Students 2011

Bullying, Smartphones, Sexting and More...

October 1, 2011

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Bullying

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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.**
2. **Definition**
   a) **"Intimidation or harassment that causes a reasonable student to fear for his or her physical safety or property."**
   b) **May consist of "physical actions, including gestures, or oral, cyberbullying, electronic or written communication, and any threat of retaliation for reporting such acts."**
3. **Policy must require school district employees to report any instance of bullying of which the employee has firsthand knowledge and address training.**

Cyberbullying

In 2010, the Missouri Legislature amended Section 160.775 to include "cyberbullying and electronic communication" in the definition of bullying.

1. **No explicit definition**
2. **Generally, causing intimidation or harassment through the use of technology – on the internet, social networking sites, texting, cell phones, emails**
3. **Lots of different forms**
   a) **Direct threats**
   b) **Constant negative or disparaging comments**
   c) **Bashing websites, etc.**
4. **On campus cyberbullying**

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**

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Recent Bullying Cases

1. **In Kowalski v. Berkeley County Schools, No. 10-1098, 2011 WL 3132523 (4th Cir. July 27, 2011): U.S. Court of Appeals for the Fourth Circuit upheld a school's discipline of student for engaging in off-campus cyberbullying of another student. Student created a *MySpace* profile called "S.A.S.H.," which she said was short for "Students Against Sluts Herpes." Another student, however, claimed it really stood for "Students Against Shay's Herpes," referring to a student named Shay N.**
   - **Kowalski invited about 100 people to join the page, and about 24 people joined. Students posted comments and images making fun of Shay N.**
   - **School officials determined that Kowalski created a "hate website" that violated school policy. Kowalski was suspended for 5 days and received a "social suspension" for 90 days, unable to participate in various social events at the school.**
   - **Court applied the "substantial disruption" test, as defined by the U.S. Supreme Court in Tinker v. Des Moines School District, 393 U.S. 503 (1969), concluding that the school was justified in imposing discipline.**

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Recent Bullying Cases (cont.)

2. **In Sanches v. Carrollton-Farmers Branch Ind. Sch. Dist., 647 F.3d 156 (5th Cir. 2011), a high school student brought a Section 1983 claim against school district, claiming it had violated Title IX because it had been deliberately indifferent to her alleged bullying.**
   - **Another female student called her a "ho" and threatened to "beat her ___ if it were for cheerleading" because plaintiff was dating her ex-boyfriend. The student's mother contacted school and the student was switched to a different class.**
   - **The same female student also allegedly started rumors about plaintiff, and physically touched plaintiff in the school hallway on her face. Plaintiff's mother reported these incidents to the school. The school investigated all incidents and took statements from all parties involved and concluded that no harassment had occurred.**
   - **The court held that under Title IX, the conduct against plaintiff was not sexual harassment, it was not severe, pervasive or objectively unreasonable, and the school district was not deliberately indifferent. The court also held under the Section 1983 claim, any harassment against the plaintiff was not based on her sex, so there was no constitutional violation and there was no evidence that the district was ever deliberately indifferent.**

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Recent Bullying Cases (cont.)

3. **In T.K. v. New York Dept. of Educ., No. 10-CV-00752, WL 1549243 (E.D.NY Apr. 25, 2011), the court addressed the issue of the extent to which bullying by other students inhibits a disabled child from being educated appropriately, and what a school must do about it.**
   - **Student was bullied on a daily basis because of her disability. Student's teacher's aides testified that student was ostracized in the classroom and the subject of ridicule from other students. Student withdrew emotionally and did not want to go to school.**
   - **The Federal district court held that student stated a valid claim for denial of FAPE under IDEA based on peer bullying and harassment.**
   - **The court found that student provided evidence that she was a victim of harassment from her peers; that her parents sent letters to the school and the principal acknowledged knowing about the bullying but not recalling that anything was done to investigate it; and that the school was indifferent by falling to take reasonable steps to investigate or remedy the conduct. Further, the court found that a student does not have to prove that she was denied all educational benefit. She may not be deprived of her entire educational benefit, but may still suffer adverse educational effects as a result of bullying. The court held that where bullying reaches a level where a student is substantially restricted in learning opportunities, she has been deprived of FAPE.**

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OCR Guidance on Bullying

1. **Summary - 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.**

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OCR Guidance on Bullying (cont.)

2. **Discriminatory Harassment**
   a) **Race, Color or National Origin (Title VI)**
      - **Include ancestry/ethnicity or citizenship/residency**
   b) **Sexual harassment/gender based harassment (Title IX)**
      - **Sexual discrimination**
      - **Sexual orientation issues may be present**
   c) **Disability (Section 504, ADA)**

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OCR Guidance on Bullying (cont.)

3. When is it discriminatory harassment?
   a) Trigger: hostile environment
   b) Conduct is sufficiently severe, persuasive or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by a school

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OCR Guidance on Bullying (cont.)

4. 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.

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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:

a) **Conduct that would cause material and substantial interference with school work or discipline, or**

b) **Conduct that would materially and substantially disrupt the work and discipline of the school, or**

c) **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. **The Supreme Court has recognized an exception to the First Amendment free speech 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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2011 Case Update

<u>J.S. v. Blue Mountain Sch. Dist.</u> (June 2011)

- **The U.S. Court of Appeals for the 3rd Circuit overturned the district court's ruling that school officials did not violate a student's free speech rights by disciplining her for creating a parody on-line profile of her principal.**
- **June 2011, the Court of Appeals 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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2011 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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2011 Case Update (cont.)

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

- **The U.S. Court of Appeals for the 3rd Circuit upheld the district court's ruling that the school district violated the student's free speech rights when they disciplined him for his off-campus creation of the parody on-line profile of the school's principal.**
- **The decision rendered by the Court of Appeals on the same day as J.S. ruled that the 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.**

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2011 Case Update (cont.)

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

- **However, the separate concurring opinion asserted that the Tinker standard is indeed applicable to off-campus speech.**
- **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."**
- **The question of the limits of Tinker's reach appears to be where the battle may be joined by the Supreme Court's nine justices.**

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2011 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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2011 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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2011 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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Points to Remember When a Student Engages in Out-of-School Misconduct on the Internet

1. **Determine if the conduct materially and substantially disrupted the work and/or discipline of the school. Courts have differed on what it takes to satisfy this standard – it is a "Fact Intensive" analysis.**
   a) **Teacher taking a leave of absence because of the incident**
   b) **Class instruction time lost (mere discussion alone probably won't be enough)**
   c) **Administrative time lost in investigating and handling the incident(s)**
   d) **Operational disruptions, i.e., computer down time**
   e) **Resulting cancellation of classes or activities.**
2. **Identify a clear "nexus" between the student's conduct and the material and substantial disruption in school or discipline.**
3. **Remember to carefully and accurately document the disruption; who was affected? How? etc.**

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Points to Remember When a Student Engages in Out-of-School Misconduct on the Internet
(cont.)

4. **Alternatively, show how the conduct would foreseeably create a risk of substantial disruption within the school environment; at least that it was foreseeable that the off-campus expression might reach the campus … (the third Tinker point).**
5. **Be prepared to defend against allegations that the disruptions were caused by an over-reaction by school officials to:**
   a) **The incident**
   b) **The suspension**
   c) **The media coverage of the incident.**
6. **Look carefully whether any of the student's Internet activity actually began or occurred in class and impose discipline for in-school on-campus behavior (always easier).**

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Points to Remember When a Student Engages in Out-of-School Misconduct on the Internet
(cont.)

7. **Examine the severity of the school's disciplinary action relative to the seriousness of the student's infraction − ensure the level of discipline is fair and consistent − don't retaliate and keep discipline in proportion to the violation. Try to fashion the discipline so as not to impact a student's potential for academic success.**
8. **Think in terms of analyzing the conduct or incident under 3 possible theories, if possible:**
   a) **Tinker – material and substantial disruption model;**
   b) **Fraser − offensively lewd and indecent speech. Case law still being developed − most courts have rejected this approach for off-campus expression, but some have been willing to consider it;**
   c) **True Threat.**

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Sexting at School

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Sexting at School

"Sexting" – The practice by which teens forward sexually explicit messages or images of themselves or their peers electronically.

Scenario: Boy asks girl to send him a naked photo of her. She does so via text message, thinking it will remain private. Three weeks later they break up and the boy forwards the text message to all his friends.

1. **One in five teens have sent or posted nude or semi-nude photos of themselves online or via text message.**
2. **Twenty-two percent of teens have received a nude or semi-nude photo of someone else.**
3. **Fifteen percent of teens have forwarded images to someone they only know online.[1]**

[1]National Campaign to Prevent Teen and Unplanned Pregnancy, Sex and Tech. - Results from a Survey of Teens and Young Adults (Oct. 2008).

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Sexting at School

What legal and practical steps can schools take to prevent sexting and its often detrimental effects on students and schools?

1. **Search cell phones (only where authorized)**
2. **Involve parents and police**
3. **Report sexting as suspected child abuse and neglect, if warranted**
4. **Minimize district's exposure to child pornography charges**
5. **Discipline students involved**
6. **Consider adopting some form of Anti-Sexting Policies**

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Sexting at School (cont.)

1. Searching Cell Phones
   a) Apply T.L.O. standard
   b) Always attempt to seek consent of a student and his or her parent before searching
   c) Provide notice in the school district's cell phone policy that the administration may search cell phones if it has reasonable suspicion that a search will reveal school rules have been violated.
   d) Stored Communications Act Concerns
2. Involve Parents and Police
   a) Notify parents promptly upon discovering that their child is the subject of, is in possession of, or has sent inappropriate pictures.

Commonwealth v. Oei, CR. No. 21212, 20523, 2009 Via. Cir. Lexis 115 (Mar. 31, 2009)

Virginia assistant principal Ting-Yi Oei charged with possession of child pornography after he asked a student to send him a semi-nude picture in the student's cell phone as part of a sexting investigation.

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Sexting at School (cont.)

   b) Advise police of sexting so that they can determine whether a criminal investigation is warranted.

Miller v. Skumanick, 605 F.Supp.3d 634 (M.D. Pa. 2009)

A school district discovered images of nude and semi-nude female students when they confiscated the cell phones of several male students. The school district turned the phones over to the district attorney. The district attorney notified the male and female students that charges for possession and/or dissemination of child pornography would be dropped only if they participated in a six to nine month education and counseling program.

The parents of three girls refused because they did not believe their daughters violated the distribution of child pornography statute. The court found that if the girls did not violate the law, the required education class and counseling could violate their First Amendment right to be free from compelled speech and interfere with their parents' Fourteenth Amendment right to direct their children's education. Ultimately, the court held that the photos did not contain any of the sexual acts prohibited by state statute and accepted the girls' claim that they did not disseminate the photographs.

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3. Report sexting as suspected child abuse or neglect, if warranted.
   a) If a sext image constitutes child abuse or neglect under Missouri statutes, it should be reported to the Children's Division.
4. Minimize district's exposure to child pornography charges.
   a) Turn over all confiscated evidence rather than receiving and maintaining images on district equipment or staff phones.
   b) School administrators who discover sexting should not share the images with other school employees.
5. Discipline students involved
   a) School districts should consider disciplining the students involved in the sexting (equally if possible).
6. Consider adopting Anti-Sexting Policies
   a) Anti-Sexting Policy – puts students and their parents on notice
   b) Revise harassment and anti-bullying policies to address sexting
   c) Ban or restrict cell phone use during school or cell phone possession at school

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Searching Student Cell Phones

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Right to Search

Quick Review of T.L.O

In New Jersey v. T.L.O., 469 U.S. 325 (1985), the Supreme Court held that the Fourth Amendment prohibition against unreasonable searches and seizures applies to public school students. Like members of the public generally, schoolchildren enjoy a legitimate expectation of privacy in their persons and effects. Id. at 339. The Court weighed the student's legitimate expectation of privacy against the growing problem of drugs and violence in the public schools, and the need for school officials to deal swiftly with such problems. Id. at 339-40.

The Court concluded that the legality of a student search depends simply on the reasonableness, under all the circumstances, of the search. Id. at 341.

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Right to Search (cont.)

Determining the reasonableness of the search involves a two-fold inquiry:

1. **whether the action was justified at its inception; and**
2. **whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place. Id.**

A student search is justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating the law or the rules of the school.

Such a search is permissible in its scope when the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

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Right to Search (cont.)

In Safford Unified Sch. Dist.v. Redding, - - - U.S. - - -, 129 S.Ct. 2633 (2009), the United States Supreme Court describes the required knowledge that a school administrator must possess to satisfy the T.L.O. reasonable suspicion standard, stating the administrator's evidence must raise "a moderate chance of finding evidence of wrongdoing."

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Applicable Legal Standards

1. **Proof Beyond a Reasonable Doubt: The highest level of proof, used mainly in criminal trials.**
2. **Clear and Convincing Evidence: The party with the burden of proof must convince the trier of fact that it is substantially more likely than not that the thing is in fact true.**
3. **Preponderance of the Evidence: The lowest level of proof, used mainly in civil trials; typically means *more likely than not*.**

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Applicable Legal Standards (cont.)

4. **Probable Cause: Standard imposed on law enforcement authorities to justify an arrest or search or to issue a warrant; the U.S. Supreme Court in United States v. Sokolow, 490 U.S. 1 (1989), determined that probable cause requires "a fair probability that contraband or evidence of a crime will be found." Language taken from the Fourth Amendment to the U.S. Constitution:**

   > **The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.**

5. **Reasonable Suspicion: In Terry v. Ohio, 392 U.S. 1 (1968), the United States Supreme Court ruled that reasonable suspicion requires specific, articulable, and individualized suspicion that crime is afoot. A mere guess or "hunch" is not enough to constitute reasonable suspicion.**
6. **Hunch:**

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ACLU asks Colorado's Boulder Valley School District (BVSD) to end cell phone searches

Student accused of smoking was taken to the principal's office. Assistant Principal Drew Adams had him empty his pockets and backpack, looking for cigarettes. No cigarettes were found. Mr. Adams demanded that the student turn over his cell phone, took it, and left the office. When he returned, he said he had found some "incriminating" text messages that mentioned marijuana. By the time the student's mother arrived, the assistant principal had made transcripts of the messages. Mr. Adams refused initially to return the cell phone. When it was returned several days later, it contained a draft of a text message in which someone had posed as a student while attempting to engage another student in conversation. School authorities followed up with a cascade of additional interrogations accompanied by seizures and searches of additional students' cell phones.

Klump v. Nazareth Area School Dist., 425 F. Supp 2d 622 (E.D. Pa. 2006)

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J.W. v. Desoto County Sch. Dist., No. 2:09-CV-00155, 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010)

The American Civil Liberties Union of Mississippi (ACLU-MS) filed suit against the Desoto County School District (DCSD) in federal district court, alleging a student was expelled after an illegal search of his cell phone turned up "gang" photos.

The suit alleged that the student, R.W., who attended Southaven Middle School (SMS), had his phone confiscated by several of his football coaches, his class principal and a Southaven Police Department sergeant after reading a text message from his father during class.

The school has a policy banning cell phone use and allows for teachers and coaches to take a student's cell phone and turn it over to office personnel for parents to pick up after paying a fine. The suit claims SMS staff, however, crossed the line by looking through personal and private data on the phone and then using that data to kick R.W. out of school for the remainder of the academic year.

Pictures on the phone showed R.W. dancing in the bathroom of his home and a classmate holding a BB gun across his chest also at R.W.'s home, according to the lawsuit. A ruling from Southaven Police Sgt. and School Resource Officer Nicholas Kennedy that the photos constituted "gang-related activity" led to R.W.'s immediate three-day suspension and subsequent expulsion from school following a disciplinary hearing before Board of Education members.

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J.W. v. Desoto County Sch. Dist., No. 2:09-CV-00155, 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010) (cont.)

The court found that the search in this case was not contrary to "clearly established" law. The court in J.W. relied on the T.L.O. standard.

The court found the crucial factor to be that R.W. was caught using his cell phone at school, which violated district policy. Thus, the phone constituted contraband when it was brought on campus. In the court's view, R.W.'s decision to violate school rules by bringing the cell phone on campus and using it within view of teachers appropriately resulted in a diminished privacy expectation in that contraband.

It was "reasonable" for school officials to confiscate the phone and search it to determine for what purpose he was using the phone. Moreover, the decision by the school officials in the case to merely look at the photos on R.W.'s cell phone was limited and justified. As a result, the court concluded that the search of R.W.'s phone itself was not contrary to clearly established law, and the individual defendants were entitled to a dismissal of the Fourth Amendment claims against them.

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Mendoza v. Klein Ind. Sch. Dist., No. 09-3895 (S.D. Tex. Mar. 16, 2011)

A.M. attended Krimmel Middle School (KMS). Associate Principal Stephanie Langner observed A.M. with a group of students viewing what appeared to be a cell phone. As Langner approached the group, A.M. turned the phone off and put it in her pocket. When Langner demanded A.M. turn over the phone, A.M. protested and Langner claims she denied having used the phone in school. After confiscating the phone, Langner stated she turned the phone on for the sole purpose of determining if A.M. has used the phone during school hours. After determining that text messages had been sent during school hours, Langner continued her search opening the sent box where she discovered a photo of A.M. nude. When confronted about the photo, A.M. admitted that she had sent the photo to a male friend who had sent her a photo of himself nude.

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Mendoza v. Klein Ind. Sch. Dist., No. 09-3895 (S.D. Tex. Mar. 16, 2011) (cont.)

Langner informed Principal Scott Crowe about the incident and what her search of A.M.'s phone had turned up. The Klein Independent School District (KISD) police were also notified. A.M. was suspended pending the results of investigations by Crowe and the KISD police. Based on the investigations, Crowe informed A.M.'s mother, Jennifer Mendoza, that A.M. was being transferred to the alternative school for 30 days for violating the student handbook's prohibition on "incorrigible behavior." On behalf of KISD's board, the superintendent upheld Crowe's decision. A.M.'s mother then filed suit on A.M.'s behalf and in her own right against KISD, Langner and Crowe.

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Mendoza v. Klein Ind. Sch. Dist., No. 09-3895 (S.D. Tex. Mar. 16, 2011) (cont.)

The federal magistrate concluded that based on T.L.O., A.M. enjoyed a privacy interest in the contents of her phone. The magistrate found that Langner had "reasonable" suspicion based on her observations of A.M. displaying and using her cell phone in violation of KISD policy, thereby passing T.L.O.'s first hurdle. However, Langner did not satisfy the second prong. Langner expressly stated that the purpose of her search was to determine whether A.M. has used the phone during school hours which could be accomplished with accessing the text messages themselves. Based on the parameters of the search, which Langner set herself, she went beyond the search's reasonable scope by continuing to search after observing that texts had been sent during school hours.

The magistrate concluded that "a continued search must be reasonable and related to the initial reason to search or to any additional ground uncovered during the initial search." Langner's continued search of the individual text messages went beyond the reasonable scope of the search.

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Amy Hestir Act and Other Student Related Legislation

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Amy Hestir Student Protection Act

1. **Electronic Communications**
   - a) **In July 2011, Missouri Legislature passed the Amy Hestir Student Protection Act, which was the first of its kind in the country, limiting the type of interactions that teachers in Missouri can have with their students via social networks.**
   - b) **The Missouri State Teachers Association filed suit against the state to block the social networking restrictions part of the law, arguing that it hindered their ability to communicate with students for academic purposes.**
   - c) **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.**
   - d) **Section 169.069 of the Act was placed on the September 6, 2011 General Assembly Special Session Agenda.**
     - **A new bill is being considered that not only repeals the provision but replaces it with a mandate that school districts have their own electronic media policy in place by March 1, 2012.**

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- **The new bill provides:**

  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.

- e) **Where do we go from here?**

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Other New Legislation

1. Amy Hestir Act
   a) Reporting Child Abuse
   b) Policy on Information Regarding Former Employees
   c) Background Checks
2. Sexual Contact with Students (Section 566.086)
3. Brain Injury Bill

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Questions???

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