



Radtke Education Law LLC

This is the first in a series of education law nuggets for parents and students.

First Amendment 2.0 Can schools discipline students for online speech?



Research has confirmed what parents already know: students are spending an increasing amount of time at the computer, usually on activities that are not related to school. A recent study by the Kaiser Foundation reports that, in the last five years, students between ages eight and eighteen have increased their personal time on the computer from one hour to one-and-a-half hours. For some parents, this may seem like an underestimate. Still, it does highlight a trend which parents generally know to be true.

New Internet capabilities and content largely account for this increase. Web 1.0 was a global library with “gated” scan and read capabilities. Web 2.0 is a different beast. It is a participatory global network where anyone with online access can create content that may be viewed in a highly public community.

Web 2.0 is creating a fault line in the usual methods of communication between students, school personnel and parents. It also confounds the legal system. Courts are struggling for consistent answers to previously unthinkable questions. For example: May a school discipline a student for posting potentially libelous Facebook comments about a teacher if those comments are posted off-campus?

In a single day, the confusion on this issue among legal “deciders” was made painfully obvious. Two federal judge panels in Pennsylvania arrived at two different conclusions on the same question of whether a school could discipline a student for online, off-campus speech. One panel protected a student's right to speak freely off-campus. (*Layshock v. Hermitage School District*). The other panel permitted a school to punish students for similar conduct. (*J.S. v. Blue Mountain School District*.)

The lawyer who represented the students in both cases said "It's difficult, if not impossible, to reconcile the two opinions."

In the *Layshock* case, the student used an off-campus computer to create a false MySpace page to spread the message that the school principal used drugs. The court said it would be an "unseemly and dangerous precedent to allow school authorities to reach into a child's home and control his or her actions there to the same extent that they can be controlled in school."

In *Blue Mountain*, a middle school student used an off-campus computer to create a false MySpace page to make accusations, in sexually explicit language, about the principal's behavior. The court said the district was authorized to discipline the student because “the profile was likely to cause a substantial disruption within the school.”

Lawyers and parents are left scratching their heads. Was the student use of vulgar language a factor in the different result? Possibly not, although the language in the case supporting discipline was more vulgar than in the case which did not.

Whatever the rationale, we do know this: Web 2.0 is continually creating new legal challenges that lawyers and parents need to watch. No one knows where or how the new fault lines might be drawn.

The series is written by Radtke Education Law, LLC, a law firm offering quality legal representation for parents and students in their disputes with schools, from child care through college. This article series offers information on emerging school issues so parents can proactively manage their relationships with teachers and school administrators.

ABOUT RADTKE EDUCATION LAW, LLC

Radtke Education Law, LLC is solely owned by Melva Radtke. She is an attorney, teacher and parent. She received her J.D. From William Mitchell College of Law in 1986, her Master's Degree in Teaching from the University of Chicago and her Bachelor's Degree, cum laude, from Augustana College in Rock Island, Illinois.

Melva worked fourteen years in the Minnesota State Senate and House of Representatives as a policy researcher and writer, providing legislative, practical and strategic analysis on a broad range of policy issues for legislators, including early childhood education and public health.

Melva is the proud mother of three young adults. One of her sons has Asperger's Syndrome and he has inspired her to work on a variety of autism-related ventures. She serves on the Board of Autism Works, an emerging nonprofit organization with an individualized service model for individuals on the autism spectrum. She also serves on the Board of Stepping Stone, an organization which is developing an independent-lifestyle dorm for young adults with Asperger's Syndrome. Melva is also the founder of a new company which produces social skills training videos for young adults on the autism spectrum.

Melva owned a family law practice and mediated and prosecuted student truancy cases in Ramsey County. She also served as a member of the Stillwater School Board, with four years as board chair.

If you have questions related to your child's education or school law disputes, you can reach Melva at: 651-269-5002