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Free Speech & Public Schools

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School offers students the opportunity for the free exchange of ideas, which includes debate, dissent and discourse. This is an important reason to protect freedom of speech in public schools. Our United States Constitution protects this right under the First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or ***abridging the freedom of speech***, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. I (emphasis added).

The U.S. Supreme Court applied this protection of free speech to our nation's public schools in the 1969 *Tinker* case. The Court recognized that "students and teachers do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent School Community School District*, 393 U.S. 503, 506 (1969). The *Tinker* case involved students protesting the Vietnam War. They protested by wearing black arm bands in school. The school punished the students, and the students filed a federal civil rights law suit claiming the school acted unconstitutionally by punishing them for expressing their dissent to the war. The U.S. Supreme Court agreed, but balanced the students' right to free speech against the school's need to remove or reduce disruption in the learning environment. The court stated that "Where there is no finding ... that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained." *Tinker v. Des Moines Independent School Community School District*, 393 U.S. 503, 506 (1969), quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966). In other words, a student's exercise of free speech may only be limited when it disrupts the learning environment.

While students still express themselves with armbands and clothes, web sites like *MySpace.com* are popular means of expression by today's youth. Many students express their dissatisfaction with teachers and school on the Internet and on personal web sites.

Is it unconstitutional for a school to punish a student for web site content that criticizes teachers or the school? Yes and No.

The Pennsylvania Supreme Court reviewed this issue in the case of *J.S. v. Bethlehem Area School District*, 569 Pa. 638 (2002). The case involved a student using the Internet to express his opinion about his teachers and his school. The student created a web site on his home computer on his

own time. The site included derogatory comments about several teachers and included a small drawing of one teacher getting her head cut off and blood dripping from her neck.

The school administration found out about the web site and took the threats seriously. The student was disciplined and expelled from school. The parents filed a lawsuit in Northampton County Court arguing that the school had violated their son's First Amendment rights. The county court disagreed. The parents then appealed to the Commonwealth Court, which did not find any Constitutional violation and affirmed the county court ruling. The parents finally appealed to the Pennsylvania Supreme Court.

The Pennsylvania Supreme Court recognized that schools have a right to direct and edit "on campus" speech. Although the student wrote the web site at home and off campus, the Pennsylvania Supreme Court decided the web site was "on campus" speech. The court found that the student and school personnel could access the web site at school and determined that was enough to make the content of the web site "on campus." "We hold that where speech that is aimed at a specific school and/or its personnel is brought onto the school campus or accessed at school by its originator, the speech will be considered on-campus speech." However, even when speech is considered "on campus," the speaker may not be censored unless the speech is *lewd and plainly offensive*, or likely to cause a *substantial disruption* to the school education process. The Pennsylvania Supreme Court found that the facts in the *J.S. v. Bethlehem Area School District* case met both types of "on campus" speech that permits the school to restrict the student's speech. The end result was that the school did not violate the student's right to free speech and the student was punished.

Not all courts agree that web site content, written at home, is "on campus" speech.

The Federal District Court of Western Pennsylvania looked at this issue as well. See *Killion v. Franklin Regional School District*, 136 F.Supp.2d 446 (W.D. Pa. 2001). In *Killion*, the student authored a web site that had a top ten list, which criticized a teacher. The student never posted the web site address at school, but some of his friends did. The school found out about the content and punished the student. His parents filed a civil rights law suit claiming the school unconstitutionally restricted their son's free speech. The *Killion* court observed that school officials are only authorized to punish speech on school property and that a student is free to speak his mind when the school day ends. The *Killion* court found this struck a balance between the student's free speech and autonomy rights and the schools' responsibility to promote an academic environment. The court found that the student's constitutional rights were violated and the school was not permitted to punish him for the web site. The parents were awarded attorney fees.

If a student is punished for statements or writings that are expressed outside the school house building, then the student's free speech rights may have been violated.

Contact Deem & López Law Offices for more information about protecting your civil rights. Call (717) 892-3900 or send an email to info@dflworkforjustice.com.

