



## **OUT OF SCHOOL INTERNET USE: A Dilemma for School Officials and Law Enforcement**

### ***Does students out of school Internet use affect what happens during the school day?***

Often times, the answer is yes. I had the opportunity to pose that question to hundreds of school based police officers (SRO's) and school administrators this past summer. At a presentation I did at the National School Resource Officers Conference, I asked the audience if they experienced in-school disruptions from students out of school Internet use. The overwhelming majority said that they did. I also asked them if they were seeing an increase or decrease in those school disruptions. Again, the audience overwhelmingly said that they were seeing an increase. Their response seems to go along with the many media reports we read regarding school disruptions and problems that are Internet based. Many of these situations are of a serious nature. With a recent increase in school violence incidents, one must wonder how many of these incidents had an Internet connection. After a tragic incident, the media often displays the suspect's web page which may contain disturbing photos and statements. On a positive note, some of these potential school tragedies have been prevented by someone reporting disturbing comments or information found on a student's web page.

### ***What can school officials take disciplinary action for when it comes to students out of school Internet behavior?***

Often times, the answer is nothing. When the U.S. Constitution was written, there was no concept of a technology called the "Internet". Citizens were afforded First Amendment Rights to freedom of speech. Our forefathers could never fathom that communication would some day be very impersonal; if not anonymous. Internet based threats of violence, impersonation of staff and students, harassment, and cyberbullying are all common situations facing middle and high schools. But many situations, sometimes highly disturbing and offensive, are afforded protection under the First Amendment. ***The question is what makes a student's web comments subject to school sanctions or a violation of law.*** The 1969 U.S. Supreme Court case of *Tinker v. Des Moines Independent Community School* set the stage for school sanctions vs. students First Amendment Rights. The court agreed with students that it was part of their First Amendment protection to wear black armbands to school in protest of the Vietnam War. The *Tinker* standard still exists today when it comes to the question of student's out of school Internet use being subject to school discipline. The Supreme Courts ruling in the *Tinker* case said that student's free speech is protected under the First Amendment unless it "materially disrupts classwork or involves substantial disorder or invasion of the rights of others". So, if a student's Internet postings cause a "material disruption" in the school, as cited under the *Tinker* case, school officials could take disciplinary action. Although school districts have that latitude, many districts are being sued by students disciplined for their out of school Internet postings. And in some cases, the students are winning in court; five figure settlements not being uncommon. The American Civil Liberties Union (ACLU) is very active in lawsuits against school districts when it comes to the Internet and students First Amendment Rights. There are many

cases pending at present in both state and federal courts. New case law may be favorable to school districts with regard to the “material disruption” standard; or they may lean toward the First Amendment Rights of students. Obviously the Internet was not around when the *Tinker* case was decided back in 1969. The issue of student’s First Amendment Rights, when it comes to online speech, may someday come before the U.S. Supreme Court. For now, case law is being determined by the State and Federal Circuit Courts. ***I would urge school officials to tread cautiously when it comes to student discipline concerning out of school Internet behavior.*** Most situations do not need an immediate decision when it comes to disciplining or not. This may be a situation where you may want to contact your district’s legal counsel. You can also consider working with the student to remove offensive material from their site as well as making a request to the Internet provider to remove the material or site itself. A situation that is of a non-emergency or not of an urgent nature requires that you proceed cautiously so as not to incur legal liability.

But what about those situations that are clearly criminal or threatening in nature. Situations such as plots to do violence at a particular school clearly fit into the “material disruption” category. Those situations need swift action on the part of law enforcement and school officials. We live in a time where threats are taken very seriously. I have yet to see any legal challenges for those types of situations. We know that students have talked of plotting violence at their school and then actually carried it out. Many times hints of doing violence or the plot itself are revealed on a student’s web page. Other types of situation require more scrutiny. Is what appears on a student’s personal web page truly criminal in nature? Does it constitute a “material disruption” to the school? These are often “gray areas” that need a close look and maybe some research. Is the student exercising Freedom of Speech or going beyond the protections that the Constitution affords to citizens. ***The most common types of Internet complaints to law enforcement involving students are: threatening, harassment, impersonation of others, and cyberbullying. Often times these complaints involve situations where an online posting or exchange is offensive but not criminal in nature or under the parameters of school discipline.*** These are most often cleared up by speaking to the offender or working with the Internet provider. I have had several situation where a call or e-mail to MySpace Security quickly put the problem to rest. MySpace has dedicated a specific e-mail address and emergency phone number for law enforcement only. But some situations do necessitate criminal action. Many state laws were written at a time when the Internet was not a consideration. Slowly but surely words such as “computer network” are being written into existing laws. Even without that language, many laws as written could be interpreted to include violations that occur online. The problem with technology, such as the Internet, is that we often have to wait a substantial amount of time to see how case law plays out with arrests involving an online crime. Case law is still coming forward on past cases involving law enforcement “stings” where police are online as teens looking to detect online predators. Case law was just established in Connecticut involving police officers being undercover online and posing as teens from a case that occurred in 2000. Fortunately, the ruling was positive for the police. For law enforcement officials, when in doubt consult your prosecutor or district attorney. The question often comes up of whether or not a specific law applies to a situation that occurred online. Again, most complaints do not need immediate action. You do have time to consult the court on the matter before deciding if a criminal arrest is warranted and proper. Most of the criminal complaints come from conversations in the Instant Messaging (IM’s) format. In a good number of complaints, the victim has an idea as to

who the communication is from. Some cases involve filing subpoenas for information, but usually a specific person emerges as the suspect. Recently a 13 year old middle school student was charged with Criminal Impersonation for assuming the identity of a school administrator and creating a MySpace account in the administrator's name. The student placed derogatory comments on the web site as if they were coming from the administrator. Had the student made derogatory comments about the administrator on their own site, there would not have been a criminal aspect to the incident. The challenge for law enforcement and our legal system is to try and interpret existing laws for online violations. At the same time we need to look at modifying those same laws to clearly include the "computer network" as a place where the violation can occur.

***Educational programs need to remind teens that they are not as anonymous as they think when online. If an incident would be criminal in nature in the "real world", it may very well be criminal in the "online world". It is my experience that teens will all agree that a legitimate face to face threat can get them in trouble both in school and legally, but something communicated online doesn't count.*** Teens also need to be reminded that cellular phone text messaging or IM's are no different from communications sent or received on their computers. Many people are not seeing the potential of the cellular phone as becoming a "mobile computer". The same safety and responsibility obligations for the home computer must apply to mobile devices. How many adults know the capabilities of their child's mobile devices or how to use "parental controls" that are often available. Educational programs to parents, school staff, and students will go along way in being proactive toward these potential situation that are "materially disruptive" to schools; if not tragic. Student's Internet indiscretions are the perfect scenario in which schools and police need to work together to minimize potentially dangerous or disruptive situations. By all recent media accounts, our educational efforts seem to be working. Recent studies are starting to show that teens are much more aware of posting personal information online and the dangers that may be associated with that.

***School districts should have an Internet usage policy in effect that is well documented and acknowledged by students and staff.*** The U.S. Department of Education as well as most State Education Departments have model policies available. Even with a comprehensive policy in effect, it still does not make a school district immune to liability in cases of school discipline for students out of school Internet behavior. It may limit or minimize the liability in some cases. And certainly, Internet usage policies are not a substitute for recognizing situations which you can and cannot take disciplinary action against. To take a look at what rights students may have while posting online, take a look at this link to the Electronic Frontier Foundation website: <http://www.eff.org/bloggers/lg/faq-students.php> . If that doesn't want to make you use caution, check out the ACLU's website for specific cases in which they successfully defended student's online postings and conduct. The bottom line is that schools and police need to work together; however both must proceed cautiously in all but emergency situations.

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