

# Schools May Expel Students for Personal Journal Entries

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## Education Law Notes

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We have previously discussed the tension between a school district's discipline for social media posts and the protections of the First Amendment. [Click here](#). Indeed, as the United States Supreme Court said in *Tinker v. Des Moines Independent County School District*, 393 U.S. 503 (1969), public school students do not forfeit their "constitutional rights to freedom of speech or expression at the schoolhouse gate."

Social media posts can be viewed by a seemingly unlimited number of "Friends" almost instantly and, therefore, can be seen to create an immediate disruption, depending upon its content. However, does a student's personal journal lack all of these characteristics? If the contents of the journal describe a seemingly violent intent towards the school, can that student be expelled? Last month the Ninth Circuit of the United States Court of Appeals said *yes*.

In *McNeil v. Sherwood School District 88J et al.*, Case No. 3:15-cv-01098, the Student created in May 2015 a "hit list" in his *personal* journal. The journal named 22 specific students and one former employee. The Student's entry stated that he "was god" and that "all these people *must die*." The journal also contained unstated depictions of violence.

The Student's mother discovered the entries four months later and brought them to a therapist for advice. From there, a series of events beyond the Student's control unraveled. Believing that she was a mandated reporter, the therapist notified the police who then told the school district. The police discovered that there were guns in the Student's house. But, the Student explained that he used the journal to "vent" and that he never intended to carry out any violent plans. The police decided no criminal charges were warranted.

The school, however, pursuant to its own policies, notified the parents of the students on the "hit list." This caused parents to seek meetings with the Principal and some students missed or left school. Eventually, the press caught wind of the story and one student was caught with a knife at school, stating that he brought it to protect himself. The school suspended the Student and thereafter notified him he would be expelled for "a threat of violence" that "caused a distinct and substantial disruption to the school environment." The Student was expelled for a year, then challenged the expulsion based on an alleged infringement of his First Amendment rights.

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In reaching its decision, the Court fashioned a three-part test that was dependent on (1) the degree of likelihood of harm to the school; (2) whether it was reasonably foreseeable that the speech would reach and impact the school; and (3) the relationship between the content and context of the speech and the school. Here, the Court found that the school district reasonably concluded that all three of these factors had been met in order to justify the school's actions. Perhaps most notably, the Court relied on the fact that the journal entries identified specific students *at the school* and that the entries contained further depictions of violence. Thus, said the Court, the Student's purported lack of intent to inflict any harm was, under these circumstances, not dispositive.

The Court also seemed to recognize the extended reach of the school's discipline into the Student's *personal* journal. As to that issue, the Court stated:

Ordinarily, schools may not discipline students for the contents of their private, off-campus journal entries, any more than they can punish students for their private thoughts, but schools have a right, indeed an obligation, to address a credible threat of violence involving the school community.

The Court's decision extends the reach of a school district into a student's private journal entries that he never intended to make public. Nevertheless, school administrators such as those in *Mercier* are thrust into the unfair position of having to either justify their decisions to expel; or face the possible consequences of not expelling despite having some credible threat of violence. In the end, administrators must decide which conversation they would rather have—the one where they acted or the one where they did not. While the Court's decision undoubtedly turns on the specific circumstances at issue, it is at least to some extent a victory for administrators who must walk that very fine line.

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