

Student Rights – Responsible Use

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Agenda:

- Student rights, legal framework
- Responsible use, teaching-learning moments
- Privacy considerations

N.M. ADMIN. CODE 6.11.2

RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOLS AND PUBLIC SCHOOL STUDENTS

Be certain your local policies and procedures are consistent with this regulation.

6.11.2.7 DEFINITIONS:

L. “Legal limits” include the requirements of the federal and state constitutions and governing statutes, standards and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools’ authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which must be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.

New Tune, Same Dance: Tinker in the Modern Classroom



Tinker v. Des Moines Independent Community School District:

- Students planned to wear black armbands in support of a truce in the Vietnam war.
- School learned of planned protest and implemented a policy to deter participation.
- 3 students wore armbands and were sent home.

Tinker v. Des Moines Independent Community School District:

U.S. Supreme Court in a 7-2 Decision held that:

- Students did not lose their First Amendment rights to freedom of speech when they stepped onto school property; and
- Armbands were pure speech which could not be infringed without proving that speech would *“materially and substantially” interfere with the operation of the school.*

Tinker v. Des Moines Independent Community School District:

U.S. Supreme Court in a 7-2 Decision held that:

- Justice Abe Fortas stating that no one expects students to “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate...
- In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views." — *Justice Fortas, speaking for the majority*

Taking a knee: free speech?

V.A. v. San Pasqual Valley Unified School District et al, No. 3:2017cv02471 (S.D. Cal. 2017)

- School creates a policy after student kneeled during the national anthem.
- Student sued the district seeking to enjoin enforcement of the policy.
- Court grants a TRO, stating that the student is likely to prevail at trial.

School Regulation of Expressive Conduct by Students

- Schools may regulate expressive conduct consistent with students' First Amendment rights
- School need not tolerate speech or conduct that is *disruptive or inconsistent with its basic educational mission*
- When creating policy schools must avoid narrowly tailoring to prohibit specific speech, e.g., kneeling during the national anthem only.

Freedom of expression framework in a nutshell:

Tinker 1969 – **materially and substantially interfere** with the operation of the school

Bethel v. Fraizer 1986 – "Conduct which materially and substantially interferes with the educational process is prohibited, including the use of **obscene, profane language or gestures.**"

Freedom of expression framework in a nutshell cont.:

Hazelwood v. Kuhlmeier 1988 - "Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities," the Court said, "so long as their actions are *reasonably related to legitimate [educational] concerns.*"

Morse v. Fredrick 2007 – when that speech is reasonably viewed as *promoting illegal drug use.*

Learning opportunity?

Respect for thoughts and opinions of others; no right or wrong; demonstration of freedom available to all in a democratic society.

Is your policy targeting a specific act; can it be more narrowly tailored?

Was the act itself materially disruptive to the operation of the school?

Did the aftermath of the act itself materially disruptive to the operation of the school?

Learning opportunity cont.

Is the consequence based on the legal framework or reflective of the administrator's personal opinions/beliefs?

Is there a way to keep the student in school and explore how the same point could have been made in a manner that was not materially disruptive?

SOCIAL MEDIA

What is social media?

A FORM OF EXPRESSION!

So, do we need another legal framework or set of rules to analyze permissible use of social media?

Do we need another framework or rules to analyze responsible use alternatives?

SOCIAL MEDIA

No, and no! Apply the 1st Amendment analysis we just discussed.

The problem with social media is the rapid, widespread and permanent impact of impermissible and/or irresponsible use.

Does this not call for preemptive discussions, curriculum and/or admonishments?

SOCIAL MEDIA

**Yes, yes and yes; but approach
the preemptive work in the
context of the development of
responsible use policies,
curriculum and citizenship.**

PRIVACY CONSIDERATIONS

Fourth Amendment of US Constitution

“The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated and no warrants shall issue, but upon probable cause . . .”

Public Schools are considered the Government.

THREE PART TEST FOR SEARCH

- **NM Court of Appeals** - *State of New Mexico v. Jonathan D. (2009)* - Court affirmed district court's denial of motion to suppress evidence obtained as a result of a school search.
- School search met the qualifications of a valid search because the search was:

TEST CONTINUED ...

1. based on *reasonable individualized suspicion*, AND
2. *reasonable in scope*, AND
3. *not excessively intrusive* in light of the age and sex of the student and nature of the infraction.

4TH AMENDMENT IMPLICATIONS IN MONITORING SOCIAL MEDIA

- Glendale Unified School District monitors student social media posts in an effort combat cyber bullying and increase student safety.
- Is this a violation of students' rights?
- Do students have a reasonable expectation of privacy in their social media accounts?

WHAT ABOUT CELL PHONES?

- Cell phones may be seized when used to break school rules or used in violation of school rules.
- Can contents of cell phones be searched?
- Do students have a reasonable expectation of privacy in contents of phones?

THANK YOU!

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