Social Media and the First Amendment

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Introduction

The use of social media by all constituents in the school community has given rise to adjudications in both administrative and judicial forums. From the discipline of students under Education Law Section 3214, to the discipline of teachers under Education Law Section 3020-a and cases to remove school board members from their elected positions have involved the use of social media.

The presentation will review the status of the law and policies regarding the use of social media, First Amendment Rights and discipline.

Social Media Posts and the First Amendment

In **Lindke v. Freed 601 U.S. 187 (2024)** the U.S. Supreme Court addressed the issue of when a governmental official's social media site would be considered governmental versus private when blocking persons from responding to the posts made by the public office holder.

A lawsuit was filed by citizen Lindke under the federal civil rights statute, 42 U.S.C.§1983, claiming that he had a First Amendment free tongue right to post on the public official's social media cite.

Social Media Posts and the First Amendment

The United States Supreme Court established a test for determining whether or not an elected official's social media site should be considered an extension of government, creating a public forum for responses:

> "A public official who prevents someone from commenting on the official's social-media page engages in state action under 42 U.S.C. § 1983 only if that official both (1) possessed actual authority to speak on the State's behalf on a particular matter, and (2) purported to exercise that authority when speaking in relevant social-media posts."

O’Connor-Ratcliff v. Garnier, 601 U.S.205(2024)

Two candidates for school board used their personal public Facebook pages to promote their candidacies for election to the positions of Board of Trustee Members.

Both succeeded in being elected and thereafter used their Facebook pages to post District-related content.

District parents posted information on their private Facebook pages. The two Trustees deleted those comments and then blocked access.

The parents sued claiming a violation of their First Amendment Free Speech rights.

O’Connor-Ratcliff v. Garnier, 601 U.S.205(2024)

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The 9th Circuit Federal Count of Appeals determined that there was a violation of the parents’ First Amendment Free Speech rights.

The Supreme Court vacated that decision and remanded the matter back to the lower court for further proceedings consistent with its decision in the *Lindke* Case.

O’Connor-Ratcliff v. Garnier on Remand to the 9th Circuit

Applied the *Lindke* Test:

- **Actual Authority:** The court found that O’Connor-Ratcliff possessed actual authority to speak for the school district. State law and Poway Unified School District (PUSD) bylaws authorized trustees—and specifically the Board president, her role at the time—to share district information via electronic communications.
- The court found that the appearance and content of her social media functioned as communications tools rather than the private citizens accounts
- **First Amendment Violation:** The panel reaffirmed that blocking Christopher and Kimberly Garnier from interactive, public-facing portions of the pages violated their First Amendment rights, as the restrictions were not narrowly tailored to a significant government interest

Social Media Posts and the First Amendment

Supreme Court Advice to Public Officials in using public media sites

Have a government social media site apart from personal social media sites.

District Policy should be clear in stating who are the official spokespersons for the governmental entity.

Don't use government staff to run a private social media account

Is it better not to have a school district social media site?

Mahanoy Area School District v. B.L. (2021)

The Supreme Court addressed a student cheerleader's Snapchat post displaying her middle fingers raised with the caption: F***School,f***school, f***cheer, f***everything was the basis of suspending her from the J.V. Cheerleading Team.

This Off-Campus rant was found to violate the First Amendment free speech rights of the student because the school authorities were found to lack jurisdiction to regular speech beyond the school house gate except under certain circumstance.

The Mahanoy Test for Discipline for Off-Campus Conduct

- Serious or severe bullying or harassment targeting particular individuals; or
- Threats aimed at teachers or other students; or
- The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; or
- Breaches of school security devices, including material maintained within school computers.

Leroy v. Livingston Manor Central School District Second Circuit (2025)

In 2021, Leroy posted an off-campus, after-hours Snapchat photo showing a friend kneeling on his neck with the caption “Cops got another”. He deleted the post within seven minutes, though other students had already screenshotted and shared it.

- The Second Circuit found that the reaction to the off-campus post did not rise to the level of a "substantial disruption" of the school environment required under *Tinker v. Des Moines* and *Mahanoy*
- **Offense vs. Threat:** The court emphasized that schools cannot punish students for off-campus speech merely because it is offensive or controversial, provided it does not constitute a true threat, harassment, or fighting words

Doninger v. Niehoff, 642 F.3d 334(2d Cir. 2008)

A student was prohibited from running for class office based upon what she wrote on a blog post from her home during non-school hours.

The student referred to school administration as “douchbags” and urged students to “piss off” the administration because they cancelled a school event –JamFest.

The court stated that: “*The question is not whether there has been an actual disruption, but whether school officials ‘might reasonably portend disruption from the student expression at issue.*”

Here a privilege was withheld, the court would not opine upon a suspension for such conduct.

Does Mahanoy change this calculus?

Appeal of K.W. 64 Ed. Dept. Rep.___, Decision No. 18520 (2024)

The District alleged that the student, in violation of the district's code of conduct, endangered the safety, health or welfare of other students by taking a video of a "hazing incident "in the Clyde-Savannah Football Field House" and uploading it to a social media platform.

The high school principal clarified that the charge of "endangering the safety, morals, health or welfare of others" encompassed two violations of respondent's code of conduct that prohibited: (1) the disruption of the orderly conduct of school programs or activities; and (2) the intimidation, harassment, discrimination, or sexual intimidation of others through social media. The record indicates that the student's conduct resulted in a substantial degree of disruption to the athletic department and the school community. The incident was covered extensively by local news outlets,

"… it is generally foreseeable that messages sent via a social media application will reach the attention of school authorities"

Would this qualify a as severe bullying under Mahanoy?

How to Reconcile Mahanoy with the DASA Regulations

The Dignity for All Students Act ("DASA") provides for violations based upon off-campus conduct, including cyberbullying that occurs:

"off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property."

See Education Law§ 11 and 8 NYCRR §100.2 (kk)(1)(viii)(c)(3)

How is it determined if such risk is foreseeable such that the violation of DASA will be sustained in court and pass the test of speech unprotected by the First Amendment?

3020-a Decision in Matter of Lipira SED Case No. 39-182 (2023)

The teacher responded to a private social media post made by a co-worker about a photo of a hair extension on the floor of a classroom which asked the question: What kind of snake is that?

The respondent answered by writing “Northern Weaver” which is a small bird with a black beak and face.

Finding that the social media post was racially insensitive, while noting the “role model status” of the teacher the penalty of a letter of reprimand was determined to be the disciplinary outcome in the 3020-a proceedings.

Secondary social media: .
How does it apply to school employees?

- Likes/dislikes?

- Reposting—what speech is the employee responsible for?

The Importance of Policy

Both the NYSSBA and Erie One BOCES Policy Services Issue policies which set restrictions on the use of social media:

NYSSBA Policies 9150

When using social media for personal use, if you identify yourself as an employee of the District, you are by extension associating yourself with the District, your colleagues and our school community; therefore you must ensure that any associated content is consistent with the mission of the district. Employees who identify themselves as associated with the District should use the following disclaimer on personal social media sites, “The views expressed on this site are my personal opinions and do not necessarily represent the views, opinions, mission or goals of the School District.”

The Importance of Policy

Policy 9150 (cont'd) Inappropriate or offensive content posted to social media sites by employees and viewed by students, parents or other employees may be investigated by building and district officials and, if warranted, may result in disciplinary action.

Policy 6410

The use of social media (whether public or internal) can generally be defined as Official District Use, Professional/Instructional Use and Personal Use. Personal use of social media or SNS by employees during District time or on District-owned equipment is prohibited. In addition, employees are encouraged to maintain the highest levels of professionalism when communicating, whether using District devices or their own personal devices, in their professional capacity as educators. They have a responsibility to address inappropriate behavior or activity on these networks, including requirements for mandated reporting and compliance with all applicable District policies and regulations.

Board Member and Use of Social Media

Application of JASMINE JAMAL 66 Ed. Dept. Rep. ___Decision No. 18,845 (2026) for the removal of Michael Torpey as a member of the Board of Education of the Carmel Central School District.

The video at issue, uploaded by the Board member who was the subject of the removal proceedings. following the 2025 New York City mayoral election, portrays respondent congratulating the residents of New York City for "doing their part in the Islamic takeover of western society."

The video, which became widely distributed throughout the Carmel community, was discussed at a regularly scheduled meeting of the board on November 18, 2025. the Commissioner opined that she had limited authority to remove a school officer based on speech made in his or her private capacity

Outcome: This single event was deemed insufficient to give rise to removal from the Board.

Board Member and Use of Social Media

Appeal of THOMAS CORBIA 61 Ed. Dept. Rep.__,Decision No. 18,092 (2023)

In September 2020, two posts appeared on a social media account (Facebook) belonging to petitioner. The first, which was posted by another individual but "shared" by petitioner, referenced "illegal immigrants." The second, which petitioner commented on with approval, made reference to a "white privilege card. "The Respondent claimed that the comments on his website was hacked

The Petitioner further contends that his social media postings were protected by the First Amendment and could not serve as grounds for his removal. He further alleged that he had "no obligation whatsoever to provide evidence against himself" by cooperating with respondent's investigation or providing his personal cellphone for analysis.

Outcome: The Commissioner upheld removal from the Board

THE END

Questions?