Preventing and Reacting to School Bullying: Policy and Legal Considerations

Prof. Douglas E. Abrams
University of Missouri School of Law
Columbia, Missouri
abramsD@missouri.edu
April 10, 2014
The Pediatric Safety System

- Parents
- Public Schools
- Law enforcement
- Juvenile and family courts
- State mental health agency
The Public Schools

- Perceptions
- Prevention
- Potential legal constraints
Potential Legal Constraints

- Disincentives to enforcement (financial and professional)
- Assertion of constitutional and nonconstitutional rights
“[T]he preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult.”

“Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults” because “the school has the obligation to protect pupils from mistreatment by other children.”

“‘[S]pecial needs’ inhere in the public school context, . . . where the State is responsible for maintaining discipline, health, and safety.”

-- Board of Education v. Earls (S. Ct. 2002)
Schools as Special Places

Schools hold authority to impose reasonable discipline "to safeguard those entrusted to their care."

-- Morse v. Frederick (S. Ct. 2007)
“materially and substantially disrupt the work and discipline of the school,” or

“collision with the rights of other students to be secure and to be let alone.”
Bethel Sch. Dist. v. Fraser (1986) -- Inculcating Values --

- “[S]chools must teach by example the shared values of a civilized social order.”
- “[F]undamental values’ must . . . take into account consideration of the sensibilities of others, and in the case of a school, the sensibilities of fellow students,” and must reflect “society’s countervailing interest in teaching students the boundaries of socially appropriate behavior.”
- “[F]undamental values disfavor the use of terms of debate highly offensive or highly threatening to others . . . . The inculcation of these values is truly the ‘work of the schools’.”
- The “basic educational mission” emphasizes “habits and manners of civility.”
“The public school system is “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”
Political vs. Non-Political Speech

- *Fraser* (1986) – distinguished *Tinker* because the student’s assembly speech was “unrelated to any political viewpoint.”

- *Morse* – distinguished *Tinker*, which “implicat[ed] concerns at the heart of the First Amendment” – political speech, which is “at the core of what the First Amendment is designed to protect.”
Deference

- *Fraser* (1986) – “The determination of what manner of speech . . . is appropriate properly rests with the school board.”

- *Kuhlmeier* (1988) and *Morse* (2007) -- “[T]he education of the Nation’s youth is primarily the responsibility of parents, teachers, and state and local officials, and not of federal judges.”
Deference (continued)

- [S]tandards of conduct for schools are for school administrators to determine without second-guessing by courts lacking the experience to appreciate what may be needed.”

- Re-emphasized “the high degree of deference that courts must pay to the educator's professional judgment.”

-- **Safford Unified School District v. Redding** (2009)
“[A] physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment. . . . ‘[V]iolence or other types of potentially expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection.’”
True threats -- “statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”

“The speaker need not actually intend to carry out the threat” because “a prohibition on true threats ‘protect[s] individuals from the fear of violence’ and ‘from the disruption that fear engenders,’ in addition to protecting people ‘from the possibility that the threatened violence will occur.”
Off-Campus Origin

If on-campus damage from cyberbullying is foreseeable, its off-campus origin is “not material.”