

Cyberbullying And How The 1st Amendment Applies To It

Is cyberbullying protected by the 1st Amendment? Schools and legislatures find this a difficult question to answer. In the 1st Amendment, the right of freedom of speech is protected. Cyberbullying is such a big problem because school's don't know how to prevent it without taking away the student's freedom of speech. There have been many examples of student's 1st Amendments rights being violated in court, with the most well-known one being the *Tinker v. Des Moines Independent Community School District*(1969). In *Tinker*, students came to school wearing black armbands to protest the Vietnam War. Their principal warned them that they would get suspended if they didn't take them off. When the students refused, they were suspended from December to the end of Christmas break. When the students sued, the Court ruled with them on the basis of students not shedding their constitutional rights at school. This set the ground for many other cases, including *Morse v. Frederick*(2007), *Wisniewski v. Board of Education*(2007), and *Bell v. Itawamba County School*(2014).

In *Morse v. Frederick*(2007), a senior from Juneau-Douglas High School brought a banner to an out of school function that read "Bong Hits 4 Jesus." The principal took it from him because it promoted the use of illegal drug use. When he sued, the Court ruled with the principal, saying that the 1st Amendment doesn't prevent school administrators from restricting student's expression of something that promotes something illegal. While this isn't associated with cyberbullying, it still speaks to how schools can restrict what students say. If a student is talking to or messaging another one about something illegal and a teacher is informed, that teacher is able to stop what is happening, whether it be with suspension or ISS.

In *Wisniewski v. Board of Education*(2007), an eighth grader shared an IM icon to 15 of his friends that showed a drawing of one of his teachers being shot in the head, with the caption “Die Mr. VanderMolen.” The teacher eventually learned about it and the student was suspended for 5 days. On his return, he sued the school. The Court sided with the school saying that the icon was a threat, therefore not protected by the 1st Amendment. This is a form of cyberbullying, although it wasn't between students. This shows how the school can shut down cyberbullying involving threats. If there are threats towards another student, or even a teacher, the school can take necessary measures to stop it.

In *Bell v. Itawamba County School*(2014), a student wrote and recorded a rap that contained harassment, intimidation, and threats against two high school teachers. When the student was suspended, he sued the school saying that his 1st Amendment rights were violated. The Court decided that the student's rights were indeed violated. Judge James Dennis said that if the majority won, then it would allow schools to monitor what their students say and do online anytime and anywhere. The majority would make schools able to punish students if they offend or anger them. Judge Edward Prado said that *Tinker* only applies to student speech on campus, and it can't be applied the same way to off-campus speech. This case shows how when something is made off-campus, the school can't monitor and restrict it. The school have no rights to control what students view or create on the Internet when they aren't at school.

Laws are already in place that require schools to monitor and address cyberbullying, but the biggest issue is whether or not addressing cyberbullying outside of school violates the 1st Amendment. The court cases already mentioned address this problem. Based off of these court cases, addressing cyberbullying outside of school is unconstitutional and does violate the 1st Amendment. The only way school administrators are able to monitor it is if the student is making

serious threats to another student or teacher. If these threats alter the way a student is performing, or causes disruption in class, then it becomes an on campus issue and the administrators can take necessary action. What a student does off-campus is their own business and their school can't interfere with it. If a school takes a trip and some form of bullying presents itself, then the chaperone can take measures to prevent it because it's a school function. The students are still under the protection of their administrators on school trips, meaning the school still has certain control over them concerning bullying.

In conclusion, when public schools address cyberbullying outside of school, it violates the 1st Amendment rights of their students. What a student does off-campus isn't associated with the school anymore so the school has no authority to take action over something said or done. On campus, as long as the student isn't disrupting class, the administrators can't stop them from expressing themselves. A student's freedom of speech is among the hardest thing to properly respect in a school environment because precautions taken against it can interfere with learning.