Suspension From Other Schools

- A school district may honor a suspension or expulsion from another in-state public school, out-of-state public school, private school, charter school or parochial school.
- The superintendent meets with the parents, guardians, or student and determines the conduct would have resulted in a suspension or expulsion in the district and would have been similarly disciplined.



Creating a Safe Environment: Enrollment

- Request records from former district within 2 days
- Former district must respond within 5 days
- Where there is reason to suspect that admission will create an immediate danger to the safety of other pupils and employees of the District, the District may convene a hearing within 5 days of the request to register and determine whether or not the pupil may register.



Suspension of 10 Days or Less

1. Principal has the authority to suspend for up to 10 days
2. Principal must provide student with due process:
 - Written or verbal notice to student of facts/reasons for suspension
 - Permit student to respond and present their version of the facts



Suspension of Greater than 10 Days

- Superintendents may suspend for a period not to exceed 180-days
- Notice of Right to appeal
- Suspension stayed UNLESS, student represents a “continuing danger to persons or property or an ongoing threat of disrupting the academic process.”



Suspension of Greater than 10 Days

Suspensions of greater than 180 days only after board hearing

- Std: Conduct “prejudicial to good order and discipline in the schools or which tends to impair the moral or good conduct of the pupils.”
- Notice of Hearing (including date and time for hearing).



Special Education Student Exception


Students with disabilities are entitled to education services and cannot be excluded from the regular education program if crime was related to the disability





Family Education Rights & Privacy Act (FERPA)


- o **Prohibits Disclosure** of student's educational records or personally identifiable student information without written parental consent;
- o Gives parents and eligible students with **Access** to inspect and review the student's educational records; and
- o Gives parents or eligible students (age18+) the right to request **Amendment** of records they believe are inaccurate or misleading.



Family Education Rights & Privacy Act (FERPA)

What Are Educational Records/Personally Identifiable Student Information?

- o All records related to a student that are **maintained** or **retained** by the District
 - o Source of record is irrelevant
- o Includes discipline records, special education records, nurse's logs, parent communication logs
- o May include camera footage
- o Does not include a teacher's personal notes shared only with a substitute



FERPA Exceptions

- “Directory Information”- Information deemed not generally harmful to disclose:
 1. district designates information as “directory” in policy
 2. directory information is available to the public
 3. may include student’s name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent school attended.
- Other staff with legitimate educational interest (need to know to serve the student)
- Health or safety emergency
- Other limited exceptions, including judicial subpoena/court order

** Board policy is more restrictive than FERPA. FERPA relates to district records, not personal observations.*



NOT A LOT GOING ON AT THE MOMENT

Recent Developments

- Employee Speech – Protected? Not Protected?
- U.S. Department of Education
- OCR and the Definition of Discrimination
- Participation in Sports



