

Should Schools Be Allowed to Limit Students' Online Speech?

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Overview: Should people be allowed to say whatever they want online? There is no question that schools have the right to limit students' speech in order to protect the school community's safety. Most people agree that threats of bodily harm should never be tolerated. But what of other, less obvious instances? Students, parents, teachers, and administrators are all wondering if students should be punished at school for what they post online, even if it's on their personal websites on their own time. Schools must protect students' First Amendment rights. They must also maintain the learning environment and safety at school. Your job in this Mini-Q is to answer the question: Should schools be allowed to limit students' online speech?

The Documents:

- Document A: Cyberbullying by Gender (chart)
- Document B: Survey of British Teachers about Cyberbullying (chart)
- Document C: *K.K. v. Berkeley County Schools*
- Document D: *J.S. v. Blue Mountain School District*
- Document E: Cyberbullying (cartoon)
- Document F: Statement of the American Civil Liberties Union
- Document G: Letter from U.S. Department of Education

A Mini Document Based Question (Mini-Q)

Should Schools Be Allowed to Limit Students' Online Speech?

Imagine that you are at home after school. You see a YouTube video of your teacher dancing at a wedding. She's terrible! Just for fun, you post a nasty comment. The next day, the teacher is absent. Over 100 people posted insulting comments about her dancing. The principal calls you and seven other students into her office. You are being suspended for **cyberbullying** and **disrupting** the school environment. Should the school be able to punish you for comments you posted at home? Or do you have the right to post online material – even mean or inappropriate material – on your own time?

The First Amendment to the Constitution says, "Congress shall make no law . . . abridging [limiting] the freedom of speech . . ." For many years, the First Amendment applied only to the federal government. But in 1925, in *Gitlow v. New York*, the Supreme Court said that it also applied to other levels of government. This applies to public schools which are a form of local government.

The right to free speech is not absolute, however. The Supreme Court has allowed certain limits on that freedom:

- **Clear and present danger.** Speech that creates immediate danger is not protected. Yelling "Fire" in a crowded theater is an example.
- **Fighting words.** Speech designed to start a fight can be punished.
- **Obscenity.** Speech that presents sexual content in an offensive way is not protected.
- **Conflict with other important interests.** For example, a school can protect young people from pro-drug messages.
- **Time, place, and manner.** When, where, and how speech occurs can be limited. If someone drove around in the middle of the night with a loudspeaker, that speech would not be protected.

Is school a place where speech can be limited? In the 1969 case *Tinker v. Des Moines Independent School District*, the Supreme Court ruled that students like Mary Beth and John Tinker have free speech rights that do not end at the schoolhouse door. However, the Court also said that if student conduct "materially disrupts classwork or involves substantial disorder or invasion of the rights of others," the First Amendment does not protect it. In another case, *Morse v. Frederick* (2007), the Court said that schools could punish speech at school events, even off school grounds.



Mary Beth and John Tinker display their protest armbands.

Today, many free speech issues center on use of technology. Teens frequently use a wide variety of technologies, including cell phones, text messages, Facebook, and email. New technologies allow speech to reach a much broader audience. Before the Internet and cell phones, if you

said something about a classmate, the information might have reached 20 or 30 people. Now, if you post something online, it could reach hundreds or even thousands.

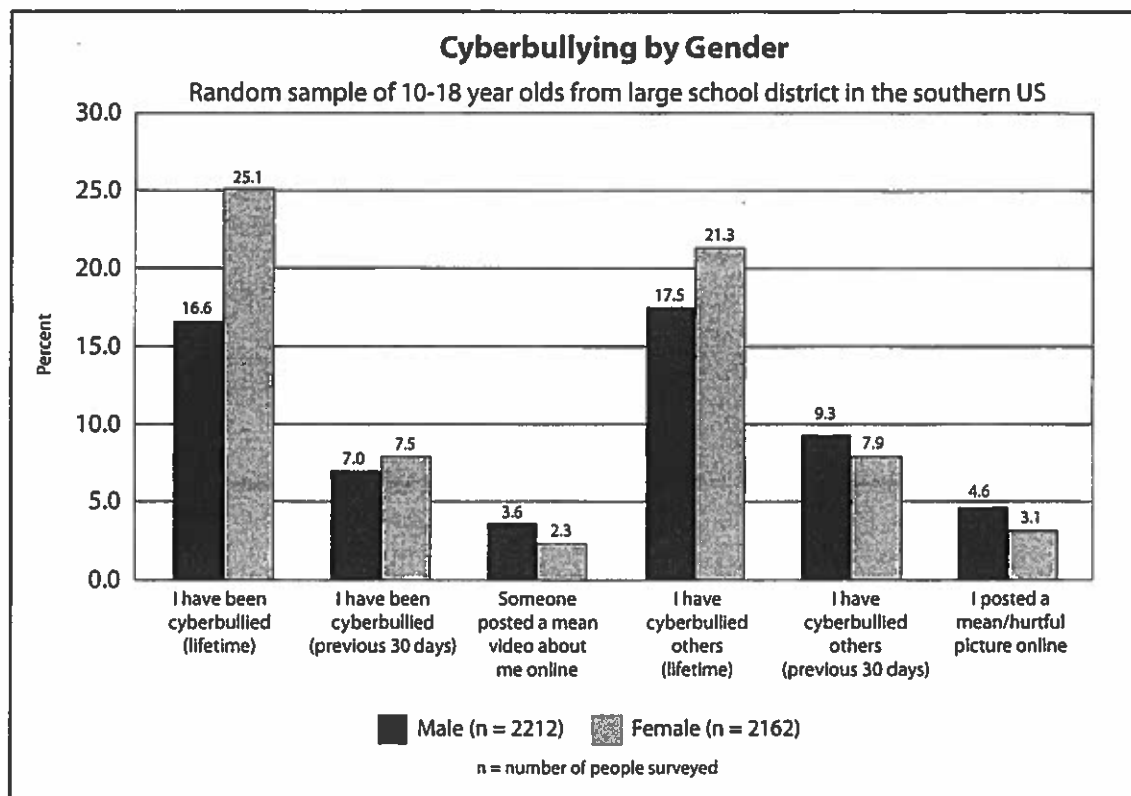
The effects of online speech can spill over into schools. School officials are responsible for maintaining an environment in which everyone can learn. They also must protect the safety of all their students. Young people have hurt themselves because of cyberbullying. Thus, school administrators sometimes feel they must punish students for online activity, even if it happens off-campus, outside of school hours.

Here is your task. Due to increasing incidents of cyberbullying at the local schools, your school board wants to make a new policy about students' online speech. They want you to write a recommendation for this policy. Read the evidence, and then decide: *Should schools be allowed to limit students' online speech?*

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Document A

Source: Sameer Hinduja and Justin Patchin, Cyberbullying Research Center, February 2010.



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Document Analysis

1. According to this graph, who is more likely to be a victim of cyberbullying – boys or girls? How big is the gender difference?
2. According to this graph, who is more likely to be a cyberbully – boys or girls? How big is the gender difference?
3. What percentage of students reported being cyberbullied in the past 30 days (average of the number for boys and girls)? If that percentage holds true for your school, about how many students have been cyberbullied at your school in the past 30 days? Does that number surprise you? Why or why not?
4. How can you use this document to argue for schools limiting students' online speech?
5. How can you use this document to argue against schools limiting students' online speech?

Document B

Source: Joint press release from the Association of Teachers and Lecturers and Teacher Support Network, April 5, 2009.

Survey of British School Teachers*	
Have you been a victim of cyberbullying – by mobile phone, email or over the Internet?	
Yes	15.1%
No	84.9%
Who was the perpetrator* of this cyberbullying? Please mark all that apply.	
Pupil	44.2%
Manager	9.3%
Colleague	18.6%
Pupil's parent/carer	5.8%
Don't know	41.9%
How did this bullying affect you? Please mark all that apply.	
Had no effect	38.6%
Reduced your confidence and self esteem	38.6%
Reduced your productivity or teaching effectiveness	15.9%
Made you ill or stressed but continued working	25.0%
Affected your home life	19.3%
Had to go to the doctor or took sick leave, suffering from illness/stress	12.5%
Became scared outside work	4.5%
* Person responsible for a crime or a misdeed; an offender.	

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Document Analysis

1. What does *perpetrator* mean? Who were the most common perpetrators reported in the survey?
2. What percentage of the teachers surveyed had been cyberbullied in some way?
3. What was the most common negative effect of this bullying on teachers surveyed?
4. What percentage of teachers said their home lives had been affected by cyberbullying?
5. How can you use this document to argue for schools limiting students' online speech?
6. How can you use this document to argue against schools limiting students' online speech?

Document C

Source: *K.K. v. Berkeley County Schools*, United States Court of Appeals, Fourth Circuit, July 27, 2011.

Note: This case began when K.K., who was a 12th grade student at Musselman High School, used her home computer to create a discussion group on MySpace.com that accused a classmate, S.N., of being sexually promiscuous. K.K. invited approximately 100 people to join the group, and about two dozen Musselman High School students accepted.

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... The next morning, S.N.'s parents, together with S.N., went to Musselman High School and filed a harassment complaint with Vice Principal Becky Harden regarding the discussion group....

School administrators concluded that K.K. had created a "hate website," in violation of the school policy against "harassment, bullying, and intimidation." For punishment, they suspended K.K. from school for 10 days and issued her a 90-day "social suspension," which prevented her from attending school events in which she was not a direct participant.

... K.K. contends first that the school administrators violated her free speech rights under the First Amendment by punishing her for speech that occurred outside the school. She argues that because this case involved "off-campus, non-school related speech," school administrators had no power to discipline her.

... There is surely a limit to the scope of a high school's interest in the order, safety, and well being of its students when the speech at issue originates outside the schoolhouse gate. But we need not fully define that limit here, as we are satisfied that the nexus [connection] of K.K.'s speech to Musselman High School's pedagogical [teaching] interests was sufficiently strong to justify the action taken by school officials in carrying out their role as the trustees of the student body's well-being....

Document Analysis

1. Who is K.K.?
2. Do K.K.'s actions count as cyberbullying? Explain.
3. What was the school's reaction to the cyberbullying?
4. Does this document support limiting or not limiting student online speech? Explain.

Document D

Source: *J.S. v. Blue Mountain School District*, Case No. 08-4138, United States Court of Appeals for the Third Circuit, June 13, 2011.

Note: This Pennsylvania case arose when the school district suspended J.S. for creating, on a weekend and on her home computer, a MySpace profile ("the profile") making fun of her middle school principal, James McGonigle. The profile did not name the principal or his school, but did include a photo of him and contained some vulgar and offensive language.

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Principal McGonigle met with J.S. and her mother Terry Snyder and showed Mrs. Snyder the profile. He told the children's parents that J.S. and K.L. would receive ten days' out-of-school suspension, which also prohibited attendance at school dances. McGonigle also threatened legal action. J.S. and her mother both apologized to McGonigle, and J.S. subsequently wrote a letter of apology to McGonigle and his wife....

The School District asserted that the profile disrupted school in the following ways. There were general "rumblings" in the school regarding the profile. More specifically, on Tuesday, March 20, McGonigle was approached by two teachers who informed him that students were discussing the profile in class. Randy Nunemacher, a Middle School math teacher, experienced a disruption in his class when

six or seven students were talking and discussing the profile; Nunemacher had to tell the students to stop talking three times, and raised his voice on the third occasion. The exchange lasted about five or six minutes.... Nunemacher admitted that the talking in class was not a unique incident [that is, it was not the only time students talked in class] and that he had to tell his students to stop talking about various topics about once a week....

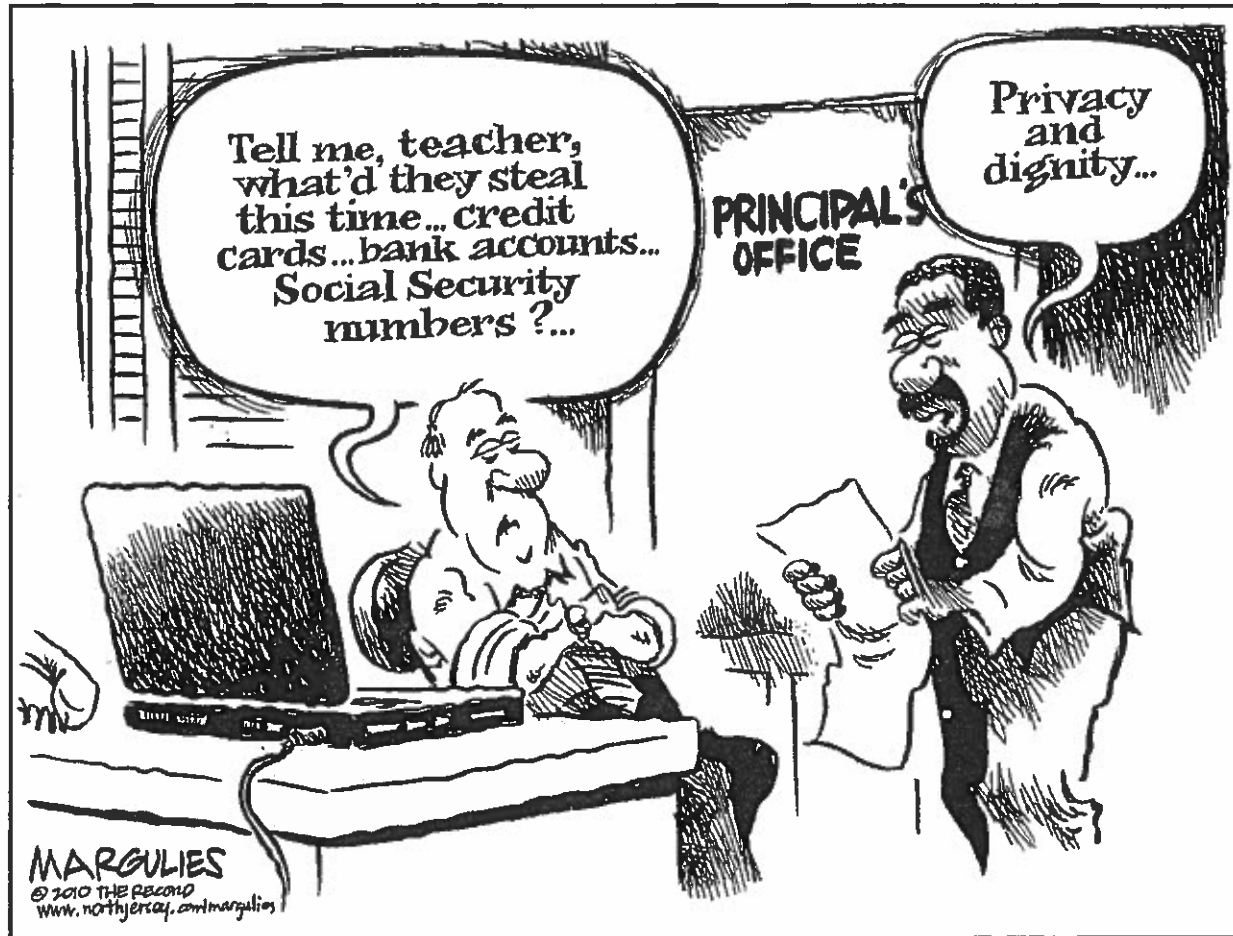
The facts simply do not support the conclusion that the School District could have reasonably forecasted a substantial disruption of or material interference with the school as a result of J.S.'s profile. Under *Tinker*, therefore, the School District violated J.S.'s First Amendment free speech rights when it suspended her for creating the profile.

Document Analysis

1. Who is James McGonigle?
2. In what ways did the School District claim the MySpace profile disrupted school?
3. What was the court's decision in the case? What reason did they give? What landmark case did they cite?
4. Does this document support limiting or not limiting student online speech? Explain.

Document E

Source: Jimmy Margulies, *The Record*, Hackensack, NJ, October 1, 2010. Adapted by artist in 2012.



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Document Analysis

1. Where is the action in the cartoon taking place?
2. What seems to be happening in the cartoon?
3. How might this teacher's performance as an educator be affected?
4. What do you think the cartoonist's message is? What might be the thesis statement for this cartoon?
5. Does this document support limiting or not limiting student online speech? Explain.

Document F

Source: Laura W. Murphy and Michael W. Macleod-Bell, "ACLU Statement Submitted to a Subcommittee Hearing on Cyberbullying, 'Protecting Youths in an Online World,'" American Civil Liberties Union Washington Legislative Office, July 15, 2010.

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The Internet presents new ways for young people to communicate – but it does not inherently [in and of itself] increase the dangers that have been present in human society for centuries. . . . The [occurrence] of “cyberbullying” has also received attention recently and in a rush to address this problem, lawmakers have forgotten that bullying has been around since long before the Internet. Previously, young people harassed and [scared or threatened] each other face to face, through third parties, through the mails, by telephone, across the airwaves, and – only now – via Internet communications. Yet there is very little research to suggest the dangers to young people are dramatically worse online than offline. Before taking legislative steps that may restrict on-line free speech, we urge Congress to make sure it accurately assesses the severity of the threat . . . We believe that any restriction specifically aimed at [limiting] the speech rights of [people under age 18] in the new electronic forum is a step in the wrong direction and not in keeping with the ideals of our constitutional framework.

Document Analysis

1. According to this document, why should we question reports of increasing threats to students online?
2. The authors say that bullying was a problem long before the Internet. What point are they trying to make by highlighting bullying’s long history?
3. Why do these authors say restrictions on students’ speech rights are “a step in the wrong direction”?
4. Does this document support schools limiting students’ online speech? Explain.

Document G

Source: Russlyn Ali, US Department of Education Office for Civil Rights, October 26, 2010.

Note: This letter is to school administrators from a US Department of Education official. It is warning administrators that they must take seriously incidents of school-based harassment and discrimination.

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October 26, 2010

Dear Colleague:

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The US Department of Education fully supports these efforts. . . . I am writing to remind you, however, that some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive [ever-present], or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR (the Office of Civil Rights) enforces.

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known. . . .

Sincerely,

Russlynn Ali, Assistant Secretary for Civil Rights, US Department of Education

Document Analysis

1. Who is the author of this letter?
2. According to the letter, what actions might violate civil rights laws?
3. According to the letter, what must schools do about harassment?
4. What is the Department of Education's position on cyberbullying?
5. Does this document support limiting or not limiting students' online speech? Explain.