Cyber Speech Regulation in K-12 Public Schools

Freedom of speech is one of the most protected rights in this country. The right to freedom of speech for students on school grounds has been a hot topic in the courts for some time now. School authorities have some power over what a student says on campus, but how far that power goes depends on the type of speech the students are using on campus (Lunenburg 1). According to Lunenburg, “School authorities must have a compelling justification to curtail students’ freedom of expression” (1). The restriction of what schools can do about students’ speech and expression on campus is applied through the First Amendment.

The First Amendment says that we have the right as citizens to freedom of speech, press, petition and assembly. Lunenburg states that the First Amendment restricts school officials from getting overly involved in students’ freedom of speech (1). However, obscene, vulgar, and inflammatory speech is not covered by the First Amendment (Lunenburg 1). Now with the advancing technology society we live in today, cyber speech is becoming another issue schools are faced with. The courts are now deciding whether cyber speech can be restricted by school officials and whether any Constitutional rights will be violated as a result of that restriction on cyber speech. If the Supreme Court allows no restriction on cyber speech, then students could greatly disrupt the school environment but we also have to remember that students have First
Amendment rights and those cannot be violated. The Supreme Court has put together a two-part framework in order to judge whether the First Amendment protects cyber speech and whether it directly disrupts school activities in anyway (Wolking 1508). This issue interests me because when my sister was in high school she was suspended from school due to a MySpace post that she had made off of school grounds.

MySpace was created in 2003, originally for upcoming musicians as a way to build fans bases (Chatfield 39). Today however, MySpace is now used by millions of teenagers around the world. With the freedom that the Internet supplies, one major occurrence on MySpace is cyber bullying (Chatfield 44). Teenagers are allowed to say whatever they want to whomever they want because of the rights to freedom of speech. Facebook is another social networking site that has recently became an enormously used Internet site. A student by the name of Phoebe Prince was being cyber bullied on Facebook so brutally it caused her to not attend class and as a result she committed suicide (Wheeler 183). This is not the only documented instance, as there are plenty more and the number is still rising (Wheeler 183). Cases like these have caused school officials to want to get involved in preventing such situations but due to the fact that speech has happened over the Internet, problems have occurred.

The first major case involving First Amendment rights on school grounds was the case of Tinker vs. Des Moines (Wolking 1510). According to Lunenburg, “Prior to the 1970s, courts generally upheld school authorities’ actions governing student conduct that simply satisfied the reasonableness standard” (1). Then when the Tinker vs. Des Moines case came to court in 1969, a rule that protects the freedom of speech and expression on school grounds was created (Wolking 1510). Lunenburg states that in this case students
wore black armbands to school in protest to the Vietnam War (2). The students were suspended, and then later in court their rights to express their opinions, were upheld (Wolking 1510). In Tinker vs. Des Moines it showed that even though schools have more authority over students because of the nature of the institution, it does not mean they can restrict student’s rights to express their viewpoints just because it causes official discomfort (Weeks 1166). Students are allowed freedom of expression and speech as long as it does not disrupt or interfere with the school’s operations or behavioral requirements (Weeks 1167). Wearing armbands did not disrupt with school activities; therefore, the students had the right to wear them.

In 1983, Bethel School District Number 403 v. Fraser case was brought to court and this time the court sided with the school district (Wolking 1510). In this case, a high school male student delivered a speech supporting his friend’s election to office to hundreds of students, in which the whole time he used a sexual metaphor to refer to his friend (Weeks 1168). According to Wolking, “Matthew Fraser, a student at Bethel High School in Washington, had been suspended for presenting a speech consisting of an extended sexual metaphor”(1511). Unhappy with this, Fraser took his case to court for the violation of his First Amendment rights (Weeks 1168). The Courts ruled that his rights were not violated due to the fact that he delivered the speech after being told not to by school authority and because it obtained obscene speech (Osborne 337). Unlike Tinker, this case caused a clear disruption to the school’s environment.

The next big case to show up in court pertaining to First Amendment rights was Hazelwood School District v. Kuhlmeier, in 1988 (Lunenburg 3). According to Osborne and Russo, this case involved a principle at a high school in Missouri that deleted two
submissions in the school newspaper that were written and edited by students (337). The courts again took the school’s side because the school newspaper is a school-sponsored activity so they have the authority to control it (Osborne 338).

According to Weeks, the Morse v. Fredrick case took place in 2002 and dealt with speech rights off of school grounds but directed at the school’s audience.

Senior Joseph Frederick stood with his friends across the street from the high school. As the Torch and Olympic crews passed him, Frederick and his friends unfurled a fourteen-foot banner that said: "BONG HiTS 4 JESUS." Across the street at the high school, students could easily read this banner. Believing that this banner violated the school's policy prohibiting the encouragement of illegal drug use, Morse demanded that Fredrick and his friends put it away. (1172)

Congress mandates public schools to remain drug-free and school environments have special characteristics; therefore, promoting drug use at off-campus school events can be censored by school officials (Weeks 1173). The courts found that First Amendment rights were not violated in this case.

We have looked at non-disruptive student expression on campus, disruptive speech on campus, and even off-campus disruptive expression. In our era of technology, teenagers have constant access to the Internet, which include countless social media sites. With the ability to post whatever you want publically, at the click of a button, schools are now starting to get involved with what students say on the Internet while they are not on campus or at a school sponsored event. In the case of Laylock v. Hermitage School
district in 2007, a high school student used a social networking site and created a fake profile pretending to be his school’s principle (Osborne 346). After being suspended by the school, he took his case to court for a violation of First Amendment rights (Osborne, Russo 346). The only time Laylock used off campus resources is when he used the principle’s picture, but other then that he created the page at home on his grandmother’s computer (Gibbs 132).

This case is very different from the previous ones because it was off campus and didn’t disrupt the schools environment like the cases before. When looking at the two-part framework to figure out whether or not Laylock applies to either, we must look at part number one. Because the speech was on the Internet and not on campus the fact that it was “lewd, offensive, and obscene” means that it cannot be subject to punishment (Beatus 788). The next part of the framework looks at whether or not it disrupts the school environment (Weeks 1174). The courts could not find sufficient enough evidence that it would cause a disruption to the schools environment so they sided with Laylock (Weeks 1174). The school district then came back and tried to argue that the speech started on campus when he got the photo from the schools website and that he directed it clearly at the staff knowing that they would find out about it (Weeks 1174). Both arguments were rejected. According to Beatus, “The court rejected the school district's argument that Laylock's use of a picture from its website was equivalent to his entering the school's property” (792). The school district thought that Fraser could be applied to Laylock’s case as well but the courts denied it because Fraser only applies to on campus speech (Weeks 1175). The ending verdict was in favor of Laylock because they couldn’t find sufficient enough evidence to show a clear disruption to the school environment.
(Beatus 793). In this case, they violated First Amendment rights but for future cases, schools are allowed to punish students if they cause “substantial or foreseeable disruption” to the environment of the school (Beatus 794).

When discussing the issue of being able to punish students for what they write off campus on the Internet raises many questions and comments from experts. Beatus believes, “Analyzing Internet student speech under the same standard as more traditional student speech may cause the courts and school administrators to punish students in either overly broad or overly narrow manners, thereby either inappropriately infringing on First Amendment rights or allowing deleterious speech to go unpunished” (794). Beatus also believes that because on campus and off campus speech can change from one to the next with “a click of the button” then the courts need to evolve their framework better for these types of cases (795). But creating a way of clearly testing whether off campus speech can actually be considered on campus speech may cause “dangerous infringements of First Amendment rights that are unacceptable to our basic constitutional tenets” (Beatus 801).

Although freedom of speech is of great importance, limiting it on school campus’s can be very necessary for schools to stay on track (Beatus 803). Weeks also agrees with Beatus that the courts need to set a more adequate guide for what is acceptable (1192). Weeks states, “The Supreme Court's student-speech precedents do not currently give enough guidance as to the scope of school officials' authority” (Weeks 1192).

According to Dranoff, “By taking a categorical approach to *Tinker* and its progeny, the proposed changes to student speech law will enable students, parents,
teachers, administrators, and courts to enjoy clarity, consistency, and a better academic environment for all” (686).

After reviewing all of the cases and all of the facts, I do agree that the courts need to establish a clear standard. They seem to go back and forth with different cases, not really having a set in stone rule for any of it. But I do not agree with Internet speech being punished by school authorities. Even if the speech is about officials from the school it still was not said on campus. If we have to start to worry about what we say in the safety of our own homes, then aren’t we violating everything that we stand for? The United States is supposed to be about freedom, and I think the freedom to say what we want on our own networking sites should not be punishable at school when it didn’t originate there.
Works Cited


Weeks, Rory Allen. "The First Amendment, Public School Students, And The Need For..."
Clear Limits On School Officials' Authority Over Off-Campus Student Speech."


7 Apr. 2015.
