



ONLINE SPEECH & DISCIPLINE

Dear School Administrator,

School starts soon and the ACLU recognizes that online speech such as MySpace, Facebook, Twitter, YouTube, blogs and texting present special challenges as you attempt to keep pace with ever advancing technologies. We hope to offer some clarity, at least as to our perspective on the constitutionality of some disciplinary matters, and avoid litigation down the road.

School officials are certainly permitted to enact reasonable policies to ensure the orderly functioning of the school day. See *Morse v. Frederick*, 551 U.S. 393 (2007).

- Schools may place restrictions on Internet computer and cell phone usage during school time, on school property, and utilizing school resources. For example, a school can reasonably require that cell phones be turned off during class. See *Coy v. Bd. of Educ. N. Canton City Schools*, 205 F.Supp.2d 791 (N.D. Ohio 2002).
- Schools may place reasonable limits on student speech that is school-sponsored, such as a school newspaper. See *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).
- Schools may discipline students for speech that disrupts school. Courts have required that the speech substantially interferes with school activity in order for a student to be disciplined. Fear that speech *may* disrupt things, speech that leads to discussion or even heated debate, or speech that a school official dislikes is not sufficient to merit stifling their speech. See *Tinker v. Des Moines Indep. Community School District*, 393 U.S. 503 (1969); *Nixon v. N. Local School District Bd. of Educ.*, 383 F.Supp.2d 965 (D. Ohio 2005).
- Students who violate those rules may of course be disciplined according to a set policy.

However, school officials' disciplinary reach is limited to speech that occurs during school.

- Schools generally cannot discipline students for online activity or speech that occurs entirely outside of the school setting.
- The only exception is for "true threats" made against someone else in the school; then schools may discipline the student making the threat according to set policy. See *J.S. v. Bethlehem School District*, 569 Pa. 638 (Pa. 2002); *Watts v. U.S.*, 394 U.S. 705 (1969).

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 SHARES



- Aside from threats, speech made entirely outside of school, even if it is about school, is not within the school's disciplinary reach. For example, a student complaining about or making fun of a teacher on a public website – if it's done on the student's time, using a non-school computer – may not be disciplined by the school.
- If a school official believes they have been slandered by a student's out-of-school online speech, they may not discipline the student in school. Rather the official's proper legal avenue for redress may be in a private legal action against the student.

In sum, a student may be disciplined for disruptive speech made during school, threats, violation of school rules pertaining to school-sponsored speech or technology use during school. If a student's online speech occurs entirely outside of school and is not a threat, they may not be disciplined by school authorities.

If our organization may be of any assistance, please feel free to call or e-mail.

ACLU of Ohio
- Legal Department