



## **Case Study: Cyberbullying and Free Speech**

### **The Facts:**

A bad idea has turned into a full-fledged legal battle ever since the principal of Gibbons Preparatory School, Cornelius Southwick, learned that a group of male students at his school created a website that ranked the qualities of every freshman girl – often in mean-spirited, unflattering ways.

The trouble began when a popular senior boy, Maxwell Zucker, asked a freshman girl named Gretchen to accompany him to the homecoming dance. When the girl declined, Zucker decided to exact revenge on the entire freshman class by creating a website, Gretchen's Gaggle, that ranked each freshman girl in categories ranging from personal appearance to weight to rumored sexual histories.

News of the website spread quickly through the Gibbons Prep student body, and several girls missed school because they were so upset about what had been said about them. When an anonymous caller alerted school officials to the website and its author, Southwick promptly suspended Zucker for ten days.

In response, Zucker and his family sued the school, claiming that the suspension was a violation of his First Amendment right to free speech. "I'm not saying that this was a wise decision on my part," the young man explained, "but it's not like I was threatening anyone, and the website was something I created after school hours, on my own personal computer. The school can't discipline me for what I say outside of school. We live in a free country."

According to the school district's lawyer, Amy Pope, Zucker gave up his right to free speech the moment he created a forum for such hateful expression. "Even though the speech was created off school property," Pope explained, "that speech became widely known among the Gibbons Prep student body, resulting in a hostile environment for Gretchen and many of her classmates. Principal Southwick had no choice but to act."

Southwick, speaking to a group of reporters outside the school, echoed his lawyer's comments. "Gibbons Prep is a place where all students need to be free to focus on their studies," he said. "It's also a place where the individual right of one student cannot be used as a justification for invading the rights of another. The First Amendment rights of young people are not absolute."

Neil Alison, the lawyer representing Zucker and his family, disagreed. "My client's online speech did not constitute a true threat, nor was the material created on school property. Part of the cost of living in a society that values freedom of expression is the toleration of speech that may be hurtful or offensive to some."

Now it's up to the courts to decide which side is right.

**Legal Questions:**

1. Is it constitutional for school officials to censor student online speech?
  
2. Under current law, what constitutes a true threat?

**Other key issues to Consider:**

**Who will win the case, and why?**

## **Answers to legal questions**

1. Student speech and the Internet raise some important and complex issues for educators, students, and parents.

Until recently, there was little law governing what was and wasn't acceptable speech on the Internet. In fact, the U.S. Supreme Court didn't issue a ruling on Internet speech until 1997. In that year, the Court returned a verdict in the case of *Reno v. ACLU* that helped clarify how Internet speech should be treated in the future.

In light of this ruling, schools should consider the following factors before regulating student speech on the Internet:

- Was the content created as part of the school curriculum, such as a class project or the official school newspaper? If so, then the speech in question is considered school sponsored, and the *Hazelwood* standard of expression would apply. In that case, schools are granted greater leeway in regulating speech that "students, parents, and members of the public might reasonably perceive to bear the imprimatur [endorsement] of the school."
- Was the content created on school computers during the student's free time? If it was, the student will likely contend the *Tinker* standard governs. Under that standard, the speech in question is entitled to protection under the First Amendment as long as it does not (a) cause a material or substantial disruption to the school community, or (b) infringe on the rights of others. An attorney for the school, however, would likely argue that the speech should be held to the *Hazelwood* standard of expression because school computers were being used.

These factors, of course, relate to student speech on the Internet that occurs on the school grounds. If the speech in question occurs on a private Web site, a different set of issues is at stake. Although case law is still evolving in this area, school officials should exercise caution before attempting to limit student expression on a private Web site maintained off school grounds.

On one hand, schools have a vital interest in keeping all members of their community safe; if a student produces speech that constitutes a "true threat" or invades the rights of others, schools have a responsibility to act. However, in the majority of lawsuits between students and administrators so far, judges have been more likely to defend the free expression rights of the students, whose speech they usually determined did not constitute a "true threat."

2. To help understand the distinctions that educators should make when

considering off-campus Internet speech, Edwin Darden, senior staff attorney for the National School Boards Association (NSBA), suggests that student Web sites be divided into three categories:

- Sites that are offensive, obnoxious, and insulting.
- Sites that are offensive, obnoxious, and insulting, and also contain some sort of veiled threat of violence or of destruction of property.
- Sites that contain an outright blatant threat.

Darden suggests that for the first category, under which most student sites fall, "my advice to schools is, you just need to develop a thick skin." For the second category, because the nature of the threat is unclear, educators should be sure to get further information on the subject before passing judgment too quickly.

For the third category, however, if the speech in question represents an actual threat, the student could be punished, as long as schools can demonstrate that the speech could disrupt the school or that it seriously threatens harm to a member of the school community.

So what does this all mean?

Because the Supreme Court has granted cyberspeech the highest degree of protection under the First Amendment, school officials need to be aware that student speech that occurs off school grounds is private and not subject to the authority of school officials unless it causes a substantial disruption. If, however, a student's speech crosses the line and suggests actual physical harm -- such as Eric Harris's Internet "hit list" prior to the Columbine massacre -- then schools should immediately consult an attorney.