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Social Media and Student Discipline - Where Are We?

Education Law Notes

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The United States Supreme Court stated nearly 50 years ago that public school students do not shed their rights to free speech at the schoolhouse gate. In *Tinker v. Des Moines Indep. Cmty. Sch. Dist.,**[1]* the Court struck down suspensions to students for wearing arm bands in protest of the Vietnam war. Today, however, social media such as "Facebook" and "Snapchat" present administrators with more difficult challenges. In the aftermath of tragic school shootings and the epidemic of cyberbullying, administrators must strike a balance between protecting their schools and respecting the First Amendment. So, when are suspensions proper and when are they not?

A Pennsylvania court recently said a school could suspend a student for posting a video reasonably thought to be a threat to shoot up the school. In *A.N. v Upper Perkiomen School Dist. et al.,**[2]* the Student posted a video of *Evan,* which comes from the non-profit group "Sandy Hook Promise" that promotes awareness for the signs of mass school violence. *Evan* shows teenage boy Evan and a teenage girl anonymously writing notes to each other on a desk through the school year. At the end of the year, they discover their identities while signing yearbooks. The video then fades to black as a student enters the gym and starts shooting. The *Evan* video then replays a second time while highlighting the student shooter in the background getting bullied and showing overlooked signs of potential violence.

In *A.N.*, a student posted *Evan* on his own "Instagram" page, but started the video at the shootings. He then imposed violent lyrics over the video, such as "you'd better... out run my gun..." and he titled the post "See you next year if you're still alive." Several students viewed the post and parents notified the police and Principal. The school closed the next day and the administration suspended the Student. The Student then sought to enjoin his suspension, claiming that it violated his free speech rights. The Court disagreed. Instead, it stated that student discipline for social media posts is appropriate if the posts "reasonably" lead administrators to forecast a substantial disruption to the school. In *A.N.*, the Court found the school met this standard, in that the police were notified, a parent expressed concern and the schools were closed.

Courts so far have seemingly upheld suspensions for reasonably suspicious threats of mass violence. For example, in *R.L. v. Central York School District*,[3] a student was suspended for posting on his webpage "Plot twist, bomb isn't found and goes off tomorrow." The Student posted this message the night police were called to investigate a false bomb threat at his school. Similarly, in *Wynar v. Douglas County School District*,[4] a student posted increasingly disturbing messages stating that he owned a "sweet gun," that he hadn't decided the date he would "do it" and that he would only kill people he hated. The Court found his suspension lawful,

noting that "we can only imagine what would have happened if the school officials, after learning of the writing, did nothing about it and [the Student] did in fact come to the school with a gun."

Perceived threats against individuals have been met with mixed decisions. In *Wisniewsk v. Weedsport C.S. D.,**[5]* the Second Circuit Court of Appeals upheld the suspension of a student who posted a drawing of a teacher with blood spatters from a gunshot. However, in *Burge v. Colton. Sch. Dist.,**[6]* a student posted on his Facebook page that a teacher who had just given him a "C" on a test "needs to be shot." The Court, however, said that there was no reason for the school to believe that he would carry through on any perceived threat. The Court found that the teacher's anxiety over the post was insufficient to justify the suspension.

Court decisions involving cyberbullying are also difficult to reconcile. In *Kowalski v. Berkley Cty. Sch.*,[7] a Student created a webpage with posts that said the victim had herpes, was a "whore" and edited pictures of her with vulgar sexual references. The posts obviously upset the victim and her parents complained to the administration. Here, the Court upheld the Student's suspension. But, in *J.C. v. Beverly Hills Unified Sch. Dist.,**[8]* a student made a video of a group of students calling a female student a "slut," "spoiled" and ugly in vulgar terms. However, the Court said that it could not uphold school discipline of student speech simply because young persons are unpredictable or immature, or because, in general, teenagers are emotionally fragile and may often fight over hurtful comments.

So where are the courts with discipline and social media? Unfortunately, the truth is that there is simply no bright-line rule. In cases involving threats of mass violence, administrators are given the most judicial support. From there, however, the lines get progressively ill-defined. Administrators must view each case based upon its own facts and determine whether the social media postings could reasonably create a disruption to the school, and also determine an appropriate length of discipline. As the cases above demonstrate, that is easier said than done.

1. 393 U.S. 503 (1969).
2. 2017 WL 85387 (E.D. PA, 2017).
3. 183 F. Supp. 3d. 625 (M.D. PA, 2016).
4. 728 F. 3d 1062 (2013).
5. 494 F. 3d. 34 (2d. Cir. 2007).
6. 100 F. Supp. 3d 1057 (2015).
7. 652 F.3d 565 (4th. Cir. 2011).
8. 711 F. Supp. 2d 1094 (C.D. Cal. 2010)

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