

Teachers, Social Media, and Free Speech

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Abstract

Teachers across the United States routinely use social media to improve communication with students and parents, enrich the classroom curriculum, and engage in professional conversations with peers. However, teacher use of social media also has a dark side. Media reports are replete with stories of teachers engaging in inappropriate social networking with students. In addition, teachers have also been disciplined for controversial social media content even when students or other members of the school community are not the intended audience. The trending issue of teachers' inappropriate or controversial use of social media amplifies the need for school leaders to be cognizant of teachers' First Amendment free speech rights and the circumstances permitting school control. A framework is proposed for developing social media policies that balance the First Amendment expression rights of teachers and pedagogical benefits of social media with the need for appropriate limitations.

Keywords: teachers, social media, free speech, social media policy

Introduction

The use of social media as a form of communication is increasing in all sectors of American society, including education (Morrison, 2014; Papandrea, 2012). Teachers across the United States have embraced social media as a pedagogical tool that improves communication with students and parents, enriches the

traditional classroom curriculum, and enhances professional development. Social media platforms, such as Facebook and Twitter, provide teachers with powerful instructional tools that foster collaboration and facilitate a cohesive learning community. Technology savvy educators use social media and other internet-based tools to expand the learning space beyond the classroom and encourage student creativity (Papandrea, 2012; Tarantino, McDonough, & Hua, 2013). Clearly, social media offers a pedagogical medium with tremendous upsides and is profoundly changing teaching and learning (Davis, 2010).

However, teacher use of social media also has a dark side. Across the country, school leaders are grappling with a disturbing trend of teachers using social media in professionally unseemly ways (Papandrea, 2012). While inappropriate teacher-to-student social networking is a major concern for school leaders and policy makers, teachers have also been disciplined for controversial social media content even when students or other members of the school community are not the intended audience (Decker & Eckes, 2014; Papandrea, 2012). The trending issue of teachers' inappropriate or controversial use of social media amplifies the need for school leaders to be cognizant of teachers' First Amendment free speech rights and the circumstances permitting school control. In addition, school leaders must balance the competing goals of appropriate restriction with sufficient freedom so that the educational benefits of social media are not unduly limited.

Teacher Free Speech Rights

Two seminal U. S. Supreme Court decisions, decided long before the advent of social media networks, form a solid foundation for understanding the parameters of First Amendment free speech protection for public school teachers. *Pickering v. Board of Education* (1968) involved Marvin Pickering, who was a high school teacher in Will County, Illinois. Pickering raised the ire of the board of education when he wrote a letter to the editor of a local newspaper criticizing the board and superintendent for what he considered the disproportional allocation of funds toward the school district's athletic programs at the expense of academic programs. The board determined that Pickering's comments were detrimental to the goals and efficient operations of the school district and terminated his employment. Pickering appealed, claiming the board's actions violated his free speech rights guaranteed by the First Amendment.

The Court flatly rejected the argument that public school teachers relinquish their First Amendment free speech rights as a condition of public sector employment. In finding for the teacher, the majority reasoned that the interest of the board in pursuing educational goals and protecting the efficient operations of the school must be balanced with the employee's right to speak out on matters of public importance:

The problem ... is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. (*Pickering v. Board of Education*, 1968, p. 2)

While the *Pickering* decision had the effect of expanding public employees' speech rights, *Connick v. Myers* (1983) placed some limitations on those rights. Shelia Myers, an assistant district attorney in Orleans Parish, Louisiana, was transferred to a different section of the office by the district attorney, Harry Connick. Myers opposed the transfer and distributed a questionnaire to other employees in the district attorney's office to solicit their views regarding the office transfer policy, office moral, the need for a grievance committee, the level of confidence in supervisors, and the degree of pressure they felt to work on the district attorney's political campaigns.

After Connick dismissed Myers for insubordination, Myers filed suit alleging she was terminated due to speech that fell within the parameters of First Amendment protection. The Court employed the *Pickering* balancing test in upholding Myer's dismissal. The initial inquiry, based on the *Pickering* balance, was whether Myer's questionnaire addressed a matter of public concern or focused on her personal grievance with Connick. The question about coercion to work on political campaigns did touch upon a matter of public concern, the Court concluded, but was insufficient, as a relatively minor part of the questionnaire, to offset the employer's interest in maintaining an efficient workplace (Hudson, 2002). Writing for the 5-4 majority, Justice Byron White stated,

Myers' questionnaire touched upon matters of public concern in only a most limited sense; her survey, in our view, is most accurately characterized as an employee grievance concerning internal office policy. The limited First Amendment interest involved here does not require that Connick tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships. Myers' discharge therefore did not offend the First Amendment. (*Connick v. Myers*, 1983, pp. 11-12)

The combined effect of the *Pickering* and *Connick* decisions was to create a two-prong test for public school teachers' free speech challenges. To satisfy the threshold prong, the teacher must show that the offending speech addresses a matter of public concern. The first prong being satisfied, the teacher must then show that his or her free speech interests outweigh the school's efficiency in operations interest (Hudson, 2002).

The *Connick* (1983) court described matters of public concern as relating to "political, social, or other concern to the community....Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record" (pp. 7-8). Teachers commenting on matters of social importance are more likely to enjoy First Amendment protection. Teachers commenting on matters of personal interest, including employment conditions, begin to stray beyond the reach of First Amendment protection. The second prong of the test requires the court to determine if the speech in question interferes with the normal operations of the school or has a detrimental effect on close working relationships. The more disruptive the speech, the less likely it is to be protected. Similarly, speech that

damages close working relationships, such as between a teacher and principal or principal and superintendent, is less likely to be protected (Hudson, 2002).

Social Media and Free Speech

A 2008 decision from a federal district court in Connecticut offers some insight as to how the courts apply the *Pickering-Connick* test to inappropriate teacher expression communicated off campus through social media. Jeffery Spanierman, a high school English teacher, opened a personal MySpace account and created a profile called "Mr. Spiderman." Spanierman used his MySpace account ostensibly "to communicate with students about homework, to learn more about the students so he could relate to them better, and to conduct causal, non-school related discussions" (*Spanierman v. Hughes*, 2008, p. 3). The school guidance counselor reviewed the "Mr. Spiderman" profile page after receiving student complaints. The site included pictures of students in close proximity to pictures of naked men with inappropriate comments beneath the pictures. The counselor also found some of the communication with students to be unprofessional, "very peer-to-peer like, with students talking to him about what they did over the weekend at a party, or about their personal problems" (*Spanierman v. Hughes*, 2008, p. 4). In addition, some of the banter between Spanierman and students included sexual innuendo (*Spanierman v. Hughes*, 2008).

The counselor informed Spanierman that the content on his MySpace profile was not appropriate and suggested he restrict his off campus communications with students to educational topics delivered through the school email system. Spanierman voluntarily deactivated his account but shortly thereafter created a new profile called "Apollo68." Another faculty member and multiple students altered the counselor to the new profile page, which was nearly identical to the "Spiderman" profile. The counselor informed school officials, who declined to renew Spanierman's contract for the next school year (*Spanierman v. Hughes*, 2008; Zirkel, 2009).

Spanierman contested his contract non-renewal in federal district court, alleging that the dismissal was a result of expression protected by the First Amendment. The court dismissed the case noting three significant factors. First, "almost none of the contents of the Plaintiff's profile page touched matters of public concern. The majority of the profile page consisted of personal conversations between the Plaintiff and other MySpace users" (*Spanierman v. Hughes*, 2008, p. 31). Second, school officials demonstrated that the only content that addressed a matter of public concern, a poem protesting the Iraq war, was not material to the decision to end the employment relationship with Spanierman. And third, even if the poem had been a factor, the evidence suggested that school officials were justified to not renew Spanierman's contract based on the disruptive effect the other MySpace content had on the learning environment. In the words of the court,

It is reasonable for the Defendants to expect the Plaintiff, a teacher with supervisory authority over students, to maintain a professional, respectful association with those students. This does not mean that the Plaintiff could not be friendly or humorous; however, upon review of the record, it appears that the Plaintiff would communicate with students as if he were their peer, not their teacher. Such conduct could very well disrupt the learning atmosphere of a school, which sufficiently outweighs the value of Plaintiff's MySpace speech. (*Spanierman v. Hughes*, 2008, 576 at 313)

A federal district court in Pennsylvania reached a similar conclusion in *Munroe v Central Bucks School District* (2014). In 2009, English teacher Natalie Munroe began a blog titled *Where are we going, and why are we in this handbasket*. She blogged without using personal information, such as workplace or address, nor did she use her last name. The majority of Munroe's 84 blog posts, written over a one-year period, discussed personal matters such as her children, food and film preferences, and exercises classes. On a number of occasions, however, Munroe wrote about school issues, some of which included disparaging comments about her students and their parents. As noted by the court, she

complained about the rudeness and lack of motivation among her students, referring to them as "jerk," "rat-like," "dunderhead," "whinny, simpering grade-grubber with an unrealistically high perception of own ability level" and "frightfully dim." [Monroe] wrote that parents were "breeding a disgusting brood of insolent, unappreciative, selfish brats." (*Munroe v. Central Bucks School District*, 2014, p. 3)

Students discovered the blog, uncovered the teacher's identity, and circulated the disparaging comments through Facebook and other social media. Eventually, the content of the blog become common knowledge throughout the larger school community. The offensive language used by Munroe to describe her students and their parents damaged relationships beyond repair, resulting in her suspension and ultimately her termination (*Munroe v. Central Bucks School District*, 2014).

Munroe filed suit, claiming her termination was an infringement upon her First Amendment free speech rights. In juxtaposing Munroe's speech with Pickering's, the court noted that Pickering restricted his speech to matters of public concern and avoided use of personally disparaging or inflammatory language, and while raising the ire of his superiors, Pickering's letter resulted in no discernable disruption to the operations of the school (*Munroe v. Central Bucks School District*, 2014). In contrast, Munroe's blog contained "gratuitously demeaning and insulting language inextricably intertwined with her occasional discussions of public issues ... [and] attracted considerable negative attention, from concerned parents and from the public at large" (*Munroe v. Central Bucks School District*, 2014, p. 13). The court found it reasonable to conclude that the blog posts would erode the necessary trust

and respect between Munroe and the larger school community and noted that students were permitted to opt out of Munroe's class at the request of offended parents. In granting the defendants' motion for summary judgment, the court concluded, "In this case, Plaintiff's speech, in both effect and tone, was sufficiently disruptive so as to diminish any legitimate interest in its expression, and thus her expression was not protected" (*Munroe v. Central Bucks School District*, 2014, p. 14).

The case of *Land v. L'Anse Creuse Public School Board of Education* (2010) did not involve a First Amendment challenge, but is instructive in defining the conditions permitting disciplinary actions when teachers are pictured on social media in a manner that offends the sensibilities of a school community. Anna Land, a middle school teacher in a Michigan school district, attended a combined bachelor - bachelorette party in the summer of 2005. During the course of the festivities, Land, in a presumptive attempt at levity, simulated the act of fellatio on a male mannequin. Unbeknownst to Land, she was photographed and the pictures were posted on a social networking site. Two years later students became aware of the salacious photos and began to circulate them. Even though the social networking site immediately deleted the photographs at Land's request, the school district terminated her employment "for engaging in lewd behavior contrary to the moral values of the educational and school community, which undermined her moral authority and professional responsibilities as a role model for students" (*Land v. L'Anse Creuse Public School Board of Education*, 2010, p. 2).

A hearing before an administrative law judge resulted in a finding for the district; however, the State Tenure Commission subsequently overturned that decision. The commission was sympathetic to Land's argument against the dismissal since two years had passed, the action was not illegal, and was not associated with Land's duties as a teacher (*Land v. L'Anse Creuse Public School Board of Education*, 2010). The Michigan appeals court, in upholding the commission's decision, ruled that the district failed to establish that the negative publicity resulting from Land's behavior was fatal to her effectiveness as a teacher.

Examination of the entire record reveals that the photographs engendered widespread gossip and some students and parents lost respect for petitioner. Further, there was expert testimony that the conduct depicted in the photographs would tend to cause students to lose respect for their teacher, and could adversely affect learning. However, some parents testified that while the internet posting of the photographs was unfortunate, they had not lost respect for petitioner as a teacher or person. Moreover, there was overwhelming evidence that petitioner was an excellent teacher who went above and beyond her responsibilities to assist her students to learn and enjoy the material, and to assist students and parents with other issues that might arise.... [W]here there is no professional misconduct, the notoriety of

a tenured teacher's off-duty, off-premises, lawful conduct, not involving students or school activities, by itself, will not constitute reasonable and just cause for discipline. (*Land v. L'Anse Creuse Public School Board of Education*, 2010, p. 8)

Policy Recommendations

Policy makers and school leaders are charged with the difficult task of balancing the need to reasonably restrict teachers' content and speech on social media with the need to respect teachers' First Amendment rights and encourage technology enhanced learning. Papandrea (2012) and Decker (2014) proposed a nexus approach as a way to achieve that balance. This approach presumes constitutional protection for teachers' off-duty, controversial speech unless "the school can demonstrate a substantial nexus between the challenged expression and the teacher's ability to perform [his or] her job" (p. 1630). In evaluating a specific incident, school administrators should first take into consideration the teacher's intent to communicate directly with students or other members of the school community. As the *Munroe* case demonstrates, anonymity is not easily guaranteed in the online world. As the *Land* case demonstrates, the teacher involved in a controversial posting is sometimes the victim of unauthorized action by another party. Accidental, unintentional, or unauthorized expressions should not necessarily prompt the same administrative response as expressions intentionally directed toward students, coworkers, or parents. In other words, Munroe's blog and Land's photographs should be viewed differently than Spanierman's website. In addition to directly interacting with students, Spanierman also engaged students in inappropriately personal conversations including sexual innuendos. Such teacher to student interactions provide further support for a strong administrative response because they imply an inability to establish appropriate professional boundaries with students and could lead to sexual harassment or abuse.

Even though Munroe passes the initial inquiry based on the lack of intent, there are still grounds for disciplinary action under the nexus test since the disruption created by her comments poisoned the school environment and seriously compromised her standing as a teacher. In contrast, Land passes the initial inquiry and survives the nexus test since her actions were not overly disruptive to the learning environment. Of course, controversial teacher expression that leads to a substantial disruption might fall within the boundary of First Amendment protection if that expression addresses a matter of social importance. For example, a Florida teacher's controversial Facebook post disparaging gay marriage addressed a matter of public interest and was therefore protected speech under the *Pickering* precedent (Michaels, 2011; Padgett, 2011).

The nexus approach provides a solid policy foundation that balances the need to protect students and the school environment with the need to respect the First

Amendment rights of teachers and allow appropriate space for social media as a pedagogical tool. Unlike restrictive policies that ban all teacher-to-student communication through private social media accounts and devices, the nexus approach focuses on the nature and effect of expression rather than the means of expression. Furthermore, the nexus approach involves an analysis of gradation, thereby factoring individual circumstances into the policy calculus (Decker, 2014; Papandrea, 2012). Based on the *Land* (2010) decision, school administrators should examine the whole record and take into account the teacher's past record, present effectiveness, and intent before deciding a course of action.

School administrators have a well-defined legal and ethical obligation to respond decisively to teacher-student communications that are sexual in nature (Decker, 2014). However, administrators are also expected to intervene when teachers post other inappropriate or controversial content even though the circumstances permitting such interventions are not so well defined. Based on Papandrea's (2012) and Decker's (2014) nexus test approach and relevant case law, the following three questions offer a viable framework for determining when administrators should respond to inappropriate or controversial teacher expression delivered through personal social media accounts or devices while off-duty:

1. Was the inappropriate or controversial content directed toward students or other members of the school community?
2. If the offensive content was not intended for members of the school community, did the teacher approve of the posting and carelessly disregard the possibility that students or other members of the school community would gain access?
3. If the response to questions one or two is affirmative, does the content suggest a breach of the state's educators' code of ethics or negatively impact the teacher's ability to perform his or her responsibilities effectively.

In addition, Decker (2014) advised that districts' define communication broadly in social networking policies to include "photographs, videos, text messages, e-mails, instant-messages, blog entries, and posts on social-networking sites such as Twitter, Facebook, and MySpace" (p. 201).

Conclusion

Effective school leaders are proactive in dealing with potential problems, including teachers' inappropriate or controversial use of personal social media accounts. As preventive measures, school leaders should ensure that policies are in place that clearly define the limits of acceptable use of social media by teachers while off-duty and when using personal internet sites and devices. School leaders should incorporate the appropriate and inappropriate use of social media in professional

development programs and take advantage of the didactic potential of cases like *Spanierman, Munroe, and Land* as cautionary tales.

It is important that school leaders acknowledge and respect teachers' First Amendment free speech rights. It is also important that school leaders recognize the pedagogical potential of social media and not unduly limit its use inside or outside of the classroom. However, school leaders do have a responsibility, and arguably a moral obligation, to protect students and the learning environment from the inappropriate uses of social media. Failure to do weakens the critical bond of trust that links school to community.

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