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Regulating the Boundaries between the Public and Private Lives of Teachers in Changing Cultural Contexts: An American Perspective

Charles J. Russo
University of Dayton, crusso1@udayton.edu

REGULATING THE BOUNDARIES BETWEEN THE PUBLIC AND PRIVATE LIVES OF TEACHERS IN CHANGING CULTURAL CONTEXTS: AN AMERICAN PERSPECTIVE

Charles J. Russo[†]
The University of Dayton, USA

Regardless of whether they wish to be regarded as such, there can be little doubt that most teachers and parents in Australia, New Zealand, and the United States agree that teachers are role models for students regardless of whether educators act in or out of schools. Yet, during this time of changing cultural contexts, the boundaries between the private and professional lives of teachers are blurred such that teachers may face liability for what they say or post in a more contemporary application of free speech, via the internet.

In light of ongoing changes, this paper examines how shifts ranging from societal attitudes on privacy and free speech to the use of social networking sites raise legal and professional challenges for administrators, their lawyers, and governing bodies in relation to the expressive, free speech of educators. In the process of reviewing the First Amendment rights of teachers, the paper briefly considers two cases that reflect how technology is changing the landscape insofar as a student teacher and a teacher experienced adverse employment actions in response to postings they made on social networking sites.

Due to the impact that societal changes have had on the private lives of teachers, the first part of this two-part paper examines relevant judicial developments on privacy and free speech rights of teachers in the United States. The second part makes brief recommendations to educators and lawyers regardless of whether they work in Australia, New Zealand, the United States, or elsewhere as they develop policies regulating teacher free speech and expressive activities.

I Introduction

Regardless of whether they wish to be regarded as such, there can be little doubt that most teachers and parents in Australia, New Zealand, the United States, and elsewhere agree that teachers, in particular, serve as role models for their students regardless of whether educators act in or out of schools. Yet, during this time of changing cultural contexts, the boundaries between the private and professional lives of teachers are more blurred than ever before such that teachers may face liability for what they say or even post in a more contemporary application of free speech, via the internet.

In light of ongoing changes, this paper examines how a variety of changes ranging from societal attitudes on privacy and free speech to the use of such technology as social networking sites raises legal and professional challenges for school administrators, their lawyers, and governing bodies in relation to the expressive, free speech behavior of teachers and other members of school staffs. In the process of reviewing the First Amendment rights of teachers, this article also briefly

[†]*Address for correspondence*: Professor Charles Russo, Department of Educational Leadership, The University of Dayton, 101 Chaminade Hall, 300 College Park Drive, Dayton, OH 45469-0534, USA. Email: charles_j_russo@hotmail.com

considers two cases that reflect on how technology is changing the landscape insofar as a student teacher and a teacher experienced adverse employment actions in response to postings they made on social networking sites.

Due to the impact that societal changes have had on the private lives of teachers, the first part of this two-part paper examines relevant judicial developments on privacy and free speech rights of teachers in the United States. Insofar as this paper focuses on teachers in public schools, this part of the paper also briefly reviews Supreme Court cases that address the rights of other public employees since the precedent that they established extends to educators. The second part of the paper briefly offers recommendations that should be of interest to educators and lawyers regardless of whether they work in Australia, New Zealand, the United States, or elsewhere as they develop policies regulating the free speech and expressive activities of teachers.

II Teacher Rights and Free Speech

It is well settled law in the United States that '[a] teacher's employment in the public schools is a privilege, not a right'[1] because '[C]onsciously or otherwise, teachers … Inescapably, like parents, … are role models [who] … demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models'.[2]

To the extent that they are viewed as exemplars or role models, teachers give up a certain amount of freedom and privacy in their professional lives, particularly with the way in which they express themselves, that they would otherwise have retain as citizens. Yet, as reflected in the ensuing review of litigation, these limitations on teacher speech rights**,** even in situations where they are not being viewed as role models per se, often conflict with the fact that freedom of speech may be the most cherished of all rights of Americans.[3] Interestingly, in the following six Supreme Court cases that have shaped the boundaries of permissible free speech by public employees, including teachers none of the disputes raised the question of whether the educators, in particular, served as role models.

Beginning with *Pickering v Board of Education of Township High School District* (*Pickering*),[4] then, the United States Supreme Court has handed down a series of judgments that helped to clarify the parameters of the employment status of teachers (and other public employees) who exercise their First Amendment rights to freedom of speech as private citizens. According to the relevant portion of the First Amendment, which was enacted in 1791 as part of the Bill of Rights, or First Ten Amendments to the United States Constitution, 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech ....' The next section of this article briefs reviews the facts and analyses in each of these cases.

A *Pickering v Board of Education of Township High School District*

1 *Background/Facts*

Before reviewing *Pickering*, it is worth recognizing that the Court handed down its ruling during a time of great social change in the United States and elsewhere. At the same time, *Pickering* presaged the Court's judgment a year later in *Tinker v Des Moines Independent Community School District*[5] wherein the Justices recognized the First Amendment free speech rights of public school students.

At issue in *Pickering* was a school board in Illinois' attempt to fire a teacher who wrote a letter to a local newspaper which criticized its handling of a bond issue as well as its allocation of financial resources between the school's educational and athletic programs. The Supreme Court identified the need to find the appropriate '[b]alance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees'.[6] In rejecting the board's claim that the letter was detrimental to the best interests of the schools, the Court wrote that the teacher's right to free speech was primary since this was a matter of public concern.

2 *Judicial Analysis*

In *Pickering*, the Supreme Court examined a variety of factors which led it to rule in favor of the teacher. Along with recognizing that the teacher had the right to speak out on a legitimate matter of public concern as a private citizen, the Justices commented that he did not have a close working relationship with those he criticized, that his letter did not have a detrimental impact on the administration of the district, and that it did not negatively affect his regular duties.

Deciding that the interests of the board and schools were not synonymous, the Supreme Court acknowledged not only that the public interest in having free and unhindered debate on matters of public importance was crucial but also that since 'teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent',[7] it was essential that they be able to speak freely on such questions of public concern.

B *Mt Healthy City Board of Education v Doyle*

1 *Background/Facts*

The Supreme Court revisited the free speech rights of teachers eleven years later in *Mt. Healthy City Board of Education v Doyle* (*Mt. Healthy*),[8] wherein it considered the effect of including a constitutionally protected right as a factor in not renewing the contract of a non-tenured teacher. The board chose not to renew the contract of a teacher who had a record of being difficult in school despite his claim that it violated his rights after he called into a radio talk show and criticized a memo from his principal dealing with a faculty dress code.

2 *Judicial Analysis*

In its rationale, the Supreme Court rejected the Sixth Circuit's finding that including a protected activity as a substantial part of the justification for the non-renewal of a probationary teacher's contract entitled him to reinstatement with back pay. The Justices remarked that the Sixth Circuit would have placed the teacher in a better position as a result of exercising his protected speech than had he done nothing. The Court conceded that where a teacher shows that protected conduct about a school matter was a substantial or motivating factor where a board chooses not to renew a contract, it must be given the opportunity to show that it would have chosen not to re-employ in the absence of the protected conduct. On remand, the board reported that it would not have renewed the teacher's contract regardless of whether he placed the call to the radio talk show.[9]

C *Givhan v WesternLine Consolidated School District*

1 *Background/Facts*

The Supreme Court returned to the issue of the free speech rights of teachers in *Givhan v WesternLine Consolidated School District* (*Givhan*).[10] The Court determined that the *Pickering* balancing test also applies to teachers who express themselves during private conversations with their supervisors. When school officials chose not to renew the contract of a non-tenured teacher in Mississippi, she was informed that it was in response for, among other reasons, her allegedly making petty and unreasonable demands on the principal and addressing him in a manner variously described as insulting, hostile, loud, and arrogant. The teacher also complained that the board, which operated under a court-ordered desegregation plan, was racially discriminatory in its employment policies and practices.

2 *Judicial Analysis*

In refusing to reinstate the teacher, the Supreme Court reasoned that the Fifth Circuit erred in declaring that school officials were justified in not renewing her contract, suggesting that under *Mt. Healthy* they may have had sufficient cause on other grounds that would have required further proceedings. The Court thought that under *Pickering*, the judiciary must consider working relationships of personnel as well as the contents of communications in evaluating whether private communications exceeded the scope of First Amendment protection.

D *Connick v Myers*

1 *Background/Facts*

At issue in *Connick v Myers* (*Connick*),[11] was whether *Pickering* protects public employees who communicate their views about workplace matters to peers. At issue was a former assistant district attorney's challenge to her dismissal on the same day that she was scheduled for a transfer to another division because she circulated a questionnaire about office operations among staff. Based on concerns that her actions would have been disruptive, her superiors terminated the employment of the assistant district attorney.

2 *Judicial Analysis*

The Supreme Court distinguished *Connick* from *Givhan* in conceding that while the teacher's statements involved issues of public concern, the attorney's were primarily based on an internal disagreement with her supervisors and the questionnaire interfered with the close working relationships in the office. In noting that the attorney's dismissal did not violate her rights, the Court established a two-step test to evaluate whether speech is entitled to First Amendment protections. First, the Justices explained that the judiciary must consider whether the speech involved an issue of public concern by examining its content and form along with the context within which it was expressed. Second, the Court posited that if speech does deal with a matter of public concern, then the judiciary must balance the interests of employees as citizens in speaking out on matters of public concern against those of employers in promoting effective and efficient public services.

E *Waters v Churchill*

1 *Background/Facts*

Almost a decade after *Connick*, in *Waters v Churchill*,[12] the Supreme Court reviewed a case from Illinois involving a nurse who was dismissed for criticizing internal staffing policies at the public hospital where she had been employed. In a plurality, meaning that since a five Justice majority did not sign on to the same opinion it is not binding precedent other than to the parties involved, the Court rejected the nurse's claim that hospital officials violated her First Amendment rights.

2 *Judicial Analysis*

In its analysis, the Court reiterated the general rule that public employees who dispute internal policies that are not of public concern may, as was the case in the dispute at bar, lack constitutional protection.

F *Garcetti v Ceballos*

1 *Background/Facts*

In a more recent application of the *Connick's* principles, albeit again not in a school setting, in *Garcetti v Ceballos* (*Garcetti*),[13] the Supreme Court, in reversing an earlier order from the Ninth Circuit to the contrary, affirmed that since a deputy district attorney's complaints about supervisors were not on matters of public concern, his speech was not entitled to First Amendment protection.

The underlying dispute, like *Connick*, involved a deputy district attorney's complaints about a supervisor in a disagreement over a memorandum he wrote claiming that a police officer lied in his affidavit to secure a warrant. **In his memorandum, the deputy district attorney** concluded that the affidavit made serious misrepresentations amounting to governmental misconduct.

2 *Judicial Analysis*

The Court Supreme held that since public employees who speak out pursuant to their official duties are not doing so as citizens for First Amendment purposes, the Constitution is unavailable to insulate their communications from employer discipline. The Court added that since the plaintiff spoke in his official capacity rather than as a private citizen when he wrote his memorandum, his comments were not protected by the First Amendment.

III Later Judicial Developments

In cases involving free speech claims, plaintiffs must show that they presented prima facie cases of adverse employment actions as a result of exercising their rights. In making such a determination, the Tenth Circuit found that job descriptions are not the ultimate factor in evaluating whether teachers addressed matters of public concern.[14] The court remanded the claims of former teachers at a charter school for consideration of whether they were subjected to adverse employment actions because they exercised their right to free speech on matters of public concern relating to the operations of their schools.

A *Matters of Public Concerns*

Examples of subjects that were treated as public concern include a policy that prevented teachers from making critical statements about school officials unless made directly to the person(s) being criticized;[15] a principal's failure to implement a school improvement plan;[16] a teacher's complaining about classroom safety, even though he expressed his views privately, through approved, formal channels;[17] a secretary's questions about whether a board's awarding of a contract presented a conflict of interest;[18] the head of a bus drivers' union-like organization expressing her concerns about student safety due to overcrowding on buses and the lack of pre-trip inspections;[19] a school nurse's challenging a grossly unsatisfactory employment rating in retaliation for her advocating on behalf of students with disabilities in her district;[20] a physical therapist's complaining that her board did not do enough to meet the educational needs of students with disabilities;[21] a secretary's responding to a question from a reporter over whether the school's principal resigned,[22] and a teacher's reporting financial improprieties by other school employees to her board.[23]

B *Not Matters of Public Concern*

In many cases, courts refused to treat the speech of school employees as protected since it failed to involve matters of public concern and was related to their job duties. At the same time, courts have largely turned a deaf ear to litigation filed on behalf of teachers in elementary and secondary schools who raise claims that they have rights to academic freedom allowing them to select and teach the materials that they see fit. If anything, courts now ordinarily recognize that teachers lack any right to deviate from established school board curricula meaning that officials cannot only tell teacher what to teach but also how they must teach the materials. In this regard, courts have been unresponsive to claims of academic freedom when teachers refused to follow directions over curricular content and/ or activities, particularly when they address in-class matters that are not of public concern.

Among these cases where teachers were dismissed or punished for speaking on matters that were not matters of public concern were instances criticizing a superintendent[24] or a board's hiring of a superintendent;[25] questioning a school's policies with regard to class size;[26] challenging the non renewals of teaching[27] and coaching contracts;[28] complaining about unfavorable evaluation ratings;[29] referring to others by using such epithets as 'ignorant and abusive', 'mentally ill' 'mindless criminals', and 'alcoholic';[30] questioning the accuracy of school attendance records;[31] challenging a board's tobacco policy;[32] claiming that school officials created a racially hostile work environment;[33] and criticizing the quality of leadership and the education children receive in a district.[34]

Other cases where courts rejected the claims of school employees concerned such matters as writing a letter to a local newspaper criticizing a hiring process;[35] failing to comply with procedures when administering state-wide standardized tests;[36] making an allegedly racist remark about immigration during class;[37] opposing a board policy designed to seek aid for disadvantaged students;[38] engaging in disruptive speech such as where a principal wrote a letter to and spoke critically about a superintendent's dress code policy;[39] circulating a survey among faculty members evaluating a school's administration and speaking critically of its quality at a school board meeting;[40] sending inflammatory and disparaging letters to members of a board for years;[41] expressing one's political views in a middle school class,[42] sending memoranda to a school's office manager and principal questioning the handling of athletic funds;[43] and voicing support for a student walkout and demonstration over proposed changes in federal immigration policy.[44]

More recently, in a controversial case from New York City a federal trial court upheld a Chancellor's Regulation which forbade teachers from wearing political buttons in support of candidates to class.[45] The court agreed with the board's concern that it had to remain neutral and should not allow teachers to influence students by wearing such buttons. The court rejected the free speech arguments of teachers in reasoning that middle and secondary schools could distinguish between the views of individual teachers and the board.

C *Special Concerns: Lifestyle Choices and Politics*

As reflected by the cases that are discussed in this section, two areas that engender controversy are the lifestyles and political activities of teachers.

1 *Lifestyle Choices*

In a case involving lifestyle and sexual preferences,[46] the Second Circuit affirmed that under the *Pickering* balancing test, the New York City Board of Education's interest in the orderly operation of a high school outweighed a tenured teacher's interest in commenting on matters of public concern through his membership in the North American Man/ Boy Love Association. The court reported that the association identified its primary goal as seeking to bring about a change in attitudes and laws governing sexual activity between men and boys while advocating the abolition of laws governing the age of consent for activities that limit freedom of expression, including child pornography laws. The court held that the teacher's dismissal, even absent evidence that he engaged in any illegal or inappropriate conduct with students, based on disruption caused by public furor over his activities in the group, did not amount to impermissible 'heckler's veto'.[47] The court ruled that since the board's action was not motivated by the desire to retaliate against him for his membership in the association, there was no reason to disturb its action.

2 *Politics*

A high profile case from New York City dealt with educator speech that had indirect political connotations. At issue were remarks by the former acting interim principal of a public high school that offered classes in Arab language and culture that led to a media firestorm. When a reporter 'questioned her about the meaning of the Arabic word "intifada", [she] accurately explained that the root of the word means "shaking off". She also stated that the word has been associated with violence and the Palestinian/Israeli conflict and emphasized that she would never affiliate herself with an organization that condones violence'.[48] In rejecting the plaintiff's claim that board officials terminated her employment in retaliation for exercising her First Amendment rights, the Second Circuit affirmed that a federal trial court did not abuse its discretion in rejecting her motion for a preliminary injunction requiring them to afford her a full and fair opportunity to be considered for the position of permanent principal. Relying on *Garcetti*, the court explained that when public employees such as the plaintiff speak out as part of their official duties, since their words are not protected, they can be subject to employer discipline The court added that even if the plaintiff's speech had been protected, her being removed from the interim position and not being considered for the permanent job was justified under *Pickering.*

Courts continue to demonstrate their continued support for school boards when teachers depart from established school curricula to express their political opinions in class. In one such case, the Seventh Circuit affirmed that a board in Indiana did not violate the rights of a

probationary elementary school teacher who voiced her opposition to American involvement in Iraq as part of a discussion with students when it chose not to renew her employment contract.[49]

The court noted that the First Amendment does not permit educators in elementary and secondary schools who address captive audiences of students to cover topics or advocate perspectives that deviate from the approved curricula of their boards, rejecting her claim that she was protected by academic freedom. Subsequently, in a variation of this theme, the Sixth Circuit, relying in part on the case from Indiana, affirmed that a teacher in Ohio lacked a First Amendment right to academic freedom that allowed her to select books and methods of instruction for classroom use without interference from public school officials.[50]

D *Teacher Speech and Social Networking*

An area of growing concern involves the extent to which teachers use the social media to interact with students and others. In the first of two cases, a federal trial court in Connecticut refused to order the reinstatement of a teacher who had made questionable postings, including personal poetry, on his MySpace page.[51] The teacher used his personal MySpace account to communicate with students about homework, to learn more about them so that, in his opinion, he could relate to them better, and to conduct casual non-school related discussions The court ruled that insofar as the teacher was unable to establish that there was a link between any protected right to free speech when he posted his musings on the internet and the loss of his job, there was no basis on which it could intervene on his behalf.

A federal trial court in Pennsylvania upheld the authority of university officials who, acting in response to requests from educators in a local school district, terminated the assignment of a student teacher who was assigned to teach English. Although the student teacher ignored the advice of university officials, that she, and her peers received during orientation not to refer to their students or teachers at their schools on their personal web pages, she continued to post material that was inappropriate on her website. Without explicitly addressing the student teacher's position as a role model, officials from both the university and school district agreed to end her placement because, among other things, she violated university policy in posting an inappropriate remark about her cooperating teacher. The student teacher also posted photographs of herself wearing a pirate hat, holding a cup that read 'drunken pirate'[52] on her personal MySpace page that was accessed by her students. While they terminated her student teaching assignment, the plaintiff was permitted to return to campus and complete a Bachelor's degree in English rather than Education.

The former student teacher unsuccessfully filed suit raising three claims. First, the federal trial court in Pennsylvania held that since the plaintiff was more of a teacher than a student insofar as her duties arose entirely from her position as a student teacher, she could be disciplined in the same manner as employees for the inappropriate postings. Second, the court refused to order university officials to award the plaintiff a degree in teacher education or to provide her with a recommendation that would have allowed her to earn certification because she failed to complete her assignment. As noted, she did earn a degree in English. Third, the court rejected the plaintiff's claim that officials violated her First Amendment rights to free speech. In so deciding, the court evaluated the plaintiff's allegations under a line of Supreme Court cases dealing with the rights of teachers, all of which were discussed earlier, rather than students, thereby affording her a lower standard of protection for her postings. The court thus concluded that since the plaintiff's comments were concerned, and made in the context of her position with the school board, rather than as a student, she was properly subjected to discipline.[53]

IV Recommendations

The onslaught of litigation on the free speech rights of educators in the United States over the past forty plus years, whether spoken, written, or on-line, highlights the need for governing bodies and educational leaders whether in the United States, Australia, New Zealand, or beyond to develop up-to-date policies for all staff. Most importantly, these policies must address the appropriate limits of employee speech in public school contexts. To this end, educational leaders and their lawyers may wish to take the following points into consideration:

1. Governing boards and educational leaders should devise free speech policies pertaining to all staff, including office workers, maintenance staff, student teachers, teachers, counselors, and administrators. Policies should remind staff that when they speak out in any medium, whether orally, in written form, or virtually, they should limit their comments to matters of public concern insofar as the Supreme Court has made it clear that any speech critical of board policies or internal operating matters are not entitled to First Amendment protection.
2. While no policy addressing free speech can cover every possible situation, guidelines should include such catch-all phrases as 'this includes ... but is not limited to ....' In this way, courts often defer to boards when dealing with otherwise well-crafted, up-to-date policies that specify the types of speech that educators should avoid insofar no one can anticipate all of the possible permutations that may emerge in the realm of free speech and expression.
3. In an emerging issue dealing with technology employees should be required to sign forms incident to their contracts, indicating that they agree to abide by the terms of acceptable use policies for computers that may well include avoiding social networking sites whether in class or when working on district-operated internet systems.
4. In a closely related point, when dealing with electronic communications, policies should specify that since personal comments and information by teachers and other staff members that are placed on social networking sites, in particular, can be accessed on district owned and operated Internet systems, users have diminished free speech rights and expectations of privacy than if they were on their own computers. This means that users can be disciplined for the inappropriate content of their postings.
5. Policies should add that if individuals refuse to sign speech (or computer use) policies, or fail to comply with their provisions, they can be disciplined for violating the terms of their employment regardless of not doing so insofar as public employment is a privilege and not a right.
6. Educational leaders, acting in conjunction with their lawyers, should provide annual orientation sessions for new employees in order to explain board speech policies, especially when changes have been implemented from a previous school year.
7. Educational leaders and governing boards, acting in conjunction with their lawyers, should review and update their speech policies, particularly those sections dealing with the rapidly evolving area of electronic communications, typically annually, in order to ensure that they are consistent with changes in the law and technology. As a word of caution, it would be wise not to review policies during or immediately after controversies since placing time between conflicts and thoughtful reviews affords better perspectives by allowing cooler heads to prevail since they can take a look at issues after calm has returned. Moreover, when policies are updated, educators should keep faculty, staff, students, and parents informed about changes whether at meetings, newsletters, and/ or on school websites.

V Conclusion

Regardless of whether courts directly address their status as such, the fact that teachers are viewed as role models distinguishes their right of free expression from that of students. As such, teacher conduct involving cyber speech and related forms of communications, are likely to be assessed by the free speech standard that flows from *Pickering* and its progeny which limits their constitutional protection to expression with regard to matters that are of public concern, a standard that does not apply to students.

In sum, even policies that are up-to-date with developments in the law and free speech ensure that governing boards will escape the threat of litigation over issues associated with the free speech of teachers and other employees. Even so, to the extent that governing boards have sound policies in place that proactively attempt to provide guidance for all who are involved in schools, then the greater the likelihood that they can prevail in court.

Keywords: expression; free speech; teacher rights; teacher speech; technology.

Endnotes

1 *Board of Educ. of City of Los Angeles v Wilkinson*, 270 P 2d 82, 85 (Cal Ct App 1954).
2 *Bethel Sch Dist No 403 v Fraser*, 478 US 675, 683 (1986).
3 In an admittedly slightly dated survey, 59% of Americans named the right to free speech as the first right under the First Amendment; religion came in a distant second at 16%; freedom of press was named third at 14% followed by the right to assembly at 10% and right to petition at 1%. Mary M. Kershaw & Bob Laird, Forgetting Our Five Freedoms, USA Today, March 4, 2002 at 1D; available at 2002 WLNR 4504752.
4 391 US 563 (1968).
5 393 US 503 (1969).
6 Ibid 569.
7 Ibid 572.
8 429 US 274 (1977).
9 *Doyle v Mt Healthy City Sch Dist Bd of Educ*, 670 F 2d 59 (6th Cir 1982).
10 439 US 410 (1979).
11 461 US 138 (1983).
12 511 US 661 (1994). For an analysis of this case, see Terence Leas & Charles J Russo *'Waters v Churchill*: Autonomy for the Academy or Freedom for the Individual?' (1994) 94 *Education Law Reporter*, 1099-1021.
13 547 US 410 (2006).
14 *Brammer-Hoelter v Twin Peaks Charter Acad*, 492 F 3d 1192 (10th Cir 2007).
15 *Westbrook v Teton County Sch Dist No 1*, 918 F Supp. 1475 (D Wyo 1996).
16 *Harris v Victoria Indep Sch Dist*, 168 F 3d 216 (5th Cir 1999), *reh'g and reh'g en banc denied*, 336 F 3d 343 (5th Cir 1999), *cert. denied*, 528 US 1022 (1999).
17 *Weintraub v Board of Educ of City of NY*, 423 F Supp 2d 38 (EDNY 2006).
18 *Kirchmann v Lake Elsinore Unified Sch Dist*, 67 Cal Rptr 2d 268 (Cal Ct App 1997).
19 *Cook v Gwinnett County Sch Dist*, 414 F 3d 1313 (11th Cir 2005).
20 *McGreevy v Stroup*, 413 F 3d 359 (3d Cir 2005).
21 *Ryan v Shawnee Mission USD 512*, 416 F Supp 2d 1090 (D Kan 2006).
22 *Salge v Edna Indep Sch Dist*, 411 F 3d 178 (5th Cir 2005).
23 *Peres v Oceanside Union Free Sch Dist*, 209 F Supp 2d 15 (EDNY 2006).
24 *Burkybile v Board of Educ of Hastings-On-Hudson Union Free Sch. Dist*, 411 F 3d 306 (2d Cir 2005), *cert. denied*, 546 U.S. 1062 (2005).

25 *Vukadinovich v Board of Sch Trustees of Michigan City Area Schools*, 978 F 2d 403 (7th Cir 1992), *cert. denied*, 510 US 844 (1993).
26 *Cliff v Board of Sch Commr's of City of Indianapolis*, 42 F 3d 403 (7th Cir 1994).
27 *Padilla v South Harrison R-II Sch Dist*, 181 F 3d 992 (8th Cir 1999), *reh'g and reh'g en banc denied*, 192 F 3d 805 (8th Cir 1999).
28 *Lancaster v Independent Sch Dist No 5*, 149 F 3d 1228 (10th Cir 1998).
29 *Fales v Garst*, 235 F 3d 1122, 1124 (8th Cir 2001).
30 *Farhat v Jopke*, 370 F 3d 580, 586 (6th Cir 2004).
31 *Brewster v Board of Educ of Lynwood Unified Sch Dist*., 149 F 3d 971 (9th Cir 1998), *cert. denied*, 526 US 1018 (1999).
32 *Hill v Silsbee Indep Sch Dist*, 933 F Supp 616 (ED Tex 1996).
33 *Wallace v Sch Bd of Orange County*, 41 F Supp 2d 1321 (MD Fla 1998).
34 *McCullough v Wyandanch Union Free Sch Dist*, 187 F 3d 272 (2d Cir 1999), *on remand*, 132 F Supp 2d 87 (EDNY 2001).
35 *Quick v Bozeman Sch Dist No 7*, 983 P 2d 402 (Mont 1999).
36 *Rodriguez v Laredo Indep Sch Dist*, 82 F Supp 2d 679 (SD Tex. 2000), *reconsideration denied*, 143 F Supp 2d 727 (SD Tex 2001).
37 *Sivek v Baljevic*, 758 A 2d 441 (Conn.Ct App 2000).
38 *Vargas-Harrison v Racine Unified Sch Dist*, 272 F 3d 964 (7th Cir 2001).
39 *Sharp v Lindsey*, 285 F 3d 479 (6th Cir 2002).
40 *Levich v Liberty Cent Sch Dist*, 361 F Supp 2d 151 (SDNY 2004).
41 *Jackson v State of Alabama State Tenure Comm'n*, 405 F 3d 1276 (11th Cir 2005).
42 *Calef v Budden*, 361 F Supp 2d 493 (DSC 2005).
43 *Williams v Dallas Indep Sch Dist*, 480 F 3d 689 (5th Cir 2007).
44 *Garcia v Montenegro*, 547 F Supp 2d 738 (WD Tex 2008).
45 *Weingarten v Board of Educ of City of NY*, 680 F Supp 2d 595 (SDNY 2010).
46 For earlier cases, *see, eg, National Gay Task Force v Board of Educ of the City of Oklahoma City*, 729 F 3d 1270 (10th Cir 1984), *aff'd by an equally divided Court*, 470 US 903 (1985) (permitting a teacher to be dismissed for 'public homosexual conduct').
47 *Melzer v Board of Educ of City Sch Dist of City of NY*, 336 F 3d 185, 198 (2d Cir 2003), *cert. denied*, 540 US 1183 (2004).
48 *Almontaser v New York City Dep't of Educ*, 519 F 3d 505, 506-507 (2d Cir 2008).
49 *Mayer v Monroe County Community School Corp. Mayer v Monroe County Community School Corp*., 474 F 3d 477 (7th Cir 2007), *reh'g and reh'g en banc denied*, (7th Cir 2007), *cert. denied*, 552 US 823 (2007).
50 *Evans-Marshall v Board of Education of Tipp City Exempted Village School District*, 624 F 3d 332 (6th Cir 2010), *reh'g and reh'g en banc denied* (2011).
51 *Spanierman v Hughes*, 576 F Supp 2d 292 (D Conn 2008).
52 *Snyder v Millersville Univ*, 2008 WL 5093140 at 5 (ED Pa 2008).
53 For a discussion of this case, see Charles J. Russo 'Social Networking Sites and the Free Speech Rights of School Employees' (2009) 75(4) *School Business Affairs* 38-41.