

STUDENTS + SOCIAL MEDIA + SCHOOL =
SUSPENSION: HOW FAR DOES A PUBLIC SCHOOL'S
POWER REACH IN PUNISHING A STUDENT FOR
POSTS MADE OFF-CAMPUS ON SOCIAL MEDIA
SITES?

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INTRODUCTION

“How many of you have ever felt personally victimized by Regina George?”¹ This is a classic line almost all millenials have heard before. Regina George, a popular high school student, created a burn book—a pink, decorated notebook full of the school’s “secrets”—detailing sexual affairs between a teacher and his students, rumors regarding drug sales made by teachers, and grossly offensive descriptions of students.² In the course of a day, this burn book turned her high school upside down, into a metaphorical zoo.³

Imagine if social media was as popular and prevalent during the creation of the Mean Girls movie as it is today. Today, social media sites and apps for mobile devices have become virtual burn books.⁴ Social media presents a platform for all of its users to post their thoughts and ideas and are accessible twenty-four hours a day, seven days a week, 365 days a year. From Facebook pages to anonymous apps such as Whisper, Secret, and Yik Yak, “digital burn books are nothing new.”⁵

In 2014, a cleverly named social media app, Burnbook, was introduced to the app market. According to the creators, the app allows its users to

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1. MEAN GIRLS (Paramount Pictures 2004).

2. *Id.*

3. *Id.*

4. ‘Burnbook’ Social Media App Criticized for Fanning Threats, KUSI NEWS (Mar. 12, 2015, 2:12 PM), <http://www.kusi.com/story/28407297/burnbook-social-media-app-criticized-for-fanning-threats>.

5. Amy-Mae Turner, *Burnbook: What Parents Need to Know About the Controversial App*, MASHABLE (Mar. 26, 2015), <http://www.mashable.com/2015/03/26/burnbook-app/#3DF.Nt4rgkq7>.

anonymously post as a way to “build the community and enhance freedom of expression.”⁶ True to its burn book form, many of the younger app users began to post vicious gossip, bullied their fellow students, and even made threats of bringing weapons to school.⁷ “[I]t [can] be argued that nothing has reached the same scale of the Burnbook app before.”⁸ Posts made to this app single-handedly closed down six schools in March of 2015.⁹ From California, to New Jersey, to Oregon, threats of mass shootings and terrorist-like attacks at public schools were made on the Burnbook app which resulted in campuses closing, heightened security, and several arrests.¹⁰

The question now turns to what happens when social media and these apps start affecting schools and their students’ abilities to receive an education in a safe environment? Who is to blame: the creator of the social media site or the app, the parents, or the students themselves? How far can a school go in punishing students for their posts on social media outlets without violating the rights of parents to raise their children as they deem fit?

As one of the greatest challenges public schools face, “[c]yberbullying raises issues that require a fine balance between protecting the constitutional rights of public school students while also creating a safe learning environment.”¹¹ The purpose of this Note is to examine the history of social media, the effects of cyberbullying today, and the continued split in authority regarding public schools’ reach on punishing students for speech made off-campus on social media sites.

I. HISTORY OF SOCIAL MEDIA

What is social media? The Oxford Dictionary defines it as “[w]ebsites and applications that enable users to create and share content or to participate in social networking.”¹² Social media allows people to “chat” or communicate

6. ‘Burnbook’ Social Media App Criticized for Fanning Threats, *supra* note 4.

7. *Id.*

8. Turner, *supra* note 5.

9. Safe Smart Social Team, *What is the Burn Book App? Parent & Teacher Guide (Video)*, SAFE, SMART & SOC. (Mar. 24, 2015), <https://safesmartsocial.com/what-is-the-burn-book-app-parent-teacher-guide>.

10. *Id.*

11. Naomi Harlin Goodno, *How Public Schools Can Constitutionally Halt Cyberbullying: A Model Cyberbullying Policy that Considers First Amendment, Due Process, and Fourth Amendment Challenges*, 46 WAKE FOREST L. REV. 641, 643 (2011).

12. *Social Media*, OXFORD DICTIONARY, http://www.oxforddictionaries.com/definition/us/social_media (last visited Feb. 8, 2016).

with others over the internet through websites, mobile applications, chats, and instant messaging.¹³

Beginning in the late 1970s, Bulletin Board System (BBS) was introduced, which allowed members to interact with other members through games and through posting messages.¹⁴ Then there was CompuServe, a communication system designed as a “business-oriented mainframe computer communication solution,” that made its way into the public’s homes in the 1980s.¹⁵ This new communications system allowed users to genuinely interact with others.¹⁶ Members could send the newly founded e-mail messages and post to forums on any subject at any time of the day.¹⁷

In 1983, “the site that may have been the first to fulfill the modern definition of social networking was born.”¹⁸ Quantum Computer Services, America Online, better known as AOL, was introduced to the market.¹⁹ By 1989, the classic jingle, “You’ve got mail!” came into the homes of all of its users.²⁰ AOL provided a place to access popular, specialized programs including AOL Instant Messenger (AIM) and AOL Radio.

In 1997, Classmates.com and SixDegrees.com were introduced.²¹ Classmates.com was designed to assist its members in finding and connecting with classmates.²² All levels of schooling were included, beginning with kindergarten classmates to college classmates, work colleagues, and fellow members of the military.²³ SixDegrees.com utilized the six degrees of separation concept, which is “the theory that anyone on the planet can be connected to any other person on the planet through a chain of acquaintances

13. Kathy Colaiacovo, *An Interesting Timeline of the Era of Social Media*, PEPPER IT MARKETING (June 20, 2015), <http://www.pepperitmarketing.com/facebook/evolution-social-media>.

14. Digital Trends Staff, *The History of Social Networking*, DIGITAL TRENDS (Aug. 5, 2014), <http://www.digitaltrends.com/features/the-history-of-social-networking>.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. AOL, BUSINESSDICTIONARY, <http://www.businessdictionary.com/definition/AOL.html> (last visited Mar. 12, 2015).

20. *Id.*

21. *Id.*

22. Chungying Chua, *A History of Online Based Social Networking [Early Profile Based Systems: Classmates, SixDegrees, Friendster, and MySpace.]*, PREZI (Mar. 4, 2014), <https://prezi.com/nzkcgzgudn2dp/a-history-of-online-based-social-networking-early-profile-based-systems-classmates-sixdegrees-friendster-and-myspace>.

23. *Id.*

that has no more than five intermediaries.”²⁴ The site allowed its users to list friends, family members, and acquaintances on their profile and by externally inviting contacts to join.²⁵

In 2002, Friendster followed in the social media movement. Friendster was a way to keep in contact with old friends, meet new friends on the Internet, and expand personal networks in a safe manner.²⁶

Then came MySpace in August of 2003, which became extremely popular with the public in early 2004.²⁷ MySpace was appealing to its users because it let the user control their page.²⁸ Users could post “nearly whatever they want[ed] to post.”²⁹ Ultimately, “[e]ach profile was a blank canvas for its owner, and in that sense, the term ‘MySpace’ gives a user ‘your space’ to do whatever he or she wants with it.”³⁰

As seen in the movie *The Social Network*, after a failed attempt at creating a site for people to compare pictures, ultimately deciding who was “Hot or Not,” Mark Zuckerberg launched Facebook in February of 2004.³¹ Zuckerberg’s idea behind Facebook was to create a centralized website that would connect the students around his university, Harvard.³² The original website was first limited to Harvard students, but quickly reached college campuses all over the United States.³³ Facebook’s reach has now expanded to almost everyone, world-wide, with access to a computer that is confirmed to be over the age of thirteen.³⁴

Facebook was the first social media network to amass one billion registered accounts.³⁵ As of September 2016, it is estimated that Facebook has

24. *Six Degrees of Separation*, WHATIS.COM, <http://whatis.techtarget.com/definition/six-degrees-of-separation> (last visited Jan. 1, 2016).

25. Chua, *supra* note 22.

26. Tania Dworjan, *History of Friendster*, LOVE TO KNOW, <http://socialnetworking.lovetoknow.com/history-friendster> (last visited Feb. 8, 2016).

27. Shea Bennett, *The History of Social Networking Through the Ages*, SOC. TIMES (June 26, 2014, 9:00 AM), <http://www.adweek.com/socialtimes/social-networking-ages/499633>.

28. “*A Place for Friends*” *A History of MySpace*, RANDOM HIST. (Aug. 14, 2008), http://www.randomhistory.com/2008/08/14_myspace.html.

29. *Id.*

30. *Id.*

31. Daniel Zeevi, *The Ultimate History of Facebook*, SOC. MEDIA TODAY (Feb. 21, 2013), <http://www.socialmediatoday.com/content/ultimate-history-facebook-infographic>.

32. *Id.*

33. *Id.*

34. *How Old do You Have to be to Sign up for Facebook?*, FACEBOOK, <https://www.facebook.com/help/210644045634222> (last visited Feb. 8, 2016).

35. *Global Social Media Ranking 2016*, STATISTA, <http://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users> (last visited Jan. 20, 2017).

1.71 billion active monthly users,³⁶ equating to one out of every five people on the Earth with an active account.³⁷ Over half Facebook users login to the site at least once every day.³⁸ Facebook makes it easy for its users to connect and share with their friends online.

The idea for YouTube came from the creators witnessing two major events in 2004: Janet Jackson's infamous Super Bowl wardrobe malfunction and the devastating tsunami in the Indian Ocean.³⁹ Launched in 2005, YouTube is a site that "allows billions of people to discover, watch and share originally-created videos," while providing a "forum for people to connect, inform, and inspire others across the globe."⁴⁰ It also acts as a distribution platform for original content creators and advertisers large and small.⁴¹

Twitter began in 2006 as a "micro-blogging site."⁴² Posts are famously known as "Tweets," which are ultimately "an expression of a moment or idea."⁴³ When a Tweet is made, the Tweet instantly appears on your timeline for all users who follow your Twitter account.⁴⁴ In its entirety, Twitter is a service that allows users to communicate and stay connected with each other through an exchange of quick, frequent messages which contain up to 140 characters of text or pictures.⁴⁵

"Take a picture, it will last longer . . . Post it to Instagram, it will last forever!"⁴⁶ In October of 2010, Instagram launched and within its first two months had amassed over one million users.⁴⁷ Instagram is an online mobile photo-sharing, video-sharing, and social networking service that enables its users to take pictures and videos while sharing them on other social media

36. *Id.*

37. Thomas Halleck, *Facebook: One out of Every Five People on Earth Have an Active Account*, INT'L BUS. TIMES (Jan. 30, 2015, 11:16 PM), <http://www.ibtimes.com/facebook-one-out-every-five-people-earth-have-active-account-1801240>.

38. *Id.*

39. Megan Rose Dickey, *The 22 Key Turning Points in the History of YouTube*, BUS. INSIDER (Feb. 15, 2013, 9:01 AM), <http://www.businessinsider.com/key-turning-points-history-of-youtube-2013-2?op=1>.

40. *About YouTube*, YOUTUBE, <https://www.youtube.com/yt/about> (last visited Feb. 8, 2016).

41. *Id.*

42. Bennett, *supra* note 27.

43. *The Story of a Tweet*, TWITTER, <https://about.twitter.com/what-is-twitter/story-of-a-tweet%20> (last visited Feb. 8, 2016).

44. *Id.*

45. *New User FAQs*, TWITTER, <https://support.twitter.com/articles/13920?lang=en> (last visited Feb. 8, 2016).

46. Bennett, *supra* note 27.

47. Geoff, *The Complete History of Instagram*, WE ARE SOC. MEDIA (Jan. 3, 2014), <http://wersm.com/the-complete-history-of-instagram>.

sites like Facebook and Twitter.⁴⁸ Ultimately, it allows you to take a picture, add a filter to the picture to enhance the photo, and upload it to your feed while allowing you to see others' photos with the ability to "'like' [and] comment on the photos. . . ."⁴⁹

II. THE INTERNET AND SOCIAL MEDIA ARE EVERYWHERE

In his article, Weisberg notes that in 1957, Dwight McDonald wrote "[a]s smoking gives us something to do with our hands when we aren't using them, *Time* gives us something to do with our minds when we aren't thinking."⁵⁰ But now "[w]ith smartphones, the issue never arises."⁵¹ Peoples' hands and minds are continuously occupied, whether they are sending work-related emails, texting their friends and family, tweeting, watching funny cat videos on YouTube, or playing the infamous Candy Crush.⁵²

"Americans [have been found to] spend an average of five and a half hours a day [on] digital media, [with] more than half of that time [spent] on [their] mobile device[. . .]."⁵³ According to a study performed in the United Kingdom, "[o]nce out of bed, we check our phones 221 times a day—an average of every 4.3 minutes."⁵⁴

Ultimately, the Internet is everywhere and now there is an app for everything.⁵⁵ When Apple first introduced their app store, there were roughly 500 applications available for download.⁵⁶ As of June 2015, there were approximately 1.5 million apps.⁵⁷ Now, users do not have to access their social media through a stationary computer; cell phones, tablets, and laptops have made access available anywhere in the world. According to Social Media Today, there are approximately 2.206 billion users of social media, with 1.925

48. Dan Frommer, *Here's How to Use Instagram*, BUS. INSIDER (Nov. 1, 2010, 12:01 PM), <http://www.businessinsider.com/instagram-2010-11>.

49. *Id.*

50. Jacob Weisberg, *We Are Hopelessly Hooked*, THE N.Y. REV. BOOKS (Feb. 25, 2016), <http://www.nybooks.com/articles/2016/02/25/we-are-hopelessly-hooked>.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. Britt Stafford, *There's an App for Everything Now*, BSCENE MAG. (July 2013), <http://www.bscenemag.com/tech-savvy-blog/theres-app-everything-now>.

56. *Id.*

57. *Number of Apps Available in Leading App Stores*, STATISTA, <http://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores> (last visited Feb. 8, 2016).

billion users utilizing their mobile devices for their social media needs.⁵⁸ “For better or worse, wireless internet access, smart phones, tablet computers, social networking services like Facebook, and stream-of-consciousness communications via Twitter give an omnipresence to speech. . . .”⁵⁹

III. RISE IN CYBERBULLYING

Cyberbullying is a term of art for the imprecise phenomenon of activities made online and through the use of electronic communication to bully a person.⁶⁰ Typically, these activities are made by a child, pre-teen, or teen and are made to torment, threaten, harass, humiliate, embarrass, or otherwise target another through technology.⁶¹

The National Center for Education reported one out of every four students has reported being bullied during the school year.⁶² According to a survey conducted in 2014 by the Cyberbullying Research Center, 34.6% of middle-school aged students were victims of cyberbullying.⁶³ 14.8% of high school students reported to being victims of cyberbullying in 2014.⁶⁴ The majority of the bullying was mean or hurtful comments or rumors that were all made online.⁶⁵ There were also instances of hurtful texts being sent and hurtful pictures of the students circulating online.⁶⁶

Researchers at Hasbro Children’s Hospital in Providence, Rhode Island looked at approximately 350 teens who were treated in the hospital’s emergency room (“ER”).⁶⁷ About 46.5% of the teens “reported violence at the hands of other teens, [while] 47[% of the teens] said they had been targets of

58. Kadie Regan, *10 Amazing Social Media Growth Stats from 2015*, SOC. MEDIA TODAY (Aug. 10, 2015), <http://www.socialmediatoday.com/social-networks/kadie-regan/2015-08-10/10-amazing-social-media-growth-stats-2015>.

59. *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, 220–21 (3d Cir. 2011).

60. *‘Burnbook’ Social Media App Criticized for Fanning Threats*, *supra* note 4.

61. *What is Cyberbullying, Exactly?*, STOP CYBERBULLYING, http://stopcyberbullying.org/what_is_cyberbullying_exactly.html (last visited Feb. 6, 2016).

62. *Bullying Statistics*, PACER’S NAT’L BULLYING PREVENTION CTR., <http://www.pacer.org/bullying/about/media-kit/stats.asp> (last visited Feb. 8, 2016).

63. *Cyberbullying Statistics*, PURESIGHT, <http://puresight.com/Cyberbullying/cyber-bullying-statistics.html> (last visited Feb. 8, 2016).

64. *Bullying Statistics*, *supra* note 62.

65. *Cyberbullying Statistics*, *supra* note 63.

66. *Id.*

67. Robert Preidt, *Cyberbullying, Violence Linked to PTSD in Teens*, U.S. NEWS (Feb. 26, 2016, 2:00 PM) <http://health.usnews.com/health-news/articles/2016-02-26/cyberbullying-violence-linked-to-ptsd-in-teens>.

cyberbullying.”⁶⁸ Of the teens reporting they were victims of cyberbullying, 23% came to the ER reporting symptoms of Post-Traumatic Stress Disorder, 14% with moderate or serious depression, and approximately 11% claimed they had suicidal thoughts within the previous year.⁶⁹

Cyberbullying, if not addressed, can quickly escalate into actual violence.⁷⁰ Peer violence is the main cause of (1) youth visits to the ER, (2) poor mental and physical health, and (3) suicide.⁷¹

IV. SOCIAL MEDIA ISSUES AT SCHOOL

Internet use among teens is sky high and as their chief means of social interaction, “[t]he line between ‘on-campus’ and ‘off-campus’ speech is not as clear as it once was.”⁷² Circuit courts are split over public schools disciplining their students for online, off-campus speech and the constitutionality of their punishments without infringing on the student’s First Amendment Right.⁷³

The last time— and really the only time— the United States Supreme Court has made a decision regarding public schools and regulating student speech was in 1969.⁷⁴ During the Vietnam War, many residents of Des Moines, Iowa wore black armbands to publicly show their objections to the war and their desire for a truce.⁷⁵ The armbands were to be worn throughout the holiday season.⁷⁶ Upon becoming aware of the public’s plan to wear the armbands, public school officials adopted a policy; any student who wore an armband to school would be asked to remove it. If the student refused to remove it, he or she would be suspended until he or she returned to school without the armband.⁷⁷ On December 16, 1965 and December 17, 1965, fully knowing the new school policy, three students wore black armbands to school.⁷⁸ The three students were all suspended from school and remained out of school until after New Years, the time agreed upon by all wearing the

68. *Id.*

69. *Id.*

70. *Cyber Bullying and Internet Safety*, CTR. FOR STUDY & PREVENTION OF VIOLENCE (2011), <http://www.colorado.edu/cspv/publications/factsheets/safeschools/FS-SC27.pdf>.

71. *Id.*

72. *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 950 (3d Cir. 2011).

73. Brittany L. Kaspar, Student Note: *Beyond the Schoolhouse Gate: Should Schools Have the Authority to Punish Online Student Speech?*, 88 CHI. KENT L. REV. 187, 195 (2012).

74. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

75. *Id.* at 504.

76. *Id.*

77. *Id.*

78. *Id.*

armbands to stop the protest.⁷⁹ The students, through their parents, filed a complaint against the school officials and the school district's board of directors, seeking an injunction restraining the schools from punishing the students.⁸⁰ The complaint further contended that the student's First Amendment rights had been violated because their conduct was within the protection of the Free Speech Clause.⁸¹

The lower courts in *Tinker* upheld the standard that the constitutionality of the actions of the schools were reasonable because they were imposed to prevent disturbance in the school.⁸² The students appealed their case to the Supreme Court, and the Court reversed the holdings of the lower courts.⁸³ Ultimately, the armbands did not materially or substantially disrupt the work and discipline of the schools.⁸⁴ The armbands were used as a silent protest, and there was no evidence presented that showed the armbands caused a disruption at the schools or imposed on fellow students' abilities to learn.⁸⁵ The Supreme Court held that the wearing of the armbands was parallel to "pure speech," which is entitled to the comprehensive protection of the First Amendment.⁸⁶

"[T]he language of *Tinker* supports the conclusion that public schools have a 'compelling interest' in regulating speech that interferes with or disrupts the work and discipline of the school, including discipline for student harassment and bullying."⁸⁷ The language of *Tinker* also shows that to justify the prohibition of a particular expression of an opinion, the school "must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompan[ies] an unpopular viewpoint."⁸⁸

Following the *Tinker* ruling, schools and their officials have been directed that they may not silence student expression just because they dislike it. Known as the *Tinker* test, or the Substantial Disruption test, schools must reasonably forecast, based on evidence and not on an "undifferentiated fear or

79. *Id.*

80. *Id.*

81. *Id.* at 508.

82. *Id.* at 505.

83. *Id.* at 514.

84. *Id.* at 512.

85. *Id.* at 508.

86. *Id.* at 516.

87. *Kowalski v. Berkeley Cty. Sch.*, 652 F.3d 565, 572 (4th Cir. 2011) (citing *DeJohn v. Temple Univ.*, 537 F.3d 301, 319–20 (3d Cir. 2008)).

88. *Tinker*, 393 U.S. at 509.

apprehension of disturbance,” that the student expression would lead to either (a) a substantial disruption of the school environment, or (b) an invasion of the rights of others.⁸⁹

While the First Amendment of the United States Constitution states that “Congress shall make no law . . . abridging the freedom of speech . . .,” there are limits to its freedom.⁹⁰ The right to freedom of speech does not extend to true threats.⁹¹ A true threat is a statement that is made with the full intention of “commit[ting] an act of unlawful violence to a particular individual or group of individuals.”⁹² The use of interstate communications, including social media sites like Facebook, to communicate a threat have been deemed to affect interstate commerce and are criminal acts according to Congress.⁹³ The Supreme Court has stated their precedent in regards to regulating student speech as:

Students retain free speech rights in public schools as long as their speech does not amount to a ‘true threat,’ does not create a material and substantial disruption of school activities, or that schools can reasonably forecast as creating a substantial disruption, unless the student’s speech was vulgar, lewd, or undermines the school’s basic educational mission, or unless the speech is of an offensively sexual suggestive nature, or unless the speech is school sponsored and school officials’ actions are reasonably related to legitimate pedagogical concerns, or unless the speech might reasonably be understood as bearing the imprimatur of the school itself, or unless the speech advocates illegal drug use.⁹⁴

Yet, there have been no decisions made regarding speech that is made off-campus.

89. *Id.* at 513.

90. U.S. CONST. amend. I.

91. Paul Larkin & Jordan Richardson, *True Threats and the Limits of First Amendment Protection*, HERITAGE FOUND., <http://www.heritage.org/research/reports/2014/12/true-threats-and-the-limits-of-first-amendment-protection> (last visited Feb. 8, 2016).

92. *Id.*

93. *Id.* (In *United States v. Elonis*, 730 F.3d 321, 326 (2013), an employee made threats to his employer and FBI on his Facebook page).

94. Allison E. Hayes, *From Armbands to Douchebags: How Doninger v. Niehoff Shows the Supreme Court Needs to Address Student Speech in the Cyber Age*, 43 AKRON L. REV. 247, 255 (2010).

A. *Student's First Amendment Rights—Freedom of Speech*

Some of the circuits have found in favor of the student in regard to posts on social media. Their reasoning was either that: 1) the school could regulate off-campus speech, but the speech did not satisfy the Substantial Disruption test found in *Tinker*; 2) or that in general, schools do not have the authority to discipline students for speech made off-campus.⁹⁵

Without social media requiring authentication of one's identity, it is easy for fraudulent social media accounts to be made. In 2007, when MySpace was the prime social networking website, two students created a fake user profile of their middle school principal.⁹⁶ The profile was created at one of the student's homes, on her family's personal computer.⁹⁷ Though the profile did not identify the principal by name, the principal's official photograph from the School District's website was used.⁹⁸ The profile contained a full spectrum of crude and vulgar content, beginning with "nonsense and juvenile humor to profanity and shameful personal attacks aimed at the principal and his family."⁹⁹ The profile identified the principal as being a bisexual man who loved giving detention, "being a tight ass, riding the fraintain [a reference to the principal's wife], spending time with my child (who looks like a gorilla), baseball, my golden pen, [expletive] in my office, hitting on students and their parents."¹⁰⁰ The profile was originally public to all MySpace users, then it was made private after several students found the profile and made comments saying they found the profile funny.¹⁰¹ Once the profile was made private, the girls "friended" twenty-two of their fellow students, granting them access to view the profile.¹⁰²

Two days after the profile was created, the principal was notified of the profile and later of its creators.¹⁰³ With the support of the School District's Superintendent, the two students were suspended from school for ten days and were not allowed to attend school dances.¹⁰⁴ The students, through their parents, filed suit against the principal and the Superintendent, arguing the

95. Kaspar, *supra* note 67, at 196.

96. J.S. *ex rel.* Snyder v. Blue Mountain Sch. Dist., 650 F.3d 915, 920 (3d Cir. 2011).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 921.

102. *Id.*

103. *Id.*

104. *Id.* at 922.

suspension violated the students' First Amendment rights, that the School District's policies were vague and overbroad, and that the punishment violated their parental rights under the Fourteenth Amendment.¹⁰⁵ Utilizing the *Tinker* standard, the court held the profile did not cause a "substantial and material" disruption in the school environment and the punishment did violate the students' First Amendment rights.¹⁰⁶ The profile was so outrageous no one who viewed it would find it truthful or take it seriously; further, there was no proof that anyone did take the profile seriously.¹⁰⁷ Additionally, the court held that the parent's rights under the Fourteenth Amendment were not violated; state law allows school districts to punish students "during such times as they [students] are under the supervision of the board of school directors and teachers. . . ."¹⁰⁸ Ultimately, the court held that "the Supreme Court nor [any other] Court has ever allowed a school to punish [their] students for off-campus speech that [was] not school-sponsored or [made] at a school-sponsored event and that [did not cause a] substantial disruption at school."¹⁰⁹ In allowing school officials to punish the students in *Snyder*, the court feared it would be giving the School District broad authority over student speech and would allow the school to censor speech at their discretion.¹¹⁰

Similar to the *Snyder* case, in *Layshock*, another Third Circuit case, a student created a fraudulent profile of his principal on MySpace on the computer at his grandmother's house.¹¹¹ The profile was full of profanity and claims that the principal was a sex addict who utilized illegal drugs.¹¹² The School District issued a ten-day out-of-school suspension, placed the student in an Alternative Education Program, banned him from all extracurricular activities, and would not allow him to participate in his graduation ceremony, while also threatening the possibility of expulsion.¹¹³ The parents of the student filed a complaint against the School District, the principal, and fellow school board officials alleging the punishment violated their son's First Amendment rights and "interfered with, and continued to interfere with, their right as parents" under the Fourteenth Amendment Due Process Clause.¹¹⁴

105. *Id.* at 923.

106. *Id.* at 924.

107. *Id.* at 930.

108. *Id.* at 924.

109. *Id.* at 933.

110. *Id.*

111. *Layshock*, 650 F.3d at 207–08.

112. *Id.* at 208.

113. *Id.* at 210.

114. *Id.*

The court held the School District did not have the authority to punish the student for expressive conduct outside of the school that the district considered lewd and offensive.¹¹⁵ “[T]here is no First Amendment protection for ‘lewd,’ ‘vulgar,’ ‘indecent,’ and ‘plainly offensive’ speech *in school*.”¹¹⁶ The court held that “schools *may* punish expressive conduct that occurs outside of school, as if it occurred inside the ‘schoolhouse gate,’ but only under very limited circumstances . . . ” such as, an off-campus school event.¹¹⁷ The speech of the student was not shown to materially and substantially disrupt the school, and thus failed the *Tinker* test.¹¹⁸

Yet, there are some circuits who have found the Supreme Court precedent, set in *Tinker*, to extend to off-campus speech. A “substantial disruption” is applied flexibly. Thus, “holding for the school effectively grants administrators the requisite flexibility to punish certain online expressions, thereby maintaining a stable learning environment while effectively conveying the school’s stance regarding the permissible extent of online speech.”¹¹⁹ Justice Alito commented in his concurrence in *Morse*,¹²⁰ that the school did have the ability to regulate student speech that encouraged the use of illegal drugs.¹²¹ Further stating, in an almost prophetic sense, “school administrators must be able to prevent and punish harassment and bullying in order to provide a safe school environment conducive to learning.”¹²²

In 2005, a high school senior created a MySpace discussion group page on her home computer, titling it S.A.S.H.¹²³ The student argued the acronym stood for “Students Against Slut Herpes,” while fellow students claimed it stood for “Students Against Shay’s Herpes.”¹²⁴ After inviting approximately 100 people to her page, the main topic of discussion on the page was a student at the same high school, named Shay.¹²⁵ On the group page, “friends” of the page were able to post with text, comments, and edited photographs of Shay with drawn-on red dots to simulate herpes on both her face and pelvic

115. *Id.* at 219.

116. *Id.* at 217.

117. *Id.* at 219 (emphasis added).

118. *Id.* at 212, 219.

119. Kaspar, *supra* note 73, at 200.

120. *Morse v. Frederick*, 551 U.S. 393 (2007).

121. *Id.* at 422 (Alito, J. concurring).

122. *Kowalski v. Berkeley Cty. Sch.*, 652 F.3d 565, 572 (4th Cir. 2011).

123. *Id.* at 567.

124. *Id.*

125. *Id.*

region.¹²⁶ After Shay and her parents found out about the webpage, the creator was asked to delete the group from MySpace.¹²⁷ She claimed she was unable to do so and instead renamed the group page to “Students Against Angry People.”¹²⁸ Shay’s parents then went to the school’s principal, provided a copy of the postings that were made on the group page and requested punishment for the student creator.¹²⁹ The principal contacted the school board to determine if this was an issue that could be addressed by the school through school discipline.¹³⁰ He was informed that it was.¹³¹ The punishment for the “hate website” was a five-day out of school suspension and a ninety-day in-school suspension that prohibited the student from attending school events that she was not a direct participant of passing crown and title of the school’s “Queen of Charm,” and participating on the cheerleading squad.¹³²

The student filed a complaint against the school’s Principal, Vice Principal, her cheerleading coach, and the Assistant Superintendent.¹³³ She claimed her free speech rights under the First Amendment had been violated because the speech was made off-campus and was non-school related speech. Thus, they had no power to discipline her.¹³⁴ The court disagreed with her contentions.¹³⁵ Especially in a case where the speech targets a classmate with verbal abuse, the need for regulation by the school is appropriate when the speech disrupts classwork, creates substantial disorder, or collides with or invades the rights of others.¹³⁶ A substantial disruption indeed occurred; the group page was seen by a large number of the student body and school computers were found to have been used to post the offensive pictures.¹³⁷

Following a discussion of the phenomenon of student harassment and bullying, the court concluded, “where such speech has a sufficient nexus with the school, the Constitution is not written to hinder school administrators’ good faith efforts to address the problem.”¹³⁸ The nexus of the student’s

126. *Id.* at 568.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* at 568–69.

133. *Id.* at 568.

134. *Id.* at 570.

135. *Id.*

136. *Id.* at 571–72.

137. *Id.* at 567–68.

138. *Id.* at 577.

speech to the school's "pedagogical interests [were] 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."¹³⁹

Very recently, in 2015, the Fifth Circuit of Appeals heard a case regarding a high school student posting a rap song on multiple social media outlets.¹⁴⁰ The song was recorded in an off-campus studio and did not use school resources, but the song was about two coaches at the school.¹⁴¹ The rap contained threatening language indicating violent acts to be taken out against two of the teachers/coaches of the student's high school.¹⁴² Several of the lines imply the coaches are perverts, are cheating on their spouses, and looking at and hitting on students inappropriately.¹⁴³ The rap also contains several references to guns, "*Run up on T-Bizzle / I'm going to hit you with my rueger*" and "*you [expletive] with the wrong one / going to get a pistol down your mouth / Boww.*"¹⁴⁴ The rap song was originally posted to the student's Facebook profile, which was not privately blocked, and then uploaded to YouTube.¹⁴⁵ One of the coaches learned about the recording the day after it was uploaded, and on the second day the school-board attorney questioned the student regarding the allegations and threats contained in the rap.¹⁴⁶ The School District found that the rap contained harassing remarks, was intimidating or threatened other students and/or teachers and was consistent with the administrative disciplinary policy.¹⁴⁷ The student was immediately suspended from school until a disciplinary committee hearing could take place.¹⁴⁸ After the hearing, the committee determined the student was to be suspended for seven days and would be placed in the county's alternative school for the remainder of the school quarter.¹⁴⁹ After unsuccessfully appealing the decision, the student and his mother brought an action against the school board, superintendent, and principal claiming the student's First Amendment rights had been violated.¹⁵⁰ The court held that the "First

139. *Id.* at 573.

140. *Bell v. Itawamba Cty. Sch. Bd.*, 799 F.3d 379, 383 (5th Cir. 2015).

141. *Id.*

142. *Id.*

143. *Id.* at 384.

144. *Id.*

145. *Id.* at 383.

146. *Id.* at 385.

147. *Id.*

148. *Id.*

149. *Id.* at 386.

150. *Id.* at 387.

Amendment does not provide students absolute rights to [freedom of speech and expression], and those rights must be tempered in the light of a school official's duty to . . . teach students the boundaries of socially appropriate behavior . . . and protect those entrusted to their care. . . ."¹⁵¹

Under the First Amendment right to free speech, a student may express his or her opinions if it is done so without materially and substantially disrupting or interfering with the requirements of the appropriate discipline in the operation of the school and without colliding with the rights of others.¹⁵² In posting the rap song to his public Facebook page and public YouTube page, the student intended for the rap to be heard and reach the school.¹⁵³ The court held that "with the near-constant student access to social networking sites on and off campus, when offensive and malicious speech is directed at school officials and disseminated online to the student body, it is reasonable to anticipate an impact on the classroom environment."¹⁵⁴

B. *14th Amendment—Tension Between School Disciplining Student Interfering with Parent's Right to Raise Child*

With the uncertainty of the social media comments made out of school being in the school's capacity to punish students without violating their First Amendment rights, parents tend to follow suit, arguing the school is overstepping its boundaries and interfering with the parent's fundamental right to raise their child.

The Fourteenth Amendment provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law."¹⁵⁵ Under the Fourteenth Amendment, parents have inherent fundamental rights regarding raising their children in the manner they deem fit. More specifically, the Due Process Clause includes the right of parents "to establish a home" and "to control the education of their own."¹⁵⁶ This fundamental right is considered one of the "oldest of the fundamental liberty interests. . . ."¹⁵⁷

The Constitution applies equally to every citizen of the United States, regardless of one's age, color, race, religion or any other factor.¹⁵⁸ This applies

151. *Id.* at 389–90.

152. *Id.* at 390.

153. *Id.* at 386.

154. *Id.* at 400.

155. U.S. CONST. amend. XIV § 1.

156. *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923).

157. *Troxel v. Granville*, 530 U.S. 57, 63 (2000).

158. *Constitutional Topic: Student Rights*, U.S. CONSTITUTION ONLINE, <http://www.usconstitution.net>

to minors as well, but they are considered a special category of person.¹⁵⁹ In many instances, the rights of minors may be suppressed or violated in ways that the rights of adults may not be.¹⁶⁰ The most prevalent violation that is allowed is when a minor student is in the care and custody of the school; there, the school should act as a parent or *in loco parentis*.¹⁶¹ Although free speech and the flow of ideas in the classroom or school—as the “marketplace of ideas”—are important, if the act of the student interferes with the educational process, the student’s act is highly likely to be suppressed.¹⁶²

The Supreme Court has continuously held that the parent’s fundamental right to raise their child are not to be interfered with, absent special circumstances.¹⁶³ Does an issue regarding social media and their child’s school rise to a level of “special circumstance?” Who knows what is best for the child in these situations?

The Sixth Circuit has recently held that:

While parents may have a fundamental right to decide *whether* to send their child to a public school, they do not have a fundamental right generally to direct *how* a public school teaches their child. Whether it is the school curriculum, the hours of the school day, school discipline . . . these issues of public education are generally “committed to the control of state and local authorities.”¹⁶⁴

Arising over a dress code dispute, a public middle school found a student in violation of their school’s policy.¹⁶⁵ The student ignored the dress code requirements and wore clothes to school that were outside of the code’s parameters.¹⁶⁶ The student argued that not being allowed to wear the clothing that she wanted was a violation of her First Amendment rights of freedom of speech.¹⁶⁷ Her father, additionally, argued the school was violating his substantive due process right to control the dress of his child.¹⁶⁸ The court

/conststop_stud.html (last modified Mar. 25, 2010).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

164. *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395–96 (6th Cir. 2005) (quoting *Gross v. Lopez*, 419 U.S. 565, 578 (1975)).

165. *Id.* at 386.

166. *Id.*

167. *Id.* at 385.

168. *Id.*

held “that the dress codes [imposed] did not violate [the student’s] First Amendment right to freedom of speech, that there is no fundamental right under the Fourteenth Amendment to wear the clothes of one’s choosing to public school. . . .”¹⁶⁹ Further, the court held that “a parent’s fundamental right under the Fourteenth Amendment to control the education of his or her child does not bar a school district from adopting a reasonable dress code.”¹⁷⁰ While dress code typically is not as severe as social media issues, it does not fall under the student’s First Amendment rights.

In retaliation for getting in trouble for dress code violations, two eighth-grade students created a profile of their middle school principal on MySpace.¹⁷¹ The profile was created over the weekend and on the personal home computer of one of the students.¹⁷² The profile contained a picture of the principal from the School District’s website and claimed the principal was a bi-sexual man named “M-Hoe.”¹⁷³ In many areas of the profile, vulgar and sexually explicit language was used to describe the principal and his general interests.¹⁷⁴ After several students viewed the MySpace page, the student made the profile private and ultimately invited twenty-two students to have access to the page.¹⁷⁵ When the school found out about the fake profile, the student received a ten-day out-of-school suspension and was prohibited from attending the school’s dance.¹⁷⁶

The student’s parents argued the punishment was a violation of their daughter’s First Amendment rights and was a violation of their rights under the Fourteenth Amendment. The School District argued that the profile caused a disruption at school, as students both viewed the profile and discussed the profile in class.¹⁷⁷ The district court agreed with the School District, stating that “as vulgar, lewd, and potentially illegal speech that had an effect on campus, we find that the school did not violate the plaintiff’s rights in punishing her for it even though it arguably did not cause a substantial disruption of the school.”¹⁷⁸ The court of appeals reversed the district court’s

169. *Id.* at 387.

170. *Id.*

171. *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 920 (3d Cir. 2011).

172. *Id.*

173. *Id.*

174. *Id.* at 920–21.

175. *Id.* at 921.

176. *Id.* at 922.

177. *Id.* at 920, 922.

178. *Id.* at 923.

holding.¹⁷⁹ The student's rights were violated, as "an undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."¹⁸⁰ Further, the court of appeals denied the parents claims of a Fourteenth Amendment violation.¹⁸¹ Only when there is some "manipulative, coercive, or restraining conduct by the State" will the parents prevail with a claim of a Due Process violation.¹⁸² Courts undoubtedly note that the Due Process Clause "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."¹⁸³ But the court also encouraged parties to understand that "there may be circumstances in which school authorities, in order to maintain order and a proper educational atmosphere in the exercise of police power, may impose standards of conduct on students that differ from those approved by some parents."¹⁸⁴ The court of appeals held that the parents' Due Process rights and their interests to make decisions regarding their children had not been implicated by the decision to suspend their daughter.¹⁸⁵ Ultimately, the suspension did violate the student's First Amendment rights but did not trigger her parents' Due Process rights or interests.

In *Layshock*, the student was suspended, placed in an Alternative Education Program, banned from all extracurricular activities, and denied the ability to participate in his graduation ceremony for creating a MySpace profile of his principal as a sex addict and drug user.¹⁸⁶ The court ruled in favor of the student and his parents; the school's actions did violate his freedom of speech and violated the parents' rights as well.¹⁸⁷ The principal and school district did not have authority to punish the student for his expressive conduct outside of school.

The Tennessee Western District Court dismissed a parent's Fourteenth Amendment right argument when she could not prove the suspension of her daughter was not rationally related to a state interest.¹⁸⁸ The suspension stemmed from an argument between two middle school students over a boy

179. *Id.* at 920.

180. *Id.* at 929.

181. *Id.* at 920.

182. *Id.* at 934.

183. *Id.* at 933.

184. *Id.*

185. *Id.* at 934.

186. *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, 208, 210 (3d Cir. 2011).

187. *Id.* at 219.

188. *Nixon v. Hardin Cty Bd. of Educ.*, 988 F. Supp. 2d 826, 841 (W.D. Tenn. 2013).

that both “friends” liked at the same time.¹⁸⁹ One friend took it to her Twitter and posted that “she was going to ‘shoot [the other student] in the face,’ with an [“emoji”] of a girl’s face, a gun, and hashtags ‘nolie’ [(no lie)] and ‘hopeshereadsthis’ [(hope she reads this)].”¹⁹⁰ The author of the “tweet” claims she did not mean anything and was joking.¹⁹¹ She received several responses from fellow students, and received a return tweet that said “Good Luck. Shoot her in the face,” followed by more emojis.¹⁹² In another tweet “conversation” with a different classmate, she tweeted “I hate her. That was my whole point. Carli, goodness, I’m funny. I’ll kill her.”¹⁹³ Upon finding out about the threatening tweets, the school decided to punish the student with forty-five days at an alternative school.¹⁹⁴ The mother of the student who made the threat said the school violated her right to care, have custody over, and control her child.¹⁹⁵ The student’s mother cited the Fourteenth Amendment, arguing that the Due Process Clause “includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests.”¹⁹⁶ Further, she argued that as a parent, the oldest of the fundamental rights afforded was violated.¹⁹⁷ Typically, government actions infringing on fundamental rights receive strict scrutiny; however, in the absence of a fundamental right, the parent must show that action was not rationally related to a legitimate state interest.¹⁹⁸ The court ultimately dismissed her claim because she could not prove that the school’s action was not rationally related to a legitimate state interest.¹⁹⁹

C. *Not all Social Networking is Bad—The Upsides to Social Media*

All aspects of social media are not bad. They are currently the fastest way to both spread and gain access to information.²⁰⁰ It is reported that over 50%

189. *Id.* at 830.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* at 831.

195. *Id.* at 841.

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Are Social Networking Sites Good for Our Society*, PROCON.ORG, <http://socialnetworking.procon.org> (last visited Mar. 24, 2015).

of people learn about breaking news on social media first.²⁰¹ This is not only due to the postings by lay people, but also posts made by top news sources on their profile pages.²⁰² For example, the 2012 Aurora, Colorado Theater shooting was reported first by Twitter and YouTube users, before news stations were able to get to the scene.²⁰³

Another benefit to social networking is that law enforcement uses social networking sites to catch and prosecute criminals.²⁰⁴ Many criminals have a tendency to brag about their crimes online.²⁰⁵ In 2011, the New York Police Department (NYPD) added a tracking unit to patrol Twitter and Facebook sites, looking for criminals who have bragged about their crimes.²⁰⁶ These patrol members search for suspicious activity that is posted.²⁰⁷

The third best reason that social media offers more of a benefit to its users, rather than a detriment, is that surveys have shown that social networking sites help students do better in school.²⁰⁸ The Internet is a highly powerful educational tool.²⁰⁹ At least 59% of students who access the Internet have reported that they utilize the sites to discuss educational topics and talk about school assignments with classmates.²¹⁰ Further, these same students discuss the college planning and application process, and continue their education outside of the school and the classroom.²¹¹ Almost all school districts, approximately 96% of the schools in the United States, say that the majority of their teachers assign homework assignments that require Internet access to complete.²¹²

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. Dan Evon, *NYPD Adding Twitter Tracking Unit to Police Force*, SOC. NEWS DAILY (Aug. 10, 2011), <http://socialnewsdaily.com/1443/nypd-adding-twitter-tracking-unit-to-police-force>.

207. *Id.*

208. *Are Social Networking Sites Good for Our Society*, *supra* note 200.

209. *Id.*

210. *Creating & Connecting/Research and Guidelines on Online Social—and Educational—Networking*, NAT'L SCH. BOARDS ASS'N, <https://cdn-files.nsba.org/s3fs-public/reports/CREATING-CONNECTING-Research-and-Guidelines-on-Online-Social-and-Educational-Networking.pdf?uWboUuaGF3I1xHt6.Vlnq4D9HnfutHyF> (last visited Jan. 25, 2017).

211. *Id.*

212. *Id.*

D. *Is There an Answer?*

Many states have turned to state laws and statutes to address bullying issues within the public school systems.²¹³ “Prior to the Columbine school shootings in 1999, no state had legislation addressing bullying in schools.”²¹⁴ Now all fifty states have a bullying law in place.²¹⁵ As of December 2015, twenty-three states include cyberbullying under their bullying law, with three more states proposing to add cyberbullying.²¹⁶ Under the bullying law, forty-eight states include electronic harassment, which is held to be different from cyberbullying.²¹⁷ Criminal sanctions are imposed on violators in eighteen states, and forty-five states impose school sanctions upon younger violators.²¹⁸ Of the forty-nine states that require a school policy, fourteen states allow schools to discipline their students for off-campus behavior that is shown to cause a substantial disruption in the school’s learning environment.²¹⁹

As of January 2016, a public school can legally restrict student speech if they satisfy one of two factors.²²⁰ The first being the *Tinker* test (if the school can reasonably forecast substantial disruption).²²¹ The second being if the student’s expression is a true threat.²²²

Despite numerous cases since the *Tinker* decision, “the issue of whether public schools can punish [their] students for off-campus, online speech remains unresolved.”²²³

In early 2016, there was anticipation that the Supreme Court would finally hear a case regarding student speech and the student’s First Amendment rights. In November of 2015, the student in *Bell* appealed his case to the United States

213. *State Cyberbullying Laws*, CYBERBULLYING RES. CTR., <http://cyberbullying.org/Bullying-and-Cyberbullying-Laws.pdf> (last visited Jan. 25, 2017).

214. *Bullying/Cyberbullying*, SAFE SUPPORTIVE LEARNING, <https://safesupportivelearning.ed.gov/topic-research/safety/bullyingcyberbullying> (last visited July 30, 2016).

215. *Id.*

216. *State Cyberbullying Laws*, *supra* note 213.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Educating for Freedom and Responsibility*, FIRST AMENDMENT CTR., <http://www.firstamendmentschools.org/freedoms/faq.aspx?id=12994> (last visited Feb. 8, 2016).

221. *Id.*

222. *Id.*

223. Clay Calvert, *Can Schools Punish Students for Off-Campus Online Speech?*, U.F. NEWS (Jan. 13, 2016), <http://news.ufl.edu/articles/2016/01/can-schools-punish-students-for-off-campus-online-speech.php>.

Court of the Appeals for the Fifth Circuit.²²⁴ He was supported by world-renowned rap artists, who collectively filed an amicus brief with the United States Supreme Court hoping to persuade the court that the violent lyrics of Bell's rap should not be taken literally.²²⁵ Included in Bell's "corner" were major rap artists T.I., Big Boi, and Killer Mike, who hoped to explain rap music is a form of art and as an expression should be afforded the protection of the First Amendment.²²⁶

Aside from his speech being part of a rap, "[i]n almost every respect, *Bell* would seem to present the perfect vehicle through which the Supreme Court could bring uniformity to this area of First Amendment law."²²⁷ On February 29, 2016, the Supreme Court denied Bell's petition, leaving the decision of the Fifth Circuit Court of Appeals intact.²²⁸ According to *The National Law Review*, the Supreme Court's endorsement of the opinion reached in the Fifth Circuit has provided "school districts with guidance and authority to discipline students whose off-campus conduct during non-school hours threatens the health and safety of the school."²²⁹

"The Internet effectively erases the distance between the school's front entrance and Bell's recording studio."²³⁰ While Bell's appeal was denied, this note supports the Supreme Court's backing of the Fifth Circuit's holding, yet believes this will not be the end of the discussion regarding students' and their First Amendment rights.

"When you consider how prevalent gun violence has become in our nation's schools, rapping about 'going to get a pistol down your mouth' (Bell's words) and referencing a specific individual is not something to be taken lightly just because the words happen to be set to a beat."²³¹ In an age where

224. Gilad Edelman, *Killer Mike's Supreme Court Brief*, *NEW YORKER* (Dec. 28, 2015), <http://www.newyorker.com/news/news-desk/killer-mikes-supreme-court-brief>.

225. *Id.*

226. Adam Liptak, *Hip-Hop Stars Support Mississippi Rapper in First Amendment Case*, *THE N.Y. TIMES* (Dec. 20, 2015), http://www.nytimes.com/2015/12/21/us/politics/hip-hop-stars-support-mississippi-rapper-in-first-amendment-case.html?_r=0.

227. Mark Joseph Stern, *Judges Have No Idea What to do About Student Speech on the Internet*, *SLATE* (Feb. 8, 2016, 5:15 PM), http://www.slate.com/articles/technology/future_tense/2016/02/in_bell_v_itawamba_county_school_board_sotus_may_rule_on_the_first_amendment.html.

228. *Bell v. Itawamba Cty. Sch. Bd.*, *SCOTUSBLOG*, <http://www.scotusblog.com/case-files/cases/bell-v-itawamba-county-school-board> (last visited Feb. 8, 2016).

229. Christine V. Hamiel, *U.S. Supreme Court Declines Review of Matter Involving Student Discipline*, *NAT'L L. REV.* (Mar. 9, 2016), <http://www.natlawreview.com/article/us-supreme-court-declines-review-matter-involving-student-discipline>.

230. Andrew Wallenstein, *The Hip-Hop Case the Supreme Court Should Reject*, *VARIETY* (Feb. 22, 2016), <http://variety.com/2016/digital/opinion/killer-mike-taylor-bell-supreme-court-1201711671>.

231. *Id.*

social media is everywhere and the Internet is where the majority of young people's expression probably occurs, digital distribution makes it all too easy to intimidate others.

While the Supreme Court's decision does expand the rights of School Districts, the Internet has not been converted from a "medium of expression to a tool of censorship."²³² Many argue that allowing this expansion is ultimately a censorship of free speech, but the note author disagrees. Public school students do possess First Amendment speech rights, although those rights are not the same as those of adults in non-school settings.

CONCLUSION

Regardless of how the bullying occurs or where the bullying occurs, if it affects the school environment or disrupts the educational process by impeding a student's ability to learn, the possibility of the bullying having a devastating effect on the student is overwhelming.²³³

Ultimately, an appeal to the Supreme Court is a major step in determining schools' rights and students' First Amendment rights. While a case has not been heard by the Supreme Court yet, the decision to not hear *Bell* has provided students and schools with a little more clarity in the gray area as to what their rights are for speech made off-campus. "[P]ublic school students deserve the right to know, pre-posting and pre-texting, what their First Amendment rights are" when they are away from campus.²³⁴ Giving students fair notice is an integral step in lessening the tension between schools, students, and parents and keeping all parties' Constitutional rights balanced.

232. Stern, *supra* note 227.

233. *Resolution on Bullying Among Children & Youth*, AM. PSYCHIATRIC ASS'N (July 2004), <https://www.apa.org/about/policy/bullying.pdf>.

234. Brief for Marion B. Brecher First Amendment Project as Amici Curiae supporting Petitioner, *Bell v. Itawamba Cty. Sch. Bd.* 799 F.3d 379 (5th Cir. 2015) (No. 15-666).