

Student Speech and Social Networking Sites
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BACKGROUND:

The top ten social networking sites receive an audience of more than 68 million and reach 45 percent of active web users as of April 2006, according to Nielsen//Netratings. High school and college students account for a significant number of users on sites such MySpace.com, Facebook.com and Xanga.com.

MySpace.com is a social networking system available to anyone more than 13-years-old. Members can integrate their profiles with blogs, instant messaging, email, music, photos and chatrooms. A person can view other accounts after he/she open his/her own. As of April 2006, the site had an audience of more than 38 million, according to Nielsen/Netratings. The site, which launched in 2002, is now owned by Rupert Murdoch's News Corp.

Facebook.com was founded in 2004 and includes more than 7.5 million people, according to the Web site. Individuals with affiliated high school or college email addresses can join the social network. It is the seventh-most trafficked Web site in the U.S., according to comScore, an internet data service provider.

As more students continue share information on social networking sites, an increasing number of students are finding themselves disciplined when school administrators feel particular postings violate school conduct codes.

RECAP ON LEGAL PRECEDENT:

The Supreme Court has yet to directly rule on a case involving off-campus internet speech. However, most lower courts follow the standard created under *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). In *Tinker*, the court ruled that students retain First Amendment protections in a public school setting so long as it does not substantially disrupt school operations or the rights of others.

A student's First Amendment protection was further defined under *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986), which held that lewd, vulgar, or profane language may be prohibited on school property. In 2002, the Pennsylvania Supreme court ruled in *J.S. v. Bethlehem Area School District* that under *Bethel* school administrators may have the authority to discipline off-campus speech.

Most lower courts continue to review off-campus student Internet speech under the *Tinker and Bethel* decisions.

SUMMARY OF EXAMPLES:

Students who are being punished for postings made on social networking sites fall into several categories.

- I. Students who have been suspended or expelled from school for postings that the school finds disruptive or threatening.
 - A. Several students who have been disciplined are currently taking legal action.
- II. Students disciplined for posting comments or photos alluding to illegal behavior such as underage drinking, drug use, or gun possession. Student athletes are especially targeted for punishment when the administrators find evidence of underage drinking posted online.
 - B. At private institutions, students are also being punished for posting activities that violate the student conduct code. Several students have been expelled from private colleges for revealing their homosexuality on social networking sites.
- III. Many schools are creating new student conduct codes in which students are not allowed to access the social networking sites on-or-off-campus. There is also legislation being considered that would require schools to monitor students' online activity.

EXAMPLES

The following are a list of examples dealing incidents involving off-campus student postings on social networking sites.

I. Student Suspended or Expelled for Social Network Site Postings

The president of the student government at Fisher College in Boston was expelled for posting comments on Facebook deemed threatening to a campus police officer. Although the student contacted the ACLU, at this time it does not appear there is any legal action pending.

Sarah Schweitzer, *Fisher College expels student over website entries*, Boston Globe, Oct. 6, 2005,

http://www.boston.com/news/education/higher/articles/2005/10/06/fisher_college_expels_student_over_website_entries?mode=PF

A junior at Paramus High School in New Jersey was suspended in October 2005 for making comments about a fellow student on MySpace. The student served the suspension and it does not appear that any legal action is being taken.

Vauhini Vara, *Some Students Find Themselves In Principal's Office Over Blogs*, Wall Street Journal Online, Nov. 26, 2005,

http://online.wsj.com/public/article/SB113268572534704333-kl_gh5uVNqDPNPepwznr7DnkfW8_20051204.html?mod=blogs

In October 2005, a student at Butler High School in Matthews, N.C., was suspended for posting a photo of a school administrator's head inserted on top of the body of Robocop. The student served the suspension and it does not appear any legal is being taken.

Vauhini Vara, *Some Students Find Themselves In Principal's Office Over Blogs*, Wall Street Journal Online, Nov. 26, 2005,

http://online.wsj.com/public/article/SB113268572534704333-kl_gh5uVNqDPNPepwznr7DnkfW8_20051204.html?mod=blogs

A Littleton High School student in Colorado was suspended for 15 days for comments made criticizing his school on MySpace. However, the student's suspension was cut short after the ACLU threatened to file suit on the student's behalf. The school administrators also agreed to remove any record of the suspension from the student's record.

Associated Press, *Student Suspended for MySpace Posting Return to School*, Feb. 2, 2006, <http://www.firstamendmentcenter.org/news.aspx?id=16511>

Administrators suspended three students at Powell High School, a public school in Tennessee, for posing as a teacher while creating MySpace postings which the administrators deemed inappropriate. The suspensions ranged from nine to 30 days based on their involvement. The District Attorney General's Office is deciding whether to prosecute the students.

Associated Press, *Schools weigh free speech against objectionable comments*, Feb. 6, 2006, <http://www.firstamendmentcenter.org/news.aspx?id=16426>

A 15-year-old student in Athens, Georgia, was suspended and transferred to an alternative school after making an entry on Xanga.com that school officials said threatened a teacher. It does not appear the student is taking legal action.

Emily Walker, *Student to be transferred to alternative school after 'threatening' blog post*, Student Press Law Center, Feb. 10, 2006,

http://www.splc.org/newsflash_archives.asp?id=1182&year=2006

Four students at Syracuse University, a private university, were dismissed from a writing class after they created a Facebook.com group to criticize their writing instructor. The students were also required to write letters of apology and create educational fliers explaining the dangers of Facebook.com. It does not appear that any of the students are taking legal action.

Allison Retka, *Syracuse disciplines students for Facebook.com group: 'Time will tell' if freedom of expression issues become commonplace on campus, professor says*, Student Press Law Center, Feb. 14, 2006, <http://www.splc.org/newsflash.asp?id=1186>

The University of Central Florida charged a student with harassment for comments made about a student government candidate on Facebook.com. After the Foundation for Individual Rights in Education

(FIRE) intervened, the university judicial board found the student was not in violation of the school's conduct code.

FIRE Press Release, *Student Wins Facebook.com Case at University of Central Florida*, FIRE, March 6, 2006, <http://www.thefire.org/index.php/article/6867.html>

Twenty students were suspended for two days from TeWinkle Middle School in Costa Mesa, Calif., for their involvement in a MySpace group in which one student threatened to kill another student and made anti-Semitic remarks. There does not appear to be any legal action being pursued. Although police investigated hate crime and terrorist threat charges, it does not appear any charges have been filed.

Allison Retka, *Students in MySpace group suspended after contents deemed threatening*, Student Press Law Center, March 8, 2006, http://www.splc.org/newsflash_archives.asp?id=1206&year=2006

At Reed College in Portland, Ore., a student was denied admissions because of remarks made about the college on his LiveJournal site.

Janet Kornblum and Mary Beth Marklein, *What you say online could haunt you*, USA Today, March 8, 2006, http://www.usatoday.com/tech/news/internetprivacy/2006-03-08-facebook-myspace_x.htm

Five students at Kirkwood High School in Missouri were suspended for 10 days after posting a list of "who's hot and who's not" in their junior class. The student's parents are not planning to file a lawsuit.

Leisa Zigman, *Students Disciplined For Facebook Content*, ksd.com, May 3, 2006, http://www.ksdk.com/news/investigative/investigations_article.aspx?storyid=96243

The Springfield School Board in Ohio reinstated a 14-year-old girl who, along with a friend, created phony profiles of a school administrator and a teacher. The girl was represented by the ACLU.

Wendy Davis, *Teens' online postings are new tool for police*, Boston Globe, May 15, 2006, http://www.boston.com/news/nation/articles/2006/05/15/teens_online_postings_are_new_tool_for_police/

Five students at Etiwanda High School in California were suspended for posting a comment which used vulgar language and Nazi pictures to criticize a teacher.

Wendy Leung, *Suspensions over MySpace lead to free-speech protests*, San Bernardino County Sun, May 21, 2006, at News.

An Illinois high school student in Plainfield School District 202 was suspended for 10 days after posting comments on Xanga.com that criticized the punishment of a fellow student and made reference to the Columbine shootings. The student has retained an attorney and a hearing this summer will determine whether the student will be expelled.

Gil Kaufman, *Students Face School Discipline For 'Inappropriate' MySpace Posts*, MTV.com, May 24, 2006, <http://www.mtv.com/news/articles/1532417/20060524/index.jhtml?headlines=true>

At Carmel Valley Middle School in California a student who photographed and posted a picture of group of girls, one of them in her bra, in the school lockerroom was disciplined for violating the school rule against using cameras on campus.

Sherry Saaverda, *How much space to give MySpace users?*, San Diego Union-Tribune, June 4, 2006, <http://www.signonsandiego.com/news/education/20060604-9999-1n4myspace.html>

An Aviara Oaks Middle School student in California was suspended for a day for a derogatory remark made on another student's MySpace profile.

Sherry Saaverda, *How much space to give MySpace users?*, San Diego Union-Tribune, June 4, 2006, <http://www.signonsandiego.com/news/education/20060604-9999-1n4myspace.html>

A. Legal Action Being Pursued By Disciplined Students

The Oceanport School District in New Jersey settled with Ryan Dwyer, a 17-year-old student, for \$117,500 in October 2005 after a district court ruled that the school district had violated the student's First Amendment rights for a Web site he created. Comments on the site included, "MAPLE IS THE WORST SCHOOL ON THE PLANET!" and "The Principal, Dr. Amato, is not your friend and is a dictator." The student had been suspended from school, kicked off the baseball team for a month and told he couldn't attend an out of town field trip.

Vauhini Vara, *Some Students Find Themselves In Principal's Office Over Blogs*, Wall Street Journal Online, Nov. 26, 2005, http://online.wsj.com/public/article/SB113268572534704333-kl_gh5uVNgDPNPepwznr7DnkfW8_20051204.html?mod=blogs

A 17-year-old student at Hickory High School in Pennsylvania was suspended for 10 days and later transferred to an alternative education program after he created a phony account for his principal on MySpace. The ACLU has filed a lawsuit on the student's behalf is pending. In January, a judge refused to grant the student a temporary restraining order letting him back into the school. In March, the school district has sought permission to sue the ACLU attorneys representing the student if the district loses the case. They claim the ALCU attorneys contributed to the student's damaged reputation because of the publicity the lawsuit has brought and therefore the attorneys should have to pay a percentage of the damages.

Kevin Poulsen, *Scenes From the MySpace Backlash*, Wired.com, Feb. 27, 2006, <http://wired.com/news/politics/0,70254-0.html>

Allison Retka, *School district blames ACLU for student's defamation claim*, Student Press Law Center, March 3, 2006, http://www.splc.org/newsflash_archives.asp?id=1202&year=2006

In Florida, a North Port High School teacher filed a lawsuit against a student for degrading comments made the teacher on a Web site. The student was also suspended by the school.

Kelli Kennedy, *Legal questions rise as schools punish students for using MySpace*, Associated Press, Apr. 23, 2006, at State and Regional.

II. Disciplined for creating a posting alluding to illegal activity

Seven male basketball players were suspended for two weeks after administrators at Lincoln East High School in Nebraska discovered blog entries mentioning the consumption of alcohol.

Nancy Buczek, *Schools Discipline Students Over Internet Content*, The Post-Standard, Feb. 2, 2006, at A1.

More than 15 students involved in extracurricular activities at East Grand Rapids High School in Michigan received two week suspensions from their activities after administrators found online photos showing the students with alcohol.

Associated Press, *Internet photos of drinking get students into trouble*, Feb. 7, 2006, at State and Regional.

Two swimmers were kicked off the team at Louisiana State after athletic officials discovered they belonged to a Facebook group which criticized swim coaches.

Janet Kornblum and Mary Beth Marklein, *What you say online could haunt you*, USA Today, March 8, 2006, http://www.usatoday.com/tech/news/internetprivacy/2006-03-08-facebook-myspace_x.htm

A football player at the University of Colorado was not allowed to play in a bowl game after he sent racially charged comment on Facebook about a fellow athlete.

Janet Kornblum and Mary Beth Marklein, *What you say online could haunt you*, USA Today, March 8, 2006, http://www.usatoday.com/tech/news/internetprivacy/2006-03-08-facebook-myspace_x.htm

A fraternity at the University of North Florida was put on probation in March 2006 after pictures were posted on Facebook of an off-campus party that showed underage drinking.

Jackelyn Barnard, *UNF Fraternity Put on Probation for Party Pictures*, First Coast News, March 13, 2006, <http://www.firstcoastnews.com/news/local/news-article.aspx?storyid=53679>

About 20 students were banned from participating in extracurricular activities at East Grand Rapids High School in Michigan after a photo showing the students drinking was posted online.

Wendy Davis, *Teens' online postings are new tool for police*, Boston Globe, May 15, 2006, http://www.boston.com/news/nation/articles/2006/05/15/teens_online_postings_are_new_tool_for_police/

High School administrators demanded a group of students be tested for drugs after seeing a MySpace photo showing the teens passing around a pipe. The school dropped the charge after the ACLU of Massachusetts intervened.

Wendy Davis, *Teens' online postings are new tool for police*, Boston Globe, May 15, 2006, http://www.boston.com/news/nation/articles/2006/05/15/teens_online_postings_are_new_tool_for_police/

Four female soccer players at San Diego State University were suspended from the team for posting comments on MySpace after their coach had warned the team not to post comments on any social networking site.

Brent Schrottenboer, *College athletes caught in tangled Web*, The San Diego Union-Tribune, May 24, 2006, http://www.signonsandiego.com/uniontrib/20060524/news_1s24myspace.html

Nine cheerleaders at Glenbard East High School in Illinois were suspended after administrators viewed MySpace photos of the cheerleaders drinking alcohol at a party.

Sara Hooker, *Blogging penalties without policies Schools without formal rules still willing to crack down*, Chicago Daily Herald, May 26, 2006, at Pg. 1.

After the San Diego City Schools police department learned of MySpace photo showing a student possibly holding a gun, the school ordered a search of that student's on campus possessions.

Sherry Saaverda, *How much space to give MySpace users?*, San Diego Union-Tribune, June 4, 2006, <http://www.signonsandiego.com/news/education/20060604-9999-1n4myspace.html>

B. Arrested for Postings

A 17-year-old in Michigan is facing three counts relating to child pornography which carry up to 20 years in prison after he posted a photo of two friends, both under 18, having sex on his Xanga.com.

Wendy Davis, *Teens' online postings are new tool for police*, Boston Globe, May 15, 2006, http://www.boston.com/news/nation/articles/2006/05/15/teens_online_postings_are_new_tool_for_police/

Three Rhode Island teens are facing child pornography charges for allegedly posting sexually explicit photos of themselves on MySpace.

Wendy Davis, *Teens' online postings are new tool for police*, Boston Globe, May 15, 2006, http://www.boston.com/news/nation/articles/2006/05/15/teens_online_postings_are_new_tool_for_police/

C. Disciplined for Sexual Orientation

Administrators assigned a sophomore at Duquesne University, a private university in Pittsburgh, a 10-page essay on the pros and cons of homosexuality after the student posted derogatory comments about homosexuals on Facebook.com. Administrators said the student has violated the university's discrimination policy.

Evan Mayor, *Student punished for anti-gay comment on Internet blog*, Student Press Law Center, Oct. 28, 2005,

http://www.splc.org/newsflash_archives.asp?id=1112&year=2005

A student at John Brown University, a Christian college in Arkansas, was kicked out of school after administrators viewed a Facebook photo of him dressed in drag and read postings commenting about his boyfriends. The university said the student's activities violated the campus conduct codes requiring student behavior to "affirm and honor Scripture."

Janet Kornblum and Mary Beth Marklein, *What you say online could haunt you*, USA Today, March 8, 2006, http://www.usatoday.com/tech/news/internetprivacy/2006-03-08-facebook-myspace_x.htm

A University of Cumberlands student in Kentucky was expelled after revealing on a MySpace posting that he was gay and has a boyfriend. Administrators at the private college said the student violated the student code of conduct by promoting "sexual behavior not consistent with Christian principles." The student has retained an attorney and is considering taking legal action.

Allison Retka, *University uses MySpace profile to expel gay student*, Student Press Law Center, Apr. 12, 2006, <http://www.splc.org/newsflash.asp?id=1241>

III. School Policies and Legislation Created

Students at Pope John XXIII Regional High School, a private school in New Jersey, were told they must dismantle their MySpace and other social networking profiles or they could face suspension.

Laura Bruno, *Blogging ban provokes a debate over cyberspace*, Daily Record, Oct. 24, 2005,

<http://www.dailyrecord.com/apps/pbcs.dll/article?AID=/20051024/NEWS01/510240324/1005>

A November 2005 update to the California State University Student Conduct Code states that students may be disciplined for obscene content posted online.

James Gonzales, *Code of conduct revisions hit Cal State-Sacramento students' cyber world*, The State Hornet, Feb. 9, 2006, at U-Wire.

The Lake County school district in suburban Chicago passed a rule requiring students who are involved in extracurricular activities to sign a pledge stating they may be punished for any illicit behavior found on social-networking sites like Facebook or MySpace.

Gil Kaufman, Students Face School Discipline For 'Inappropriate' MySpace Posts, MTV.com, May 24, 2006,

<http://www.mtv.com/news/articles/1532417/20060524/index.jhtml?headlines=true>

Republicans in the U.S. House of Representatives introduced a bill, HR 5319, which would require public schools to monitor students' online activities. In addition, schools would be required to install technology to block access to any social networking Web site or chat room in which students may be "presented with obscene or indecent material."

A.J. Bauer, *Student's Columbine reference leads to expulsion hearing*, Student Press Law Center, June 1, 2006, <http://www.splc.org/newsflash.asp?id=1269>