



The First Amendment in the Digital Age – From Flags and Bumper Stickers to Facebook and SnapChat, What School Leaders Need to Know.

SOCIAL MEDIA: FRIEND OR FOE?

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Friend

The Internet and social media tools offer seemingly limitless educational advantages

Foe

The Internet and social media tools can be improperly used to initiate and foster inappropriate relationships among staff and students or otherwise utilized in ways that are harmful to District officials, staff, students and the school community as a whole

Rules Governing the Code of Ethics for Arkansas Educators

- ▶ Standard #1
- ▶ “An educator maintains a professional relationship with each student, both in and outside the classroom”

Policy 3.45: Licensed Personnel Social Networking and Ethics

“It is the duty of each staff member to appropriately manage all interactions with students, regardless of whether contact or interaction with a student occurs face-to-face or by means of technology, to ensure that the appropriate staff/student relationship is maintained. This includes instances when students initiate contact or behave inappropriately themselves. Staff members are reminded that whether specific sorts of contacts are permitted or not specifically forbidden by policy, they will be held to a high standard of conduct in all their interactions with students. Staff members are discouraged from creating personal social networking sites to which they invite students to be friends or followers.”

Prohibiting Electronic Communications Between Educators and Students

- ▶ A few years ago, the Missouri legislature passed such a law, but it was overturned after a legal challenge by the state teachers union when a judge ruled that the law was unconstitutional.

Public Officials and Staff Members Are Concerned About the Use of Social Media

A survey in 2014 showed that some 80% of teachers:

- (a) used social media both personally and professionally;
AND
- (b) worried about the conflicts and issues that may arise with their students or their parents as a result of the use of social media.

This survey also showed that only 29% of teachers believe they have received significant or adequate training about interacting with students or parents in social media.

Over 1000 teachers across the US participated in the survey.

The background is a dark blue gradient with several semi-transparent light blue circles of varying sizes scattered across it. In the top right corner, there is a solid yellow vertical rectangle.

Do Public Employees or
Officials Have a First
Amendment Right to
Speak Freely On Social
Media?

Sometimes

- ▶ The First Amendment protects speech that is on “matters of public concern” (as opposed to matters of purely private concern) and the speech does not disrupt the operation of the school.

Public Concerns

“Matters of political, social or other concern to the community or government officials”

Can include speech concerning marriage, school safety, corporal punishment, same sex marriage, transgender issues, gun control – the social/political issues of the day – or if the speech could substantially disturb the school

Private Concerns/Not Protected

Can include speech that disses colleagues, addresses employee grievances, mentions students, parents or patrons

This post on social media by a student is a good example of how a social media post can lead to a substantial disruption of the operation of the school:

- ❖ I kind of want to bomb my school tbh
- ❖ So do I, so many drama queens and bitches and school and teachers and idk where I'm going with this ...
- ❖ I was thinking F-18's with laser guided missiles would do the trick for our school.
- ❖ We could just pull the fire alarm and shoot everyone who runs out, I'll be aiming for a few people in particular (Ms. _____ and _____) @ _____
- ❖ Bomb me, kthx.
- ❖ You're cool so I'll let you live @ _____ (as well as @ _____)

Arkansas Teacher Fair Dismissal Act

- ▶ Termination or non-renewal is permitted when there is just and reasonable cause to believe that a teacher has engaged in conduct which is unprofessional or which materially interferes with or compromises the continued performance of his or her duties as a teacher.
- ▶ See Ark. Code Ann. § 6-17-1507

Could a district terminate a teacher *whose former lover posted the photos* of the teacher?

- ▶ This is known as so-called “revenge porn” which is defined by Wikipedia as “sexually explicit media that is publicly shared online without the consent of the pictured individual by the ex-partner to shame or embarrass the pictured individual, or by hackers. Many of the images are pictures actually taken by the pictured persons themselves.” Sixteen states (not including Arkansas) have passed laws criminalizing revenge porn.

Electronic communication with students should always be **TAPed**:

- ▶ Transparent – maintain openness, visibility and accountability
- ▶ Accessible – consider all electronic communication to be a matter of record
- ▶ Professional – use correct grammar and tone, choose appropriate subject matter and choose words that are courteous

“The Bequette Rule”

BEFORE:

- ❑ hitting the “send” button for an email or text
- ❑ posting something on social media
- ❑ taking a photo or allowing a photo to be taken
- ❑ forwarding the joke you received by email or text from an old “friend”

CONSIDER THE FOLLOWING:

How would you feel about yourself, your family, your friends, and your job security if what was sent or pictured ended up on page one above the fold of the *Arkansas Democrat Gazette*?

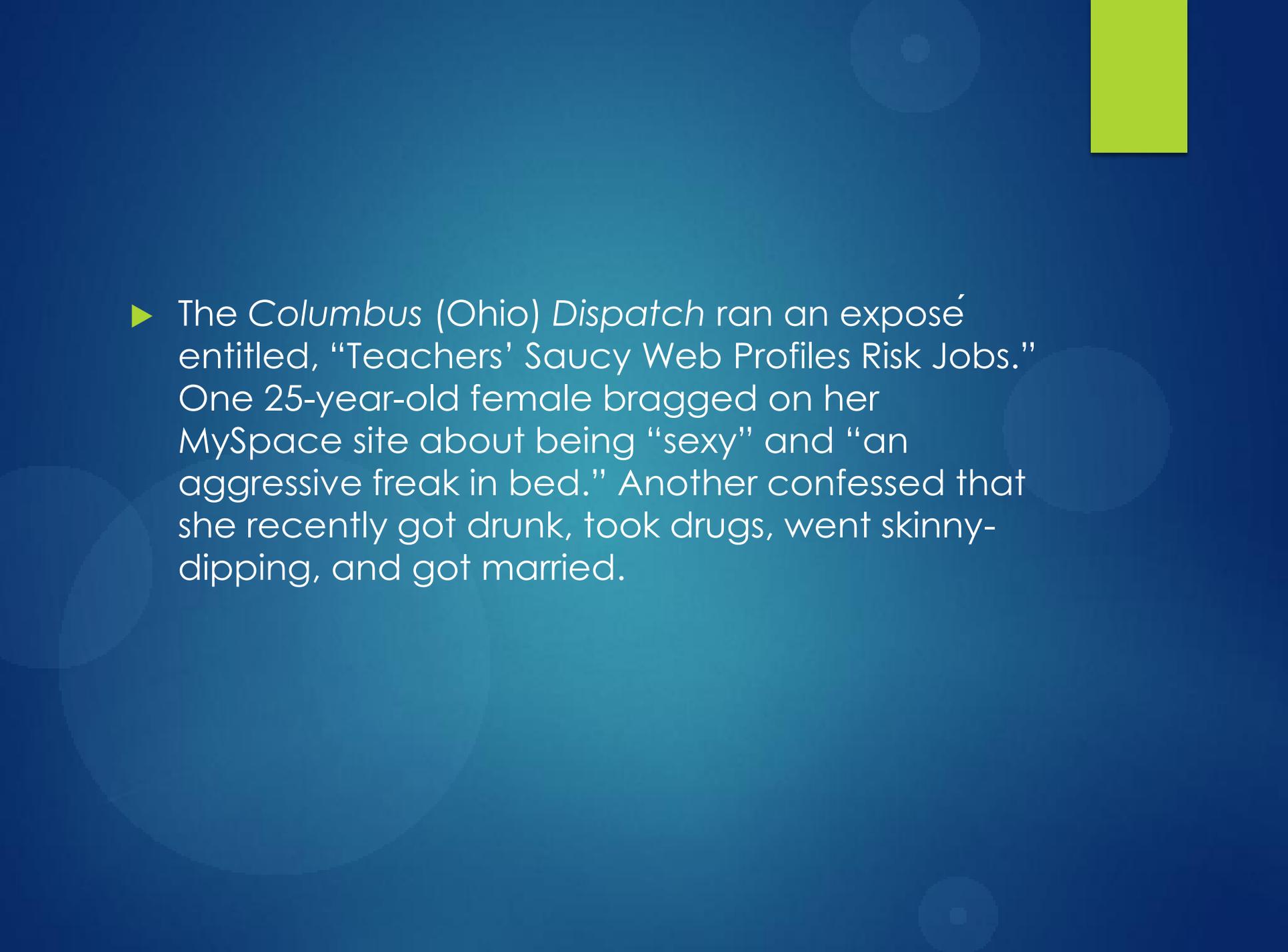
OR

What would your mother say if you showed it to her?

Social Media Nightmares

(these folks did not follow “The Rule”)

- ▶ An afterschool staffer from Charlotte, North Carolina was fired for his Facebook comment that he likes “chillin’ wit my n_____” and a “suggestive exchange” with a female friend. Two probationary teachers faced termination for their Facebook musings that “I’m feeling pissed because I hate my students,” and I’m “teaching in the most ghetto school in Charlotte.”

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- ▶ The *Columbus (Ohio) Dispatch* ran an exposé entitled, “Teachers’ Saucy Web Profiles Risk Jobs.” One 25-year-old female bragged on her MySpace site about being “sexy” and “an aggressive freak in bed.” Another confessed that she recently got drunk, took drugs, went skinny-dipping, and got married.

- ▶ *The Washington Post* published a front page “investigative” piece entitled “When Young Teachers Go Wild on the Web,” quoting one DC teacher’s Facebook page: “Teaching in the DC Public Schools – Lesson #1: Don’t smoke crack while pregnant.” A special ed teacher wrote on her page to a student, “You’re a retard, but I love you,” and posted a photo of herself “sleeping” with a bottle of tequila.

- ▶ A San Antonio newspaper reported that college student “Mahka” posted pictures of herself in various stages of drunkenness with the catchy caption, “Can U say wasted?” She also wrote: “Drinking and partying is my life. I’m gonna be a high school English teacher one day.”

- ▶ A Connecticut teacher was fired because of two cyber conversations with students on his MySpace page. In one posting, he teased a student about his girlfriend, and the student responded, “dont be jealous cause you can’t get any lol:)” The teacher replied: “What makes you think I want any? I’m not jealous. I just like to have fun and goof on you guys. If you don’t like it. Kiss my brass! LMAO.” He also jokingly threatened another student with lifelong detention for calling him “sir.” Pretty mild stuff, really.

- ▶ A mentor for beginning teachers sued the Central Kitsap (Washington) School District claiming that she was demoted because of comments she posted on a personal blog. She described one administrator as “a smug know-it-all creep” who has “a reputation of crapping on secretaries....”

- ▶ A Pennsylvania teacher was dismissed from her teaching position because of “unprofessional” postings on her MySpace site, which she urged her students to visit. Her site included comments criticizing her supervisor and a photograph of her wearing a pirate hat and drinking from a plastic cup with the caption “drunken pirate.”

The DOs and DON'Ts for Teachers on Social Media

- ▶ There are millions of teachers on social media right now. They discuss professional, personal, and cultural things on a daily basis. But what are the best ways to make the most of your time on social networks?
- ▶ There are some great ways to really grow your professional learning network, discover new lesson ideas, and take your teaching to the next level.
- ▶ However, there are more than a few ways to incorrectly use social media if you're a teacher (or any professional for that matter). Below are just a few best practices to keep in mind as you embrace the brave new world of social media for teachers.

The Do's & Don'ts For Teachers On Social Media

It's about more than digital citizenship.



DAILY GENIUS

80% of U.S. teachers are on social media. Here are some handy best practices worth following.

Social Media DOs

Post updates and comments.
If you're in a public forum, keep it light & positive. If you can't, keep quiet.

Connect with colleagues with whom you feel safe. Don't connect with colleagues you're unsure about. Being friends with everyone isn't part of the job description.

Control your privacy settings.
And keep up with the changes that Facebook makes to those privacy settings.

Take care when posting pictures of others.
If you tag a colleague, just think how you'd feel if they did the same to you.

Disconnect from negativity.
Unfriend or block those who continually blast you with negativity and trolling.

Show what you're proud of.
Done something great?
Let people know.

Social Media DON'Ts

Don't comment on status updates of your students, even if its positive, because you'll either be criticising or showing favouritism. You can't win.

Don't follow your students on Facebook. Your intentions are innocent but there's little to gain and much to lose.

Never drink and tweet or post. Comments made after a bottle has been opened never look so wise or amusing in the morning.

Think twice before connecting with parents on social media. In a small community it can be fine, but think before you do.

Don't show the beach shots of anything with a state of undress. Those bikini photographs may look fabulous but will just cause comment.

Don't post party pictures off social media. If you lost dignity and it was photographed, don't revisit the crime scene.

Don't post during work hours.
It just doesn't look good. Not even if it was scheduled.

Don't overpost.
Don't offer the world continuous updates on your activities.

DAILY GENIUS

Do the following:

- ▶ Post updates and comments. If you're in a public forum, keep it light and positive. If you can't, keep quiet.
- ▶ Connect with colleagues with whom you feel safe. Don't connect with colleagues you're unsure about. Being friends with everyone isn't part of the job description.
- ▶ Control your privacy settings. And keep up with the changes that Facebook makes to those privacy settings.

Do the following:

- ▶ Take care when posting pictures of others. If you tag a colleague, just think how you'd feel if they did the same to you.
- ▶ Disconnect from negativity. Unfriend or block those who continually blast you with negativity and trolling.
- ▶ Show what you're proud of. Done something great? Let people know.

Don't do the following:

- ▶ Don't follow your students on Facebook. Your intentions are innocent but there's little to gain and much to lose.
- ▶ Don't comment on status updates of your students, even if it's positive, because you'll either be criticizing or showing favoritism. You can't win.
- ▶ Think twice before you connect with parents on social media. In a small community it can be fine, but think twice before you do.

Don't do the following:

- ▶ Don't drink and tweet or post. Comments made after a bottle has been opened never look so wise or amusing in the morning.
- ▶ Do not post party pictures off social media. If you lost dignity and it was photographed, don't revisit the crime scene.
- ▶ Please don't share the beach photos of anything with a state of undress. Those bikini photographs may look fabulous but will just cause comment.

Don't do the following:

- ▶ Don't overpost. Don't offer the world continuous updates on your activities.
- ▶ Do not post during work hours. It just doesn't look good. Not even if it was scheduled.

Actual Cases: Student Discipline

- ▶ FIFTH CIRCUIT U.S. COURT OF APPEALS (2007)
- ▶ School officials learned that a student kept a journal which included a description of a violent, Columbine-style attack on the school and expelled the student. The student and his mother sued, alleging that the journal was merely “creative writing.”

- ▶ HELD: The U.S. District Court agreed that the writings did not amount to a true threat that would justify disciplinary action. The Circuit Court reversed and ruled in favor of the school, concluding that the student's writings were not entitled to constitutional protection: "School administrators must be permitted to react quickly and decisively to address a threat of physical violence against their students, without worrying that they will have to face years of litigation second-guessing their judgment as to whether the threat posed a real risk of substantial disturbance."

- ▶ SECOND CIRCUIT U.S. COURT OF APPEALS (2007)
- ▶ An 8th grader used an icon on his instant messages depicting a gun firing a bullet at a person's head with blood spattering. The student used this icon with the caption "Kill Mr. VanderMolen" in messages to 15 friends, some of whom were classmates. All this was done from home. The messages were available on the Internet for three weeks. Another student brought the messages to the attention of Mr. VanderMolen, the student's English teacher, resulting in a semester-long suspension from school. The parents sued alleging violation of the First Amendment.

- ▶ HELD: The Court ruled for the school district, holding that even though the conduct occurred off campus, it was reasonably foreseeable that the messages would reach the school and cause a material disruption.

- ▶ ELEVENTH CIRCUIT U.S. COURT OF APPEALS (2007)
- ▶ A student recorded a dream in her notebook in which she shot her math teacher during class. A teacher obtained the notebook after seeing the girl pass it to a classmate. The student was suspended and recommended for expulsion. The parents sued claiming infringement of her First Amendment right to free speech.

- ▶ HELD: The Court ruled for the school district, holding that by taking the narrative to school and failing to exercise strict control over the book in which it was written, the student increased the likelihood that the narrative would be seen by others. The same analysis could easily be applied to a Facebook post or other social media platforms.

- ▶ THIRD CIRCUIT U.S. COURT OF APPEALS (2011)
(En Banc)
- ▶ An 8th grade student was suspended for creating a fake “MySpace” profile of his principal. The profile included statements attributed to the principal that his time at school was spent “f*****g in my office, hitting on students and their parents. I am a sex addict with a small p***s” and my wife, a counselor at the school “looks like a man.” The parents sued, alleging the actions were protected by the First Amendment.

- ▶ HELD: A very divided Third Circuit overturned the suspension, concluding that the profile was so outrageous that it was unlikely anyone would believe it was genuine and the speech did not create a material and substantial disruption of school. Six judges on the court dissented, noting that the decision “allows a student to target a school official and his family with malicious and unfounded accusations about their character in vulgar, obscene, and personal language . . . leaving school officials defenseless to protect . . . against such attacks and powerless to discipline students for the consequences of their actions.”

- ▶ FOURTH CIRCUIT U.S. COURT OF APPEALS (2011)
- ▶ A high school senior, cheerleader, and reigning “Queen of Charm” created a MySpace webpage designed to ridicule and demean a fellow student, and invited classmates to join in the attack, and many did. The website included a picture of the other student with the caption: “Portrait of a Whore.” The student was suspended by school officials and the student sued.

- ▶ HELD: Even though everything the student did on the *MySpace* account was done from home, the court upheld the school district's actions.

- ▶ FIFTH CIRCUIT U.S. COURT OF APPEALS (2015)
(En Banc)
- ▶ An 18 year old high school student published a rap song on Facebook and YouTube. The rap included the N-word, the B-word, the S-word, the P-word, the MF-word, and the F-word. The rap further was defamatory to identifiable people, accusing two coaches of sexual misconduct with students, comments on the size of the breasts of the one of the coach's wives (using the T-word), and suggesting that one of the coaches will "get a pistol down your mouth/Pow." The school expelled the student and the student sued alleging violation of his First Amendment rights.

- ▶ HELD: A three-judge panel held that the student's expulsion violated the Constitution because the school district could not produce evidence of any serious disruption at the school and the rap was written and produced off campus, there was no basis to infringe on the student's off-campus artistic expression. However, upon en banc review by the entire Fifth Circuit, the court reversed and ruled in favor of the district. The court recognized that when the U.S. Supreme Court decided its first free speech case in 1969, the digital world and social media did not exist, which now present new challenges for school administrators. The court also noted the large increase in school violence and that the student's intent, while the rap was produced and recorded off campus, was intentionally directed at the school community. Finally, the court recognized that the cornerstone of public education is the teacher and coach, and any act which threatens, harasses, or intimidates the educator impedes if not destroys the ability to educate.

Actual Cases: Employee Discipline

- ▶ NEW YORK STATE COURT (2012)
- ▶ The day after a New York City public school student drowned during a field trip to the beach, a teacher posted on Facebook: “After today, I am thinking the beach sounds like a wonderful idea for my 5th graders! I HATE THEIR GUTS! They are the devils (sic) spawn!” One of the teacher’s Facebook friends posted, “oh you would let little Kwame float away!” to which the teacher responded, “Yes, I wld (sic) not throw a life jacket in for a million.” The teacher was terminated for conduct unbecoming her profession and appealed the termination to state court.

- ▶ HELD: The court ruled that the teacher's termination under these circumstances was inconsistent with the spirit of the First Amendment and disproportional. The court acknowledged that the central role of social media such as Facebook is for free and quick expression such as when a person converses with a friend on the phone. The teacher's expectation that only her adult friends would see the posting was reasonable and the incident was isolated.

- ▶ NINTH CIRCUIT U.S. COURT OF APPEALS (2009)
- ▶ A school curriculum specialist and instructional coach had a public blog that included several highly personal comments about her employers and fellow teachers. The teacher did not refer to any individuals by name but many were easily identifiable by the description of their positions or their personal attributes. After the district received several complaints, the specialist was transferred to a classroom position on the basis that her blog had “fatally undermined her ability to work as an instructional coach.” The specialist sued, alleging that the transfer constituted First Amendment retaliation.

- ▶ HELD: The Court ruled in favor of the school district, concluding that while some of the blog posts were matters of public concern, many of them were only about matters of private concern, which justified the district's concern about the specialist's ability to work as an instructional coach.

- ▶ U.S. DISTRICT COURT/PENNSYLVANIA (2014)
- ▶ A high school English teacher had a private blog which included posts in which she complained about students, referring to them as “jerk,” “rat-like,” “dunderhead,” “whiny,” and “frightfully dim.” The teacher also wrote that parents were “breeding a disgusting brook of insolent, unappreciative, selfish brats.” She also referred to a co-worker by first name and with a vulgar epithet, and complained about school administrators. The blog did not state where she worked or lived, but a local newspaper reporter began asking questions to school administration regarding the blog and its contents. The teacher was suspended and the story was picked up by *The Huffington Post* and other networks such as CNN, Reuters, and the Associated Press. The teacher was ultimately terminated and filed suit alleging violation of her First Amendment rights.

- ▶ HELD: The court ruled for the school district, holding that while some of the blog posts touched on issues of political and social concern, such as academic integrity, the value of honor and students' general lack of effort, the blog as a whole was dominated by personal issues that were unprotected by the First Amendment. The Court also noted that the blog eroded the necessary trust and respect between the teacher and her students, as evidenced by the numerous requests of parents to move out of the teacher's class, and thus constituted the material disruption in the school environment necessary to remove First Amendment protection.