

# Students 2012

## Updates on School Violence, the Use of Social Media and More...

September 29, 2012

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- I. School Violence Issues
- II. Update on Off-Campus Student Conduct
- III. Bullying
- IV. Update on Student-Related Laws and Policies



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# School Violence Issues



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# School Violence

## Active Shooter Situations

1. Potential Liability
2. Safety of Students
3. Have a Plan



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# Active Shooter Situations

How an incident is handled may impact liability of School District.

- a) Failure to warn verdict awarded families to two Virginia Tech students.
- b) Awarded each family \$4 million in damages.

Have a Plan in place.

- a) Work with local law enforcement.



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# Active Shooter Situations (cont.)

Columbine shooting in April 1999 changed the law enforcement approach to active shooters.

- Traditional approach – perimeter and SWAT
- Columbine shooters killed 13 before committing suicide
- Columbine lawsuits – quicker response could have saved lives
- Watershed moment



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# Active Shooter Situations (cont.)

## “Shelter in Place”

Also known as “Lockdown” or “Security in Place”

- Most Common Approach after Columbine
- Remain in locked classrooms
- Shooter will seek the path of least resistance and bypass locked doors



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# Active Shooter Situations (cont.)

- Changing Landscape
  - Virginia Tech & Fort Hood shooters rehearsed and practiced with targets at ground level
  - Virginia Tech students shot while hiding in hallways
  - Lockdown not always feasible
  - School library, lunchroom scenarios
- Additional options to Shelter in Place became necessary



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# Active Shooter Situations (cont.)

## Alternative Approach

- **A** ALERT
- **L** LOCKDOWN
- **I** INFORM
- **C** COUNTER (CONFRONT)
- **E** EVACUATE (ESCAPE)



# Active Shooter Situations (cont.)

- Has Met with Some Resistance
- Classroom Discretion
- School Accountability Methods
- Requires More Training



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# Active Shooter Situations (cont.)

## Another Variation

- Run – Hide – Fight
  - <http://www.stlouisco.com/LawandPublicSafety/PoliceDepartment/Information/SurvivinganActiveShooterIncident>



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# Active Shooter Situations (cont.)

- Have a policy in place to address situations
- Work with local law enforcement
- Additional information available from the Safe Schools Partnership



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# Safe Schools Partnership

- Established in 1998 in response to increasing incidents of school violence throughout the country
- Membership includes nearly every school district and law enforcement agency in St. Louis County.
  - Also includes agencies outside St. Louis County's geographical boundaries.
- Training is held twice a year



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# Safe Schools Partnership (cont.)

- All documents related to the Safe Schools Partnership can be found at:

[www.stlouisco.com/police](http://www.stlouisco.com/police)

- Once at the site look on left side of page for link to Partnership information including:
  - Manual
  - Safe Schools Hotline Brochure
  - Links to related sights



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**2012 Update  
Student Discipline for  
Off-Campus Conduct  
Occurring on the Internet**



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# Substantial Disruption

Cases involving social networking sites; including parody websites critical of school and staff or containing lewd or violent information.

Primary First Amendment Supreme Court Cases Involving Students (where threats not involved): Tinker and Fraser

- Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969) (invalidating disciplinary action against students for wearing black armbands to protest the Vietnam War)
- Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 683 (1986) (upholding disciplinary action against student for delivering assembly speech laden with sexual innuendo)



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# Substantial Disruption (cont.)

Tinker set forth the following criteria to describe student conduct that would merit school discipline:

- Conduct that would cause material and substantial interference with school work or discipline, or
- Conduct that would materially and substantially disrupt the work and discipline of the school, or
- Conduct that might reasonably have led school authorities to foresee substantial disruption of or **material interference with school activities.** – FACTS!!!

Most Courts reluctant to expand Fraser to off-campus activities.



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# Where Threats are Involved – Courts May Apply the “True Threat” Doctrine

1. Exception to the First Amendment protection where “true threats” are concerned. Watts v. U.S., 394 U.S. 705 (1969)
2. Supreme Court has described “true threats” as “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” Virginia v. Black, 538 U.S. 343 (2003)



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## The Test Is:

1. Whether the student's statements on a website constitute true threats as viewed by a reasonable person. If they do, the speech is not protected by the First Amendment.
2. The speech must be knowingly communicated to the object of the threat or to a third person.



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# 2012 Case Update

## J.S. v. Blue Mountain Sch. Dist. (June 2011)

- The U.S. Court of Appeals for the 3<sup>rd</sup> Circuit ruled that the school district violated a student's First Amendment free speech rights when it disciplined her for creating a parody *MySpace* profile page of her middle school principal, off-campus and on a home computer, which contained vulgar, lewd and false statements about the principal.



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# 2012 Case Update (cont.)

## J.S. v. Blue Mountain Sch. Dist. (June 2011) (cont.)

- The Court held that “because Plaintiff was suspended from school for speech that indisputably caused no substantial disruption in school and could not reasonably have led school officials to forecast substantial disruption in school, the school district’s actions violated her First Amendment free speech rights.”
- The Court held that Fraser does not apply to off-campus speech because if the speech in Fraser “had been delivered in a public forum outside the school context, it would have been protected.”



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# 2012 Case Update (cont.)

## Layshock v. Hermitage Sch. Dist. (June 2011)

- The 3<sup>rd</sup> Circuit U.S. Court of Appeals ruled that school district violated a student's free speech rights when it disciplined him for creating an offensive parody *MySpace* profile of his high school principal, off-campus and on a home computer.
- Insufficient "nexus" between student's "speech" and a substantial disruption of the school environment.
- The Court held that Fraser does not apply to off-campus speech. "Fraser does not allow the school district to punish the student for expressive conduct which occurred outside the school context."



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# 2012 Case Update (cont.)

1. U.S. Supreme Court denied *certiorari* in both Blue Mountain and Layshock as well as a third case (Kowalski v. Berkeley County Schools).
2. State of the law and the analysis remain as described in the Hannibal School District case, discussed in the next 3 slides.



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# 2012 Case Update (cont.)

D.J.M. v. Hannibal Public Sch. District, No. 10-1428, 2011 WL 3241876 (8th Cir. Aug. 1, 2011)

On October 24, 2006, Plaintiff student was chatting online via “instant message” on a computer in his home with a classmate. During the course of their conversation, Plaintiff told the classmate that he was going to get a gun and kill certain classmates. The classmate forwarded his statements to school administrators within hours.

Plaintiff was arrested by police for making those threats and was admitted to the psychiatric ward of the Lakeland Regional Hospital. Plaintiff was a sophomore in Hannibal Public School District at the time of the alleged threats. On October 31, 2006, the District suspended Plaintiff for ten days for his threatening communications. On November 3, 2006, the District's Superintendent extended Plaintiff's suspension through the end of the 2006-2007 school year.

Plaintiff's parents appealed the suspension to the District's Board of Education (“the Board”). On February 21, 2007, the Board conducted an appeals hearing. On March 1, 2007, the Board upheld the decision to suspend Plaintiff until the end of the school year.



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# 2012 Case Update (cont.)

## D.J.M. v. Hannibal Public Sch. District (cont.)

The Court of Appeals applied both the “true threats” test as well as the Tinker standard to the facts of the case and found under both that the District did not violate the Plaintiff’s First Amendment Rights.

### True Threat

1. Plaintiff’s references to targeted classmates were hate-filled comments (e.g., midgets and fags).
2. Plaintiff’s statements that five specific named individuals “would go” were real cause for alarm, especially since talked about borrowing a 357 magnum from a friend.
3. The reaction of those who read his messages was evidence that his statements were understood as true threats (e.g., “serious stuff” and “sounds serious to me”).



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# 2012 Case Update (cont.)

## D.J.M. v. Hannibal Public Sch. District (cont.)

### Substantial Disruption

1. The Court held that “it was reasonably foreseeable that Plaintiff’s threats about shooting specific students in school would be brought to the attention of school authorities and create a risk of substantial disruption within the school environment.”
2. School officials had to spend considerable time dealing with parent concerns and ensuring that appropriate safety measures were in place.
3. The Court held that off-campus speech can be regulated under Tinker.



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# Bullying



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# A. Statutory Requirements

(Mo. Rev. Stat. § 160.775)

1. In 2006, the Missouri Legislature passed a statute requiring all school districts to have a policy on bullying.
  - a) Definition - "Intimidation or harassment that causes a reasonable student to fear for his or her physical safety or property."
  - b) Policy must require school district employees to report any instance of bullying of which the employee has firsthand knowledge and address training.



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# Statutory Requirements (cont.)

2. In 2010, “Cyberbullying” was specifically added to statute
  - a) No definition
  - b) Lots of different forms
    - Direct threats
    - Constant negative or disparaging comments
    - Bashing websites, etc.



## B. OCR Guidance on Bullying

1. On October 26, 2010, DOE, through OCR, issued a detailed guidance for school districts regarding bullying and Federal discrimination laws.
  - a) Warns school districts that they need to look at each bullying incident not only as a violation of bullying policy, but a possible action of discriminatory harassment.
  - b) If discriminatory harassment has occurred, the school district must take steps to end harassment, regardless of discipline for bullying.



# OCR Guidance on Bullying (cont.)

2. What must school district do?
  - a) Take immediate and appropriate action to investigate.
  - b) If harassment has occurred, take prompt and effective steps reasonably calculated to:
    - End the harassment;
    - Eliminate any hostile environment; and
    - Prevent its recurrence.
  - c) Take steps to prevent retaliation against person(s) who made complaint or provided information.
  - d) Apply regardless of whether student makes complaint or identifies conduct as discriminatory.



## C. Off-Campus Bullying

1. Respond to all complaints!
2. Discipline student?
  - a) Substantial and material disruption to school environment
  - b) Need nexus between off-campus behavior and school disruption
3. Other options
  - a) Notify parents – inform them of what consequences can be
    - Crimes of harassment, stalking
  - b) Talk to SRO/Police
4. Could the bullying also be discriminatory harassment?



## D. Recent Bullying Cases

- More lawsuits brought against school district
  - NSBA Legal Clips Article
- Courts have found school districts not liable
  - Doe v. Covington County School Board (5<sup>th</sup> Cir.) – March 2012
  - Estate of Asher Brown v. Cypress Fairbanks Indep. School District (S.D. Texas ) – May 2012
- Why?



# Update of Student Related- Laws and Policies



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# A. Electronic Communications

1. 2011's Amy Hester Act – limiting the type of interactions that teachers in Missouri can have with their students via social networks. On August 26, 2011, a Cole County Circuit Judge issued a preliminary injunction against the law, calling it a staggering prohibition of free speech rights.
2. Section 169.069 of the Act was placed on the September 6, 2011 General Assembly Special Session Agenda, providing:
  - Every school district shall, by March 1, 2012, promulgate a written policy concerning employee-student communication. Such policy shall include, but not be limited to, the use of electronic media and other mechanisms to prevent improper communications between staff members and students.



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# Electronic Communications (cont.)

3. Check your Policy (might be separate electronic communication policy or in staff/student relations). Standard provisions relating to students may include:
  - a) Nothing prohibits use for educational purposes (defined in policy).
    - An activity reasonably considered to be a part of the employee's duties in the district.
    - May include coordination of an extracurricular activity, depending on employee's job description.
    - Some policies put time limits on communication for educational purposes, or require it be on a district provided device, or if not, require supervisor authorization.



# Electronic Communications (cont.)

- b) The district discourages staff members from communicating with students electronically for reasons other than educational purposes.
- c) When the communication is not for educational purposes, and if concerns are raised, the staff member must be prepared to articulate the reason for any deviation from the requirements of this regulation and must demonstrate that the staff member has maintained an appropriate relationship with the student.
  - Employees are encouraged to consult with their supervisors prior to engaging in behaviors or activities that might violate professional boundaries as defined in the policy.
  - The policy does not limit staff members from communicating with relatives (or those living in the home) who happen to be students of the district.



## B. Missouri Public Prayer Amendment (Amendment 2)

1. Approved on the August 7, 2012 primary election ballot in the State of Missouri.
  - a) Ballot read, in part:
    - That the right of Missouri citizens to express their religious beliefs shall not be infringed;
    - That school children have the right to pray and acknowledge God voluntarily in their schools; and
    - That all public schools shall display the Bill of Rights of the United States Constitution.

The measure repealed Section 5, Article I of the Missouri Constitution and replaced it with a new Section 5.



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# Missouri Public Prayer Amendment (Amendment 2) (cont.)

2. MSBA Guidance, "Information on House Joint Resolution No. 2 as it Relates to Public School Districts"
3. Difficult to speculate on how this Amendment will change district practices, because it is likely that the application of the Amendment will result in a violation of the U.S. Constitution, depending upon the circumstances. Situations relating to the Amendment will have to be addressed as they arise.



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# Missouri Public Prayer Amendment – Provisions Related to Students

1. Nor shall a citizen's right to pray or express his or her religious beliefs be infringed.
  - a) Generally, the government may not restrict a person's right to pray or express his or her religious beliefs. However, Federal courts have interpreted the First Amendment to allow the government to infringe upon a person's right to religious expression if it is in accordance with a law that is neutral and of general applicability.



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# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

b) The Amendment changes this.

- The new Amendment could arguably require the district to allow students to wear t-shirts with religious messages even if all other messages were prohibited.
- If the district were to do otherwise it could be viewed as “infringing on religious expression,” even though the district is restricting all expression, not just religious expression.



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# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

2. That the state shall not coerce any person to participate in any prayer or other religious activity, but shall ensure that any person shall have the right to pray individually or corporately in a private or public setting so long as such prayer does not result in disturbance of the peace or disruption of a public meeting or assembly.
  - a) Under prior state and federal law, public school students may voluntarily pray at any time before, during, or after the school day so long as the prayer is not disruptive to the educational environment.



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# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

- b) The First Amendment of the U.S. Constitution allows districts to curb the rights of students and staff to pray in a public setting even when the prayer is not disruptive if it appears that the State (the school district) affirmatively sponsors the particular religious practice of prayer.
- Will the Amendment arguably allow this type of district-sponsored prayer?



# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

3. That students may express their beliefs about religion in written and oral assignments free from discrimination based on the religious content of their work.
  - a) Generally, students are free to express their religious beliefs in assignments, but there are certain parameters to this expression. The Amendment language does not address these parameters.
  - b) Courts have generally recognized the right of students to express their religious beliefs in assignments *if* the expression fits within the scope of the assignment.



# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

- c) Additionally, though students are currently allowed to express their religious views in written assignments, students do not have the right to proselytize during oral presentations and a public school may restrict a student's religious viewpoint when a "reasonable outside observer could view the student's religious speech as being endorsed by the district."



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# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

4. That no student shall be compelled to perform or participate in academic assignments or educational presentations that violate his or her religious beliefs.
  - a) District policies that address this issue are commonly called “opt-out” policies.
    - Courts have held that the Free Exercise Clause of the U.S. Constitution allows, but does not require, districts to permit students to opt-out of parts of the school curriculum.



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# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

- b) The Amendment would require school districts to allow students to opt-out of any assignment. Realistically, most districts already allow parents and students to do this.
- This provision could be used to exclude students from a significant portion of the curriculum and arguably would require the district to create alternative assignments for students. There are no parameters or limits.



# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

- c) The Amendment arguably goes further and would allow a student to refuse to participate in school projects, homework assignments, or attend class if the student feels the discussion violates his or her religious beliefs.
  - The concern is that this could ultimately lead to students failing classes for missing tests and assignments or possibly failing to complete all requirements for graduation.
- d) Further, teachers may feel a need to alter their lesson plans to avoid all discussion of religion, and ultimately it may be argued that districts may be required to establish alternative classes that do not discuss religious issues in order to provide students with required courses.



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# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

5. That all free public schools receiving state appropriations shall display, in a conspicuous and legible manner, the text of the Bill of Rights of the Constitution of the United States.
  - a) This requirement does not conflict with the current state or federal law. To be in compliance, districts should display the Bill of Rights in each school.



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# Missouri Public Prayer Amendment – Provisions Relating to Students (cont.)

## 6. Lawsuits

### a) ACLU Lawsuits

### b) Future Lawsuits

- As the Amendment is open-ended and it conflicts with many court interpretations of the First Amendment of the U.S. Constitution, it is anticipated that lawsuits will arise.



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# Questions???

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