

## Electronic off-campus student-speech cases

### [Doninger v. Niehoff](#), 527 F.3d 41 (2nd Cir. 2008)

On her blog, a student used lewd language to criticize her high school administration. Based on this behavior, school officials banned the student from running for class secretary in her senior year. Relying on its previous application of [Tinker v. Des Moines Independent Community Sch. Dist.](#) (1969), to off-campus speech, the 2nd U.S. Circuit Court of Appeals found that the student's behavior created a "foreseeable reasonable risk of substantial disruption" such that it might be regulated by school officials.

### *J.S. v. Blue Mountain School District*, slip copy, 2008 WL 4279517 (M.D. Pa.)

A student created a MySpace profile for the school principal at home indicating that he was a pedophile and sex addict and including a photograph of the principal from the school Web site. The principal discovered the profile after teachers reported that their students were discussing the profile in class. The principal suspended the student for making false accusations against him and for violating the copyright of the photograph. Using an amalgamation of standards set forth in *Tinker*, [Bethel School District v. Fraser](#) (1986) and [Morse v. Frederick](#) (2007), the court found that because the speech was vulgar, lewd, potentially illegal, and had an effect on campus, the school did not violate the student's rights by punishing her "even though [her actions] arguably did not cause a substantial disruption of the school."

### [Wisniewski v. Board of Education](#), 494 F.3d 34 (2nd Cir. 2007)

A student used an icon depicting a pistol firing a bullet at a person's head, including the caption "Kill Mr. VanderMolen," when communicating on AOL Instant Messenger on his parents' computer. Philip VanderMolen was the student's English teacher. The icon was visible to the student's Instant Messenger "buddies," and a classmate saw the icon and reported it to VanderMolen. The school administration suspended the student for five days. The 2nd Circuit applied the *Tinker* standard to these facts and found that the school's punishment did not violate the student's First Amendment rights because the off-campus communication "foreseeably create[d] a risk of substantial disruption within the school environment."

### [Layshock v. Hermitage School District](#), 496 F.Supp.2d 587 (W.D. Pa. 2007)

A student created a parody profile of his school principal on MySpace and used lewd language. Stating that *Fraser* applied only to lewd speech on school property and that [Hazelwood School District v. Kuhlmeier](#) (1988) applied only to school-sponsored speech, the court found that under *Tinker* the school did not establish a "sufficient nexus" between the off-campus speech and a "substantial disruption of the school environment." Thus, the student's off-campus electronic speech was protected by the First Amendment.

### *J.S. v. Bethlehem Area School District*, 569 Pa. 638 (2002)

A student created a Web site containing derogatory comments about a teacher and principal at student's school. The court found that the site, created off-campus, was an on-campus communication for the purposes of *Tinker* and *Fraser* because the student accessed it at school and showed a friend. The court found that the site had lewd

language under *Fraser*, but noted that it was unclear whether *Fraser* applied in a situation where the speech did not occur at a school assembly or even during a class. The court found that the school produced enough evidence that the student's Web site constituted a "substantial disruption" under *Tinker* and thus the school did not violate the student's First Amendment rights in punishing the student for the site.

***Mahaffey v. Aldrich*, 236 F.Supp.2d 779 (E.D. Mich. 2002)**

A student contributed to a Web site that another student had created. He published a page called "Satan's web page," which included a list of "people I wish would die." He also listed "Satan's mission for you this week," which included "stab[bing] someone for no reason." A parent of another student notified the police. The principal recommended expulsion, but then retracted her recommendation after a hearing on the matter and allowed the student to return to school for the second semester. The court found that the school violated the student's First Amendment rights when it regulated his off-campus speech, because there was no "proof of disruption to the school or on campus activity" caused by the student's Web site.

***Killion v. Franklin Regional School Dist.*, 136 F.Supp.2d 446 (W.D. Pa. 2001)**

A student composed a "Top Ten" list at home about the school's athletic director after being denied a school parking permit. The list included statements about the director's overweight appearance and the size of his genitals. The student e-mailed the list to friends from school, but did not bring the list to school. A third party then distributed the list on school grounds. School administrators suspended the student for 10 days. The district court followed other districts in applying *Tinker* to off-campus student speech and found that the suspension violated the student's First Amendment rights because the list did not cause a "substantial disruption."

***Emmett v. Kent School Dist. No.*, 415, 92 F.Supp.2d 1088 (W.D. Wash. 2000)**

A high school student moved for a temporary restraining order prohibiting the school from suspending him for creating an off-campus Web site that included "mock obituaries" of students' friends and commentary on school faculty. The court granted the student's motion, ruling that *Fraser* and *Hazelwood* did not permit the school to punish off-campus, non-school-sponsored speech. Additionally, the court found that the student's speech was non-threatening in nature.

***Beidler v. North Thurston School District*, No. 99-2-00236-6, (Wash. Super. Ct. 2000)**

A student created a Web site depicting the principal having sex with cartoon character Homer Simpson. School administrators discovered the site and expelled the student. The judge ruled under *Tinker* that the off-campus speech did not cause a "substantial disruption" to the school and therefore the school administrators violated the student's First Amendment rights in expelling him.

***Beussink v. Woodland R-IV School Dist.*, 30 F.Supp.2d 1175 (E.D. Mo. 1998)**

A school punished a student for creating an off-campus Web site that included lewd language and criticisms of the Woodland High School administration. The court found that under *Tinker* the student had a likelihood of success on his First Amendment claim

because the school did not demonstrate that his site created a danger of “disruption or interference with school discipline.” The court thus enjoined Woodland High School from punishing the student for his Web site.

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