

Do Students Still Have Free Speech in School?

Social media has eroded young people's privacy—and advocates are trying to win it back.



Adam Hunger/Reuters

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In 1965, when Mary Beth Tinker was 13 years old, she wore a black armband to her junior high school to protest the Vietnam War. The school promptly suspended her, but her protest eventually led to a landmark Supreme Court case: *Tinker v. Des Moines*. In their verdict, the court vindicated Tinker by saying students do not “shed their constitutional rights to freedom of speech or

expression at the schoolhouse gate.” The 7-2 ruling ushered in a new era of free speech rights for students. First Amendment advocates basked in the glow of the *Tinker* decision for decades.

However, the Internet has since complicated the meaning of the ruling, and those same advocates now worry students’ rights to freedom of speech are again under attack. Schools regularly punish students for online comments, even if those comments are made away from school property and after school hours. Although some administrators target cyber-bullies, others punish students whose only offense is posting an online comment that the school doesn’t like.

The situation has inspired Tinker herself to [tour the nation’s schools](#) to revive student speech rights, nearly 50 years after her famous protest.

“The digital age, with its wonderful capacity to democratize speech, is so important to students’ rights, but also carries new and interesting threats to students’ rights,” Tinker says. “If we don’t encourage young people to use their First Amendment rights, our society is deprived of their creativity, energy, and new ideas. This is a huge loss, and also a human rights abuse.”

There are numerous examples of schools punishing students for seemingly innocuous online activity. In 2012, after a Minnesota student wrote a Facebook post saying a hall monitor was “mean” to her, she was forced to turn over her Facebook password to school administrators—in the presence of a sheriff’s deputy. The school made an [out-of-court settlement](#) with the student, who was represented by the ACLU.

In other recent cases, student banter that would have gone unnoticed in the pre-digital era has drawn swift punishment. In Kansas, a high school class president was [suspended for a Twitter post](#) making fun of his school’s football team. In

Oregon, 20 students were **suspended** over a tweet claiming a female teacher flirted with her students. And just a few days ago, also in Kansas, a student was suspended for a tweet that made the principal “uncomfortable” (in the wording of the school’s **disciplinary incident notification**).

“We cannot allow the hard-fought battles for student speech rights to be eroded in the digital age,” says Lee Rowland, an ACLU staff attorney specializing in speech, privacy, and technology. “School officials aren’t permitted to listen in on chatter at students’ private gatherings with friends, or rifle through their private videos and photo albums. Nor should we permit them to do so simply because those conversations or images are digital.”

No one disputes the fact that students can be cruel online. Chip Douglas, a 10th grade English teacher in North Carolina, **resigned** after students created a fake Twitter profile that portrayed him as a hyper-sexualized drug addict. But some First Amendment advocates believe a subsequent law enacted by the North Carolina legislature in December 2012, the first of its kind, has gone too far. Intended to protect teachers from cyber-bullying, the law **prohibits** students from making any online comments meant to “intimidate or torment” a school employee.

Such broad language creates two big First Amendment problems. First, schools can punish any speech as long as they can cite “intimidation.” Second, schools can punish students for comments made after school hours, in the privacy of their own home.

“You can’t equate online speech created on personal time with in-class speech, and it’s dangerous to try,” says Frank LoMonte, director of the Student Press Law Center. “Schools are so prone to censor and intimidate whistleblowers who complain about school conditions on school time. Students absolutely must have

some safe space where they can complain when schools are dirty, dangerous, or overcrowded, without fear that the long arm of school discipline will reach out and grab them.”

Student speech—often in defiance of administrators—has helped keep schools transparent. In September, students writing for an Ohio high school newspaper looked at public records and **discovered** that what their high school’s administration had called an “alleged assault” by a student was actually an alleged rape. In November, students at a Staten Island high school **broke a story** about how the answers to Department of Education standardized tests were posted online before the test was administered.

In the landmark *Tinker* case, the Supreme Court specifically **warned** schools that they could not forbid student expression simply because they wanted to avoid controversy. “In order for [a school] to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint,” the court said.

Tinker says that the students of today, just like those from her generation, want to express themselves using peaceful, creative methods. “They are using all the tools available, including online speech, to make a positive contribution,” she says. “Today, students have more than armbands.”

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