

Criticizing the Coach, Social Media and the First Amendment

James Bemiller, J.D., University of Tennessee
Dr. Sylvia Trendafilova, University of Tennessee

The use of the Internet and social media is infused in the American student lifestyle. Pew Internet & American Life Project: Teens and Social Media 2 (2007) (stating that 93% of teenagers use the Internet and 73% of teenagers use a social networking site). This phenomenon of social media use in its various forms (Facebook, MySpace, Twitter, etc.) has presented school administrators and coaches with a twist on an old issue: criticism by students and student athletes in the scholastic setting. Instead of hate mail to the coach or a scribbled cartoon lampooning the principal or athletic director posted in the cafeteria or locker room, modern technology enables students to disseminate public criticism of school officials quickly to a large audience complete with pictures and video. Student-generated hostile and offensive online speech directed at school officials has generated a line of litigation pitting administrators' control of the educational environment against students' First Amendment rights.

Citizens are guaranteed the First Amendment Constitutional right of free speech. How should administrators balance students' First Amendment rights with the school's responsibility to regulate social media which is disparaging to administrators, coaches, and staff members?

The proposed session will explore the evolution of student free speech protections beginning with the seminal U.S. Supreme Court cases of *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S. Ct. 733 (1969) and the later exceptions carved out in *Bethel School District v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159 (1986), *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266, 108 S. Ct. 562 (1988) and its' most recent school speech decision *Morse v. Frederick*, 551 U.S. 393, 127 S. Ct. 2618 (2007). *Tinker* recognizes the custodial and comprehensive authority of public school officials and the court's reluctance to interfere with the resolution of conflicts and discipline of students which arise in the operation of the school systems. Because of these special characteristics of the school environment the Court in *Tinker* held lawful the prohibition of student speech which would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school. *Fraser* carves out a narrow expansion of speech that may be restricted, limiting lewd, obscene, profane speech on campus. *Hazelwood* also allowed school administrators to restrict speech emanating from school-sponsored activities, such as a school newspaper generated on campus. *Morse* allowed restriction of speech promoting illegal activities at school sanctioned or supervised events.

The application and interpretation of these foundational cases has been tested most recently in *J.S. v. Blue Mt. Sch. Dist.*, 2011 U.S. App. LEXIS 1147 (3d Cir. 2011) in which a student constructed a MySpace page disparaging her principal as a pedophile with public accusations of sexual misconduct. In a split decision the majority held that the administration had violated the student's First Amendment rights by punishing the

student with a 10-day suspension for her creation of the profile from her home computer. Conversely, in *Lowery v. Euverard*, 497 F.3d 584, 591-92 (6th Cir. 2007) student-athletes formed a petition to discredit the football coach and the court held that these student-athletes could be dismissed from the team for their disparaging comments toward the coach without similar free speech protections.

The proposed session will address the policy questions for administrators and coaches in light of the reasoning in this line of cases and most recent rulings.

1. Can administrators treat student-athletes differently than the general student body and why?
2. Does *J.S. v. Blue Mountain* give students license to make hostile and malicious allegations directed at school personnel as long as the comments are generated off campus?
3. What could be considered a “reasonably foreseeable substantial disruption” under the Tinker Standard?
4. What policy should administrators establish regarding social media “speech” by students and student-athletes?
5. Are there other legal avenues of redress for hostile speech by students?