

Annual MARE/MO K-8 Conference

Staff and Student First Amendment Issues

October 22, 2020

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GUIN MUNDORF

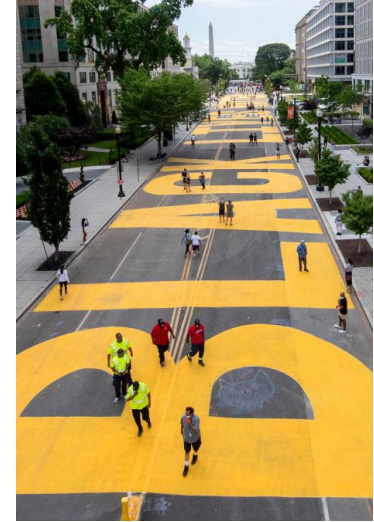
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Presentation**

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How are Current Cultural Movements Impacting Schools?



Who Has Opinions about these Topics?



Student Speech on Campus

*Tinker v. Des Moines Independent
Community School District (1969)*



Tinker applies to off-campus student speech:

(1) Where it is reasonably foreseeable that speech will reach the school community

&

(2) Cause a substantial disruption to the educational setting





Substantial-disruption factors:

- **Where? (Location?)**
- **When? (During instructional time?)**
- **What? (Accompanying speech/conduct?)**



Three (3) areas
in which schools can
regulate student speech
without meeting
Tinker's substantial
disruption standard

Fraser
1986

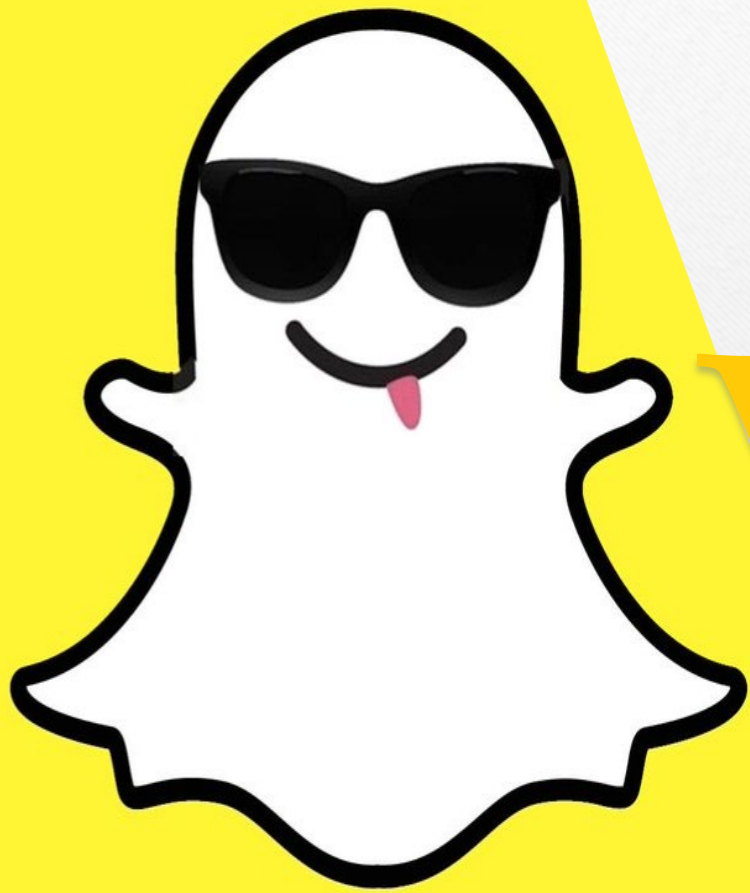
**Vulgar/
Offensive**

Kuhlmeier
1988

**School
Sponsored**

Morse
2007

**Drug
Use**



Vs.





With social media, where is the schoolhouse door?

B.L. v. Mahanoy Area School District:



B.L. v. Mahanoy Area School District:

- **Florida Student posts on Snapchat “posted a photograph of herself and a friend, their middle fingers extended, that contained the caption “F*\$% school F*\$% softball F*\$% cheer F*\$% everything.”**
- **Coach cuts the Student from Cheer.**

B.L. v. Mahanoy Area School District:

- On appeal, Third Circuit looked at how to differentiate between “on-campus” and “off-campus” speech in the digital age.
- Court said Student’s comment was made off-campus, and that Tinker, which addressed only on-campus speech, did not apply.

B.L. v. Mahanoy Area School District:

- **Third Circuit opinion – not binding in Missouri.**
- **District has petitioned the Supreme Court to hear this case.**
- **No decision yet whether it will go up.**



**What about
Missouri?**

Beussink v. Woodland R-IV School District (E.D. 1998):

- Off campus, Student created a web page using vulgar language to criticize various school officials - was then suspended
- Court found punishment was a violation of First Amendment rights - merely, “disliking” the content is not enough.

*A.S. by & through Schaefer v. Lincoln
Cty. R-III Sch. Dist., (E.D. Mo. 2019)*

- Another Snapchat case
- Student doctored photo, depicting fellow Student in a casket.
- Fight broke out at school after the photo had gone around.

*A.S. by & through Schaefer v. Lincoln
Cty. R-III Sch. Dist., (E.D. Mo. 2019)*

- **Court found, “it was reasonably foreseeable that this speech would (and indeed did) reach the school community and cause a substantial disruption to the educational setting, it is not protected speech under the First Amendment.”**

Let's look at two student groups...

- A Black Lives Matter group forms a silent picket line.
- A group of students wearing red "Make America Great Again" signs walks by.

what
if...

The “Make America Great” group carries signs that say “All Lives Matter?”



2 506-8 3 506-8 FILM 4 506-8

What

Happens

Next

2 2A 3 3A 4 4A

If a group of students wearing confederate flag apparel get involved?



The background of the image is a faded, semi-transparent Confederate battle flag. It features a large white saltire (X-shape) on a blue field, with white stars in the four quadrants. The flag is set against a background of red and white horizontal stripes.

What about the Confederate Flag?

B.W.A. v. Farmington R-7 School District (8th Cir. 2009)

- **A district can ban Confederate flags if it can forecast a substantial disruption based on events in the school and community.**
- **Cannot ban Confederate flags simply because they are offensive or uncomfortable.**

Consider...

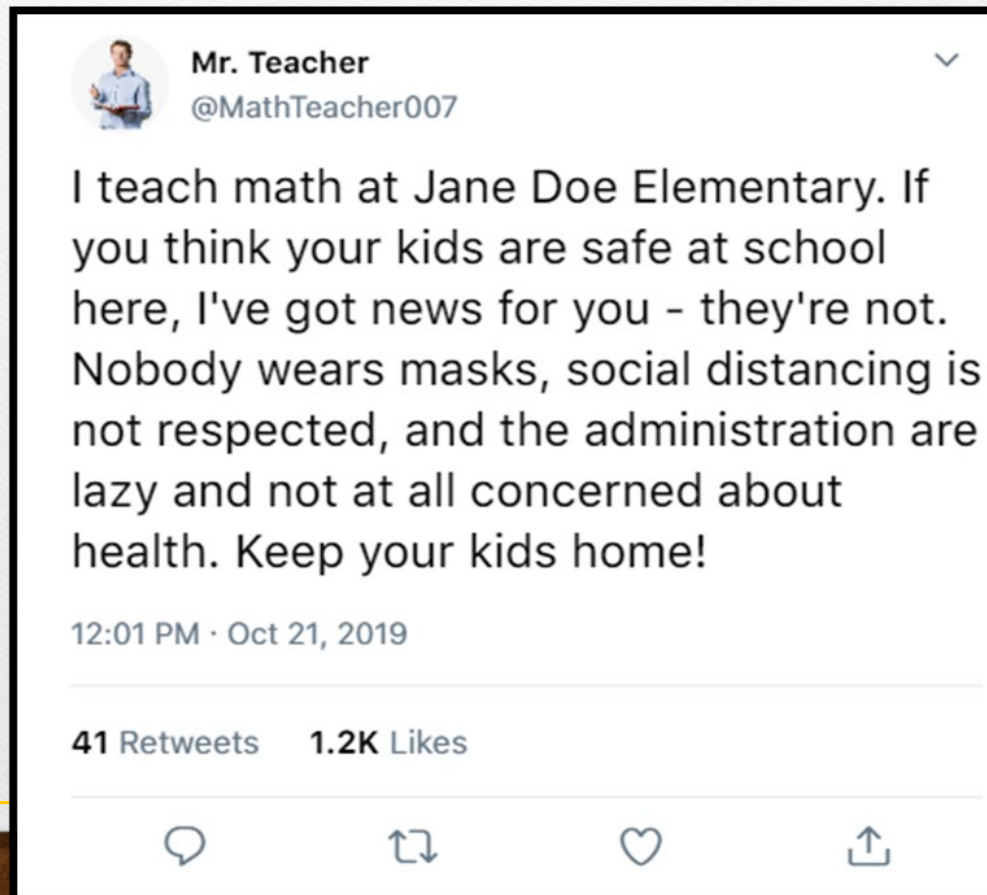


- Do I just not like it? (Be honest, sometimes there's a lot to not like about it)
- Will it reach the school environment?
- Will it cause substantial disruption?
- Is it threatening?
- Is it vulgar and lewd?

Staff members have
social media accounts,
too.



This shows up on your Twitter feed....



This shows up on your Twitter feed....



Mrs. Hodges

@Kree49

Follow

I already wanna stab some kids. Is that bad? 19 more days.

Newark, CA

Reply Retweet Favorite More

FAVORITE

1



With Staff Speech, Consider...

1. Whether the employee is speaking as a public citizen or pursuant to official duties?
 - If public citizen, then additional analysis is required.
 - If speaking pursuant to official duties, then speech can be substantially limited.

With Staff Speech, Consider...

- 2. Whether the employee's speech relates to a matter of public or private concern based on content, form, and context?**



With Staff Speech, Consider...

- 3. Whether the interests of the employee as a private citizen in commenting on matters of public concern outweigh the interests of the public employer in promoting the efficiency of the public services it performs, or vice versa.**

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