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Charles J. Russo

*University of Dayton*, crusso1@udayton.edu

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What control do districts have over what teachers post on the social media?

# Beware: Teachers Who Blog

By Charles J. Russo, J.D., Ed.D.

A recent case from Pennsylvania, *Munroe v. Central Bucks School District* (2014), raises fresh questions about the free speech and expression rights of public school teachers as they use the Internet. In *Munroe*, when a board terminated a high school teacher's employment for making controversial postings about her students and colleagues on her personal blog—postings that proved disruptive—a federal trial court rejected the educator's claim that she was dismissed in retaliation for exercising her right to free speech.

Before reviewing the facts and judicial opinion in *Munroe*, it is worth noting that blogs (a term coined in the late 1990s by joining the words "Web" and "log") are collections of online postings created by individuals that are read and sometimes commented on by others. The growth of that phenomenon is nothing short of amazing; the popular blog site Tumblr (2014) reports that as of early September 2014, some 201.9 million blogs were on the Internet, totaling 90.5 billion posts.

## **Munroe Facts**

Beginning in the fall of 2006, the first of her four years as a high school English teacher in the district where she worked, the plaintiff received a satisfactory rating from her supervisors. Two years later, the teacher's principal wrote a strong letter of support recommending her for admission to a graduate program.

The teacher achieved tenure in 2010 and continued to receive positive evaluations until the existence of her then two-year-old blog came to light in February 2011. The teacher made 84 blog posts during 2009 and 2010, the majority of which were personal in nature. However, she occasionally posted

controversial, inappropriate comments about colleagues and students, which lead to this litigation.

The teacher used a pseudonym on her blog posts and did not mention names or dates when she, according to the court,

complained about the rudeness and lack of motivation among her students, referring to them as "jerk," "rat-like," "dunderhead," "whiny, simpering grade-grubber with an unrealistically high perception of own ability level" and "frightfully dim." Plaintiff wrote that parents were "breeding a disgusting brood of insolent, unappreciative, selfish brats." She referred to a co-worker by first name and with a vulgar epithet. Plaintiff also complained about the school administration, writing that she had observed the administration harass a colleague until he resigned because the administration felt that he was an ineffective teacher. (*Monroe*, p. \* 1)

In her defense, the teacher alleged that the blog had no more than nine subscribed readers, including her and her husband.

The controversy in *Munroe* erupted in February 2011 after a local newspaper reporter contacted school officials over allegations that students were circulating the teacher's postings on social media sites. The story attracted widespread attention within days of the teacher's suspension without pay, when it was covered by electronic and print media, including major TV networks. When interviewed by the media, the teacher did little to quell the growing firestorm, contending that she was disciplined unfairly. A month later, she went on maternity leave for the remainder of the term.

In June 2011, the teacher's principal evaluated her performance for the prior year as unsatisfactory. The court did not identify

the basis for that rating. Moreover, the superintendent filed an unsuccessful “Educator Misconduct Complaint” with the commonwealth’s Office of General Counsel. After returning to work in August 2011, the teacher continued to receive negative evaluations until the board terminated her employment in late June 2012, about 18 months after her postings about her students and colleagues on her personal blog became public knowledge.

### Judicial History and Rationale

Unhappy with her dismissal, the teacher filed suit under Section 1983 of the U.S. Code, alleging that officials violated her federally protected rights. The teacher claimed that she was fired in retaliation for exercising her constitutionally protected views under the First Amendment.

According to the court, in order to succeed, the teacher had to demonstrate that her speech was constitutionally protected and that her exercise of that protected right was a substantial factor in the alleged retaliation she experienced.

In addressing the teacher’s free speech rights, the judge began the substantive portion of her rationale with *Pickering v. Board of Education of Township High School District 205* (1968). Quoting *Pickering*, the judge identified her task as having to “balance between the interests of the [teacher], as a citizen, in commenting upon . . . matters of public concern and the interest of [the board], in promoting the efficiency of the public services it performs through its [teacher]” (*Munroe*, \*2, citing *Pickering* at 568).

The judge next turned to the Supreme Court’s most recent case on the free speech rights of public employees, *Carcetti v. Ceballos* (2006). In *Carcetti*, the Court upheld the dismissal of an assistant district attorney for complaints he made about his supervisor while speaking in his official capacity. Relying on

*Carcetti*, the Court held that teachers have free speech rights if they speak as private citizens, on matters of public concern, and their interests in exercising their First Amendment rights are greater than those of their boards in the efficient operation of the schools. The court found that such determinations must be made on fact-specific considerations of the entire record in dispute. The judge conceded that insofar as the context in which speech occurs is crucial, the burden of proof is on public employers, such as the board in *Munroe*, to demonstrate that teacher acts of expression are disruptive.

Addressing the board’s motion for summary judgment, the court recognized that there was no dispute that the teacher made her blog posts as a private citizen. However, the court acknowledged that most of the postings were on private issues, with a limited number touching on “broad issues of academic integrity, the value of honor” (*Munroe*, p. \*3).

The court observed that when the teacher did post comments on matters of public concern, she mostly complained about her students and sometimes was “blogging ‘at work’” (p. \*4). In fact, the judge noted that the teacher also composed a list of remarks she wished she could have used on report cards: “A complete and utter jerk in all ways. Though academically ok, your kid has no other redeeming qualities”; “Just as bad as his sibling. Don’t you know how to raise kids?”; “Liar and cheater”; and “Utterly loathsome in all imaginable ways.”

Those comments led the judge to write, “Whatever public concern she occasionally touched on is subsumed by personal invective; the blog’s ‘overall thrust’ devalues the discussion of public issues” (p. \*4).

The judge pointed out that once the existence of the blog became known to the school community, it created a controversy undermining the teacher’s claim that it was viewed by a limited number of

readers. The court reasoned that although the board did not have a rule in place forbidding teachers to blog at the time of the incident, it had the authority to “regulate disruptive or unprofessional conduct [by teachers] even without the benefit of a proscriptive policy or ethical guideline” (p. \*4). The court was convinced that the blog posts eroded the essential public trust and respect parents and students must have for teachers, such that board officials allowed students to opt out of her classes.

Nearing the end of her analysis, the judge distinguished *Munroe* from *Pickering* on the basis that in the latter, the teacher was improperly dismissed for speaking out about the public issue of schools’ tax increases and the use of board funds. Conversely, in *Munroe*, her prior good record notwithstanding, the court declared that the teacher was dismissed because her “blog contain[ed] gratuitously demeaning and insulting language inextricably intertwined with her occasional discussions of public issues” (p. \*5).

In balancing the interests of both parties, the court ruled that the board did not violate the teacher’s right to free expression. Having decided that the teacher’s comments were so disruptive that they were not entitled to First Amendment protection, the judge concluded that it was unnecessary to address whether she was dismissed for making the blog posts and so granted the board’s motion for summary judgment.

### Recommendations

*Munroe* highlights the need for district leaders to ensure that they have guidelines in place for teachers and district employees who choose to blog or exercise their First Amendment speech rights by commenting through social media Websites, such as Facebook and Twitter. Clear policies help reduce or eliminate potential controversies and harm that staff members’ remarks can engender

when students, their parents, or the general public access the posts.

Concerns over blogs are especially important because there has been a veritable explosion of them since they first emerged in the late 1990s. The volume of posts is, of course, well beyond the scope of anyone to monitor with any accuracy. Still, district leaders would be wise to get ahead of the proverbial curve by setting parameters with regard to employees' blogs if their posts address their professional lives as educators, particularly if they make remarks about colleagues or students.

As a preliminary matter, it is worth recalling that in *Munroe*, the board developed guidelines only after the controversy erupted. Accordingly, district leaders should consider the following points when developing or revising policies.

1. Consistent with the development or revisions of other policies, boards should assemble broad-based teams that, at a minimum, include a board member; a member of the district's leadership team, such as the school business official; representatives of teachers, other employees, and possibly their unions; parents; and other community members.
2. Board policies and guidelines should remind employees that if they are going to engage in blogging or using social media sites to exercise their free speech rights, disruptive speech on school-related matters not of public concern are unlikely to be protected by the First Amendment. Consequently, educators who are not mindful of that limitation on exercising their free speech rights by blogging or using electronic media do so at their own employment peril. In practice, that means that policies and guidelines should suggest that teachers and other employees limit posts to non-school-related issues.
3. In *Munroe*, the court noted, and the teacher admitted, that she was "blogging 'at work'" (*Munroe*, p. \*4). Policies and guidelines should make it clear that because district-owned and -operated computers and systems are district property, their use can be restricted to legitimate academic and administrative purposes, thereby limiting access to personal blog sites during work hours or from home.
4. As a practical matter, board policies and guidelines should remind educators that once they have posted on blog sites or other parts of the Internet, their words take on lives of their own, seeming to exist independently in cyberspace, all but ensuring that they cannot be retrieved or changed as they wait to be discovered—as was the case in *Munroe*. Policies should thus advise teachers and other employee bloggers to be mindful of the content of their postings.
5. Policies should identify possible sanctions in the form of graduated discipline, ranging from loss of access to computer systems to written reprimands, suspensions, or dismissal for teachers and staff members who engage in more serious offenses, such as making disruptive or inappropriate blog postings, as in *Munroe*. Those provisions should specify the due process protections afforded educators who are accused of violating board policies along with the steps to be followed when and if disciplinary sanctions are imposed.
6. As part of the process of keeping teachers and other staff members abreast of updates in board policies, education leaders should provide orientation sessions to explain those provisions in greater detail. Additionally, officials may wish to consider providing updates on policy developments in the form of professional development sessions, because insofar as the speed at

which technology evolves continues to outpace the law's ability to stay abreast of emerging developments, ensuring that all are up-to-date can help avoid potentially costly legal challenges.

7. Education leaders should ensure that their personnel and computer use policies are updated annually. Annual updating of acceptable computer use policies relating to emerging issues, such as teacher blogging, in particular, is essential, because of the speed with which advancements in that area occur. Ensuring that those policies are consistent with changes in both the law and technology is crucial. That approach is important when advising employees to refrain from visiting blogging sites whether on district-owned and -operated systems and whether in school or at home, unless they are commenting only on personal issues that do not involve their workplaces. Further, policies should be reviewed at annual retreats between academic years rather than in the immediate aftermath of controversies so that educational decision makers have time for critical reflection.

## References

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**Charles J. Russo, J.D., Ed.D.**, vice chair of ASBO's Legal Aspects Committee, is Joseph Panzer Chair of Education in the School of Education and Health Sciences (SEHS), director of SEHS's PhD Program in Educational Leadership, and adjunct professor in the School of Law at the University of Dayton, in Ohio. Email: [crusso1@udayton.edu](mailto:crusso1@udayton.edu)