

Student Rights To Privacy Under School Technology Usage

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EDU 620

Positive School Culture & School Law

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February 27, 2022

Abstract

Through exploring the scope at which public school students have the right to privacy of thought, ideas and content, it is clear that the school administration and district hold the greatest power. However, this line of privacy has become even more nuanced since the use of technology has become pervasive in the school environment. The extent of which districts and schools must

provide explicit and clear limitations and rules of governance over technology usage is critical in providing a safe space for both students and the district. The response of administrators to situations in which a student breaks these limitations should first prioritize the privacy of students if the content was not created for the means of disruption or violence.

Scenario

Over the weekend, Principal Treble received a notification on the district software Gaggle that lewd, indecent and vulgar writing had been found. The writing in question was written the day before, on Saturday. On Sunday, Principal Treble read the content that was flagged by the software. It was a long fictional story that seemed within the genre of fan fiction. In the story, explicit sexual content was written in great detail. The story also included pictures of a young woman dressed provocatively - though the pictures did not include the face of the young woman.

Kendra Jaylen was called into the office on Monday by Principal Joyce Treble to discuss the writing of the sexually explicit content that the software flagged. Kendra, a 15 year old sophomore, was unaware that she wrote that particular story on the Google Docs that was through her school account. She discussed how the story was not for school purposes and that she was working towards being a writer in the future.

Principal Treble remarked that she would have to call Kendra's parents to inform them of the story and share it with them. Kendra said that it was against her right to privacy since the story was personal in nature and wasn't for anyone else. She was unaware that any content written on

a school account was fodder for administration, parents, and teachers to read. Kendra believes that the software has pushed beyond the lines of privacy, since the content wasn't being utilized in a school setting - but merely was a school account. She also feels as if her 1st amendment rights have been violated and does not want her parents informed. She asserts that it is fictional and therefore it has caused no harm and is not an indication of her personal behavior and does not want her parents involved.

The school does not have a digital citizenship program. The district does have an Acceptable Use Policy embedded within its Student Code of Responsible Ethics (SCORE) but upon checking, the student didn't ever have her parent sign the form at the beginning of the year.

RELEVANT CONSTITUTIONAL AMENDMENTS

1st Amendment: Protection of a students' freedom of speech.

4th Amendment: Protection from unreasonable searches and seizures by the government.

5th Amendment: Protection of self-incrimination in a public school setting.

RELEVANT CASE LAW

Tinker v. Des Moine (1969)

In this case, the court decided that teachers and students do not shed freedom of expression within school walls. It was determined that students who were wearing armbands in protest of

the Vietnam War were within their first amendment rights to express themselves as it did not "materially and substantially interfere" with the operation of the school.

Bethel School District v. Fraser (1986)

In this case, the court upheld that students be legally suspended for lewd speech and that schools hold within their rights to prohibit offensive and lewd speech or expression. In this case, Matthew Fraser, in front of 600 classmates, gave a speech that included explicit sexual innuendo within the context of a school political speech. Chief Justice Burger stated that districts could control speech when it was inconsistent with the "fundamental values of public school education."

Morse vs. Frederick (2007)

In a turn around from *Tinker v Des Moines Schools*, the court upheld that schools can limit student speech if it is disruptive. In this case, a student held up a "Bong Hits for Jesus" poster during a school-sponsored event. The court, in ruling for Morse, confirmed that the right to free speech of public school students is not as extensive as those of adults and that there are limits to which the ruling of *Tinker v Des Moines (1969)* would reach.

BL v. Mahanoy Area School District (2020)

In this case, a student who posted and published on her personal social media account, disparaging words towards the school and school personnel, was protected by the court. She was suspended but argued that her off campus speech was not under the purview of the school. The judges reaffirmed that schools have the right to prohibit speech on campus, but concluded that off campus speech falls under the parental responsibility and that the regulation of student off-campus speech raises serious concerns of the first amendment rights of students and that, as Justice Samuel Alito stated, “officials should precede cautiously before venturing into this category.”

ARTIFACTS

Artifact 1: Acceptable Use Policy

Violation of the Acceptable Use of Technology/Internet Policy

Students of [REDACTED] Schools are offered access to the school system computer network for the internet and electronic mail (email). Internet and email are global networks. Through these networks, students have access to thousands of libraries, databases and educational websites, and can exchange messages with Internet users throughout the world.

Students are responsible for their behavior on the school computer network just as they are in a classroom. The SCORE applies to all use of the school computer network.

The network is provided for students to conduct research and to communicate with others for educational purposes only. Access to network services will be given to students who are in compliance with the rules for appropriate use.

Individual users of the school system computer network are responsible for their behavior and their behavior and their communications over that network.

Network storage areas, disk and/or external drives used with the internet will be treated like school lockers. Network administrators may review files and communications to maintain system integrity and to ensure students are using the system responsibly. The following are prohibited forms of Internet use:

- Accessing, sending, or displaying offensive messages, pictures, or profane or abusive language
- Sending or receiving sexually explicit messages (Sexting)
- Cyber-bullying
- Texting
- Damaging computer networks
- Violating copyright laws
- Using another's identification or password, or trespassing in another's work
- Using the network for any illegal activities as defined by state or federal law
- Hacking

The RPS Internet Safety curriculum is implemented in all schools. Lessons and activities are integrated in all subject areas. Internet safety tips and Acceptable Use policies are posted on our website.

If it is determined that the use of technology, and/or social media on or off school property, caused a disruption in school, the school has the authority to discipline the student.

Cyber-bullying: Cyber-bullying may include sending cruel or threatening messages to students' school email accounts or posting rumors, threats or negative comments about peers online. Schools have the authority to discipline students for misuse of school system computers, email and Internet services. Schools also have the authority to discipline students for emails or Internet activity that is off school grounds and without using school equipment if the conduct causes serious disruption to the school environment.

Artifact 2: Student Code of Responsible Ethics (SCORE)

| SBAR | Category B: Behaviors related to School Operations (BSO) interfere with the daily operation of school procedures | Level | Level | Level | Level | Level | Notify Law Enforcement |
|-------|--|-------|-------|-------|-------|-------|------------------------|
| | | 1 | 2 | 3 | 4 | 5 | |
| BSO1 | Altering an official document or record | X | X | | | | |
| BSO2 | Giving false information to staff | X | X | X | | | |
| BSO3 | Refusal to comply with requests of staff in a way that interferes with the operation of school | X | X | X | | | |
| BSO4 | Failure to be in one's assigned place on school grounds | X | X | | | | |
| BSO5 | Failure to attend assigned disciplinary setting (detention, in-school suspension, Saturday school) | X | X | | | | |
| BSO6 | Bringing unauthorized persons to school or allowing unauthorized persons to enter the school building | X | X | X | | | |
| BSO7 | Dress Code Violation | X | X | | | | |
| BSO8 | Gambling (games of chance for money or profit) | X | X | | | | |
| BSO9 | Possessing items that are inappropriate for school (examples include toys, literature, electronics) | X | X | | | | |
| BSO10 | Possessing stolen items | X | X | | | | |
| BSO11 | Unauthorized use of school electronic or other equipment | X | X | | | | |
| BSO12 | Violation of Acceptable Use of Technology/Internet Policy | X | X | | | | |
| BSO13 | Violation of school board policy regarding the possession or use of portable communication devices | X | X | X | | | |
| BSO14 | Vandalism, graffiti or other damage to school or personal property | X | X | X | | | |

Artifact 3: SCORE Administrative Response

LEVELS OF INTERVENTIONS AND RESPONSES

| | |
|----------------|---|
| LEVEL 1 | <i>Level 1 responses are intended to prevent further behavioral issues while keeping the student in school.</i> |
| | <ul style="list-style-type: none"> - Warning - Written reflection or letter of apology - Loss of privileges - Seat change - Phone call/letter/conference to parent/guardian - Teacher conference with students - Mentoring - Progress Monitoring Sheet - Reteach or Modeling Desired Behavior - Teacher and/or administrator conference - Community Service (appropriate to correct the behavior) - Recognize/Reward Appropriate Behavior - Check-In and Check Out System - In-class time-out - Time-out in another classroom setting - Reinforcement of appropriate behaviors - Classroom behavior contract/ Behavior Monitoring Form - Referral to Counselor - Parent Liaison Referral - Confiscation by administration - Restitution - Conflict resolution/Community Circles |
| LEVEL 2 | <i>Administrative responses and interventions at this level are designed prevent further behavior issues and keep the student in school. Depending upon the severity of the behavior, short-term removal of the student from the classroom may be appropriate.</i> |
| | <ul style="list-style-type: none"> - Parent/ Guardian Contact - Check-In and Check Out System - Peer mediation - Loss of privileges - Campus clean-up/ Community Service - Confiscation of items - Schedule/Class Change - Referral to SBT - Behavior contract (developed with and signed by the student, parent/guardian, and school officials) - Referral to School Base Support Services - Student Conference - Administrator/Teacher/Counselor/Student conference (includes re-teaching or expected behavior) - Parent/Teacher and/or Administrator conference - Family Liaison Referral - Community Resources - Referral to Counselor - School/Administrator behavior contract - Behavior Specialist Referral (elementary) - In School Support with behavioral interventions - Mediation or conflict resolution - Referral to Individualized Education Plan (IEP) team (for a current student with an IEP) - Restitution - Extended School Day - Community Circles/Healing Circles |

STEPS TO ADDRESS SCENARIO

As the administrator, it would be important to first have a conversation with the student. At this point, we would discuss the facts of what was presented through the Gaggle Software. This would be followed by the going through school policy on usage of school accounts and how her story breached those rules. It would be important to also discuss concern over the appropriateness of the writing. It was made clear that that student and her parent never signed the SCORE and Acceptable Use Policy documents.

After reviewing the Student Code of Responsible Ethics (SCORE), as administrator I would move forward as a warning. Though the speech was indecent and lewd, it by no means disrupted learning or the school environment, as it was never meant to be seen by anyone but her. This clearly feels like “off-campus” material that was inadvertently posted through a school account. Once the student understands the limits of her privacy using school accounts, it seems that it

would be unnecessary to move forward with disclosure to the parents or to elevate this higher. Though sexual in nature, the content of the story didn't expose any threat to herself or others and therefore should remain private to her.

However, in understanding that she has not had her Acceptable Use Policy and SCORE sheets signed by her parents, it would be necessary to have school personnel identify those who have not done so and attempt to get those signed by all students who are currently missing them. In addition, creation of a digital citizenship program that all students must attend, would be implemented and mandated, so that all students understand their rights and limitations within the scope of school accounts.

CONVERSATIONS

As stated above, first and foremost would be the conversation with the student. It would include both discussion of the content of the story and the limitations of usage within school accounts. Secondly, all students would then be required to take a digital citizenship program. Thirdly, all parents who have not read and signed the SCORE and Acceptable Use Policy would be reached.

REFLECTION QUESTIONS

Which equity issues were raised in your scenario?

The equity issues raised in this scenario include the privacy of all students and equitable distribution and dissemination of the rules and regulations under which students must comply. It is clear that not all students were fully educated on the limitations and implications of using school accounts for personal use. It is also clear that not all parents completed reading and acknowledging the student code of conduct and therefore it is incredibly important that parents also understand the scope of behaviors and implications for those behaviors. It is also a case in which a student's right to privacy should be protected if the expression does not disrupt learning or demonstrate a concern of violence.

How do the action(s) you chose support equity in this fictional school? How could the action(s) potentially perpetuate inequities?

The actions chosen support equity in so much that it presupposes the innocence of the student and puts the onus of responsibility on the school to provide adequate information on rules and policies to both students and parents. If the school has not met that responsibility, if the actions made by the students are deemed not to be dangerous, then the student's rights of privacy should not be broken.

What restorative practices can be implemented in order to address these issues proactively, retroactively, or both?

The digital citizenship program for all students would be a means of providing preemptive practices for potential future issues. The restorative practices that would follow would be to

communicate regularly with the student about appropriate content if it is seen that she continues to write sexually explicit materials for school papers or projects.

CONCLUSION

Though the courts have determined that schools can ban or prohibit lewd or indecent speech within the school walls, in this case, the determination is that the student was not appropriately educated about those limitations and therefore should be given a warning. It is the responsibility of the school first to be sure that the students understand their rights and to protect student speech if it doesn't pose a threat to others or themselves. Using the latest case of *Mahanoy Area School District v B.L. (2021)*, though related directly to off-campus expression, best fits with this scenario in which the student believed that she was expressing herself in a way that was not connected to the school.

REFERENCES

Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 106 S. Ct. 3159, 92 L. Ed. 2d 549 (1986).

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