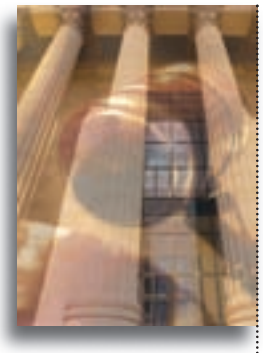

Social Networking Sites and the Free Speech Rights of School Employees

By Charles J. Russo, J.D., Ed.D.

The more proactive and thoughtful board policies are, the more likely they are to survive judicial challenges.

As Internet technology—including the use of social networking sites, most notably MySpace and Facebook—becomes more common in schools, novel legal questions involving personal communications and free speech that could not even have been imagined barely a decade ago, let alone when ASBO International was founded a century ago, present challenges for school business officials and other education leaders.

In the midst of growing controversy over the limits of student expression on the Internet, a federal trial court in Pennsylvania addressed the extent to which education officials can restrict the ability of student teachers and, by extension, teachers and other school employees to exercise their rights to free speech on Internet social networking sites.

In *Snyder v. Millersville University* (2008), the court upheld the authority of university officials who, acting in response to requests from educators in a local school district, terminated the assignment of a student teacher. Officials agreed to end the plaintiff's placement because, in addition to concerns about her subject-area knowledge, she violated university directives that she received during her student teacher orientation by posting an inappropriate remark about her cooperating teacher on her personal MySpace page that was accessed by her students.

Based on the legal issues that *Snyder* presents for school business officials and other education leaders with regard to the free speech rights of employees, however broadly this term is understood, this column is divided into two substantive sections.

The first reviews the court's analysis in some detail since it can provide school business officials and other education leaders with insights into preparing policies for use in their own districts. The second section offers suggestions that school business officials and other educational leaders might wish to incorporate into their policies with regard to employee use of Internet social networking sites and their effect on district operations. The column rounds out with a brief conclusion.

Snyder v. Millersville University

The facts in *Snyder* are straightforward. Litigation ensued when the plaintiff filed suit after university officials, acting on the request of local education officials who did not want her to return to the high school where she was placed, terminated her student-teaching assignment in the English Department due to her poor performance.

During her placement, the student teacher's university-based supervisor rated her professionalism as good or reasonable in most areas, grading her overall performance as satisfactory. Still, the supervisor advised the plaintiff to improve her communication skills and to learn to establish boundaries in her relationships with students.

As the situation evolved, the plaintiff's cooperating teacher also indicated that she needed to act more professionally with students and not, for example, discuss private matters in class, such as how meeting her ex-husband while at dinner with her boyfriend "ruined" her Valentine's Day.

More importantly, the cooperating teacher criticized the plaintiff's professional competence as an English teacher, highlighting her ignorance of basic grammar, punctuation, usage, and spelling along with her poor classroom management skills. The cooperating teacher evaluated the student teacher's overall performance as being in need of "significant remediation."

In response to the criticisms, the plaintiff ignored warnings that she and the other student teachers received during orientation not to refer to their students or teachers on their personal Web pages. After learning from a colleague that the plaintiff's students were visiting the student teacher's MySpace page, the cooperating teacher urged her to discontinue postings about the school. The plaintiff had also posted a picture of herself wearing a pirate hat, holding a cup that read "drunken pirate."

After another teacher viewed the photograph along with the plaintiff's posting of a critical remark that was apparently about her cooperating teacher, the latter voiced her concerns to her supervisor, who, in turn, contacted the district superintendent.

Ultimately, the superintendent informed the student teacher that she should not return to her placement. Further, disturbed by the plaintiff's errors in grammar and usage, the superintendent wrote a letter stating that he did not think that she should have been able to pass student teaching.

A final review of the student teacher's performance by the university-based supervisor and cooperating teacher revealed that while they were displeased with the posting of the photograph, they ranked her "professionalism" as unsatisfactory primarily due to the content of the posting about the cooperating teacher. The reviewers rated the student teacher at various grades of acceptable in other areas. The student teacher was not allowed to return to the school to complete her assignment.

On returning to the university campus, university officials informed the plaintiff that since she did not complete student teaching, she could not receive a Bachelor of Science in Education nor qualify for a recommendation for teacher certification. However, officials were able to work with the courses that she had completed and allowed her to graduate with a Bachelor of Arts in English.

Dissatisfied with the outcome, the plaintiff initially filed suit alleging that university officials violated her rights to due process and freedom of speech. After the federal trial court dismissed the due process claims, it allowed the former student teacher's First Amendment free speech claim to proceed to trial.

Judicial Rationale

Before rendering its conclusions of law in the nonjury trial, the court began with a discussion of the plaintiff's status. The court reasoned that the plaintiff was "an apprentice more akin to a public employee/teacher than a student" (*Snyder* 2008, p. 9) during her time in the district since her duties, which included teaching, writing lesson plans, and grading papers, arose entirely from her full-time assignment as a student teacher. Accordingly, the court was satisfied that the plaintiff could have been disciplined in the same manner as a public employee.

As a prelude to reviewing her substantive charges, the court rejected the plaintiff's request to enjoin officials from taking the actions that they had already completed because she was unlikely to prevail on the merits of her case.

Turning to the first two of the former student teacher's overlapping claims, the court rejected her request that she be granted a BSE. The court refused to order university officials to award the plaintiff a BSE because insofar as she failed to complete student teaching, Pennsylvania law forbade university officials from granting her the degree she sought.

Similarly, the court found that since the plaintiff failed to complete her student-teaching assignment, it would not order university officials to provide her with a recommendation that was a prerequisite for obtaining teacher certification. The court maintained that granting such a request would have been a disservice to the public interest based on the plaintiff's poor performance as a student teacher.

As to the third and most significant issue in the case, the one that goes to the heart of this column, the court examined the former student teacher's allegation that university officials violated her First Amendment right to free speech. The court began its rationale by acknowledging that since different judicial standards apply depending on whether the plaintiff was treated as a student or as a public

employee, it was crucial to apply the appropriate test.

Relying on precedent from the Supreme Court and the Third Circuit, the court reiterated that as long as public employees speak out on matters of public concern, education officials could limit their speech only to the extent necessary to enhance efficient and effective school operations.

Policies should identify sanctions, ranging from loss of access to systems to dismissal for those who engage in more serious offenses.

Conversely, again relying on Supreme Court precedent, the court recognized that due to concerns about academic freedom, these same officials could not limit student speech absent a reasonable and specific forecast that the challenged speech would materially or substantially disrupt or interfere with school operations or the rights of other students.

In explaining how these different standards applied, the court pointed out that if the plaintiff were treated as an employee, she would have borne the burden of proving that her speech was on a matter of public concern, a dubious proposition under the circumstances, thereby affording her speech a lower level of protection than if she were considered to be a student. The court determined that if it viewed the plaintiff as a student, rather than as an employee, university officials would have had to demonstrate that they had a constitutionally valid basis for limiting her speech.

When applying the judicial standards, the court ruled that consistent with a case from Massachusetts wherein the First Circuit affirmed the dismissal of a student teacher's placement due to inappropriate remarks that he made to students about his personal beliefs (*Hennessy v. City of Melrose* 1999), albeit in a school setting rather than on a social networking site, the plaintiff's position was more like that of a public employee than a student. The court also cited other similar cases, involving students whose participation in practicum placements in a prison (*Andersen v. McCotter* 1996), in a psychiatric hospital (*Watts v. Florida Int'l Univ.* 2007), and as a special-education student teacher in a high school (*Miller v. Houston County Bd. of Educ.* 2008) were terminated because their speech did not involve matters of public concern.

Rounding out its opinion, the court rejected the plaintiff's claim that because the consequences of her speech had academic ramifications, it was protected since she was, in a significant way, a student while serving in the district. In rejecting this contention, the court pointed to the fact that on her MySpace page the plaintiff went so far as to describe herself as "the 'official teacher' of [her] students" (*Snyder* 2008, p. 13).

In concluding that since the plaintiff's posting on MySpace did not involve a matter of public concern and her speech was not entitled to First Amendment protection, the court denied her request for relief in the form of an injunction preventing university officials from acting as they did.

Recommendations

Snyder highlights the need for school business officials and other education leaders to develop up-to-date comprehensive computer use policies for all staff, whether regular employees, student teachers, or others. Most importantly, these policies must address the appropriate limits of employee speech on the Internet when Web sites can be accessed by students or the public.

As an initial matter, policies of local school boards should specify that since district-owned and -operated systems are board property, their use can be restricted to legitimate academic and administrative purposes, thereby limiting access to social networking sites, such as MySpace and Facebook. This means that since systems are board property, personal comments and information such as photographs that are posted on social networking sites that are accessible on district-operated Internet systems may not be entitled to the free speech rights and expectations of privacy that they might enjoy on private sites.

The upshot is that unless school employees limit their comments to matters of public concern, they can be disciplined for speech that is critical of other staff or internal board policies or for inappropriate use in accessing social networking sites since more than 40 years of precedent from the Supreme Court emphasizes that such speech by employees is unprotected by the First Amendment.

At the same time, board policies should specify that, at least when it comes to district-owned and -operated systems, controversies over their use aside (McVey 2009), education officials have the right to install firewalls or filtering software that blocks access to social networking sites, such as MySpace, in a manner consistent with those that limit access to other objectionable sites, such as pornography, in schools. Of course, the use of firewalls would not prevent employees from posting information on sites that are not accessible on district-owned and -operated systems, thereby leaving open a gray area over the extent to which individuals can be disciplined for nonworkplace speech.

While future litigation will undoubtedly set the parameters for employee speech on the Internet on

non-district-owned Web sites, the more proactive and thoughtful board policies are, the more likely they are to survive judicial challenges.

Board policies should also, as a practical matter, remind users that once they have posted on the Internet, their words take on lives of their own, seeming to exist independently in cyberspace, all but ensuring that they cannot be retrieved. Policies should thus advise employee users to be careful about the content of their postings.

Consistent with the outcome in *Snyder*, local education officials, acting in conjunction with university faculty, should remind student teachers (as well as interns) in particular that due to the professional duties that they are assuming in schools, such as preparing lesson plans, teaching classes, grading papers, and attending faculty meetings, they are to be treated as employees rather than students. In other words, since student teachers are likely to be treated as employees rather than students, they, too, should avoid inappropriate postings or criticisms of staff members and board policies on social networking Web sites.

Regardless of their status as regular or student teachers, board policies should require all teachers, and other staff, to sign forms indicating that they agree to abide by the terms of acceptable use policies when working on district-operated Internet systems. Such provisions should stipulate that individuals who refuse to sign forms signifying their willingness to comply with acceptable use policies, or fail to comply with their provisions, can be disciplined for inappropriate use of facilities. Policies should identify possible sanctions, ranging from loss of access to systems to dismissal for faculty and staff who engage in more serious offenses, such as making inappropriate postings on social networking sites.

As part of the process of keeping employees abreast of updates in board policies, education leaders should hold orientations to explain these provisions in more detail for new employees and student teachers specifically since college students seem to rely so heavily on social networking sites. Additionally, officials may wish to consider providing updates on policy developments in professional development sessions because insofar as the growth of technology continues to outpace the ability of the law to keep up with emerging developments, keeping everyone up-to-date can proactively avoid challenges as time passes.

Finally, education leaders should ensure that their personnel and computer use policies are updated regularly, typically annually. Updating policies regularly can help ensure that they are consistent with changes in both the law and technology, particularly in advising employees to avoid social networking sites on district-owned and -operated systems.

Conclusion

In light of *Snyder*, school business officials and other education leaders should develop new and innovative policies designed to encourage employees to engage in the responsible use of the Internet. After all, just as the Internet is constantly expanding, education leaders owe it to themselves and other school employees to keep pace with legal developments by keeping abreast of the rapid growth and development of technology so as to be able to devote district resources to the most effective use in educating students rather than fending off avoidable litigation.

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