No. 20-255

In the Supreme Court of the United States

MAHANOY AREA SCHOOL DISTRICT.,
Petitioner,

v.

B.L., A MINOR, BY AND THROUGH HER FATHER, LAWRENCE LEVY AND HER MOTHER BETTY LOU LEVY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

Brief of the Huntsville, Alabama City Board of Education and Eleven Additional Alabama School Districts as Amici Curiae in Support of Petitioner

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INTEREST OF *AMICI CURIAE*

Amici curiae [the Alabama School Districts] are twelve school districts located in the State of Alabama.[1]

The Huntsville, Alabama City Board of Education operates elementary, middle, and high schools in northern Alabama. It educates roughly 24,000 students—from pre-kindergarteners to graduating seniors.

The Cullman, Alabama City Board of Education operates elementary, middle, and high schools in northern Alabama. It educates roughly 3,100 students—from pre-kindergartners to graduating seniors.

The DeKalb County, Alabama Board of Education operates elementary, middle, and high schools in northeastern Alabama. It educates roughly 8,800 students—from pre-kindergartners to graduating seniors.

The Guntersville, Alabama City Board of Education operates elementary, middle, and high schools in northern Alabama. It educates roughly 1,800 students—from pre-kindergartners to graduating seniors.

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[1] All parties have consented to the filing of this amici curiae brief. No counsel for any party authored this brief in whole or in part. No counsel for a party made a monetary contribution to fund the preparation or submission of this brief. And no one other than the amici curiae and their counsel made any such monetary contribution.

The Lawrence County, Alabama Board of Education operates elementary, middle, and high schools in northern Alabama. It educates roughly 4,500 students—from pre-kindergartners to graduating seniors.

The Lee County, Alabama Board of Education operates elementary, middle, and high schools in eastern Alabama. It educates roughly 9,400 students—from pre-kindergartners to graduating seniors.

The Marion County, Alabama Board of Education operates elementary, middle, and high schools in northwestern Alabama. It educates roughly 3,200 students—from pre-kindergartners to graduating seniors.

The Marshall County, Alabama Board of Education operates elementary, middle, and high schools in northern Alabama. It educates roughly 5,700 students—from pre-kindergartners to graduating seniors.

The Muscle Shoals, Alabama City Board of Education operates elementary, middle, and high schools in northwestern Alabama. It educates roughly 2,700 students—from pre-kindergartners to graduating seniors.

The Oneonta, Alabama City Board of Education operates elementary, middle, and high schools in central Alabama. It educates roughly 1,400 students—from pre-kindergartners to graduating seniors.

The Sheffield, Alabama City Board of Education operates elementary, middle, and high schools in western Alabama. It educates roughly 1,000 students—from pre-kindergartners to graduating seniors.

The Winfield, Alabama City Board of Education operates elementary, middle, and high schools in western Alabama. It educates roughly 1,200 students—from pre-kindergartners to graduating seniors.

Like other school districts across the country, the Alabama School Districts have dealt with cyberbullying, cyberstalking, and other forms of off-campus harassment of its faculty and students. Like other school districts, the Alabama School Districts have attempted to address proactively issues like cyberbullying and online harassment of its students. Like many other districts, the Alabama School Districts are obligated by state law to protect students from cyberbullying and online harassment. And like other districts, the Alabama School Districts have had to adapt their policies rapidly and modify their procedures frequently to respond to the challenges of COVID-19 while still achieving their educational missions.

In short, the Alabama School Districts are not unlike any other school district in the nation. And that is precisely the point.

The Alabama School Districts have a strong interest in ensuring that their teachers and administrators have the tools to address student speech that violates their disciplinary standards and that inter-

feres with the operation of their schools and classrooms—whether in person or virtually. They also have a strong interest in ensuring that their teachers and administrators can use those tools without constant fear of litigation and liability. Therefore, the Alabama School Districts have a strong interest in assisting the Court in balancing the rights of students against the need for schools to maintain the discipline and order necessary to educate all of their students safely and effectively.

INTRODUCTORY STATEMENT AND SUMMARY OF ARGUMENT

In *Tinker v. Des Moines Independent Community School District*, the Court recognized that students maintain, to some extent, their rights to freedom of speech and expression while in school. *See* 393 U.S. 503, 506 (1969). The Court also recognized, however, that the school environment was different from the public at large. *See id.* It recognized that student speech can interfere with other students' rights "to be secure and be let alone." *Id.* at 508. So the Court held that, as part of their authority to discipline student conduct, schools have the power to regulate student speech that "would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.'" *Id.* at 509 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)).

The Court, of course, decided *Tinker* in a different era—before the rise of the Internet and the near omnipresence of social media. Faced with the rise of cyberbullying, cyberstalking, and other forms of online harassment, schools have responded by using

their authority under *Tinker* to address student speech that is arguably off-campus (though the boundaries of campus in the post-COVID world are themselves hard to define). Until this case, courts had generally recognized that schools could do that, at least in some contexts, and school districts have relied on those decisions to navigate the challenges ever-evolving technology presents.

The Third Circuit repeatedly voiced concerns about the potential effects interpreting *Tinker* to allow schools to police off-campus speech might have on students' speech rights. (*See* Pet.App.12a, 28a–31a.) The Third Circuit worried that the *Tinker* exception might swallow the general rule the First Amendment provides. (*See* Pet.App.28a–30a.)

But courts recognizing that *Tinker* extends beyond the walls of the school have limited the scope of school power to regulate student off-campus speech. Although they have not coalesced around a single standard, they have all imposed a heightened, *Tinker*-plus standard for addressing student speech that occurs off campus (whatever that now means). If the Court is convinced that those standards are incorrect or too broad, it should supply the correct standard instead of throwing the baby out with the bathwater and leaving schools nearly powerless against social media in their efforts to maintain an effective educational environment.

Perhaps more importantly, Big Brother is not watching. There is little evidence schools have taken it upon themselves to police a broad range of off-campus student speech. Instead, a survey of federal decisions suggests that suits involving off-campus

speech are uncommon. And those suits tend to address unusually heinous speech with particularly strong ability to disrupt the school environment.

ARGUMENT

I. Courts recognizing school authority to police some off-campus student speech have not granted schools unfettered power to police all off-campus student speech.

The Third Circuit's decision correctly divides the prevailing standards for regulating off-campus speech under *Tinker* into a few camps. There is a camp that adds a reasonable-foreseeability test to *Tinker*—asking whether it is reasonably foreseeable that the speech will reach the school community and disrupt the school environment. *See, e.g.*, *S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771, 773, 777–78 (8th Cir. 2012); *Wisniewski ex rel. Wisniewski v. Bd. of Educ. of Weedsport Cent. Sch. Dist.*, 494 F.3d 34, 38–39 (2d Cir. 2007). There is another camp that adds a requirement that the speech have a sufficient nexus to the school and its pedagogical interests. *See, e.g.*, *Kowalski v. Berkeley Cty. Schs.*, 652 F.3d 565, 573 (4th Cir. 2011). And there is a third camp that does not explicitly state what standard it is applying but that allows schools to police speech that appears to be directed at the school community. *See, e.g.*, *Bell v. Itawamba Cty. Sch. Bd.*, 799 F.3d 379, 394 (5th Cir. 2015) (en banc); *Wynar v. Douglas Cty. Sch. Dist.*, 728 F.3d 1062, 1069 (9th Cir. 2013). Even decisions of district courts from circuits that have not yet ruled on *Tinker*'s application to off-campus speech seemingly fall into one of those three categories.

1. What each of those camps does, then, is create a sort of *Tinker*-plus standard for school regulation of off-campus speech. They take the *Tinker* standard and then layer a second test on top of it. So, for example, under the reasonable foreseeability test, schools can regulate student speech only (1) if the speech "would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," *Tinker*, 393 U.S. at 509, and (2) if it would be reasonably foreseeable to the student that their speech would reach campus and would cause that sort of disruption, *see Wisniewski*, 494 F.3d at 38–39. In other words, the lower courts have taken the *Tinker* exception—the Third Circuit calls it a narrow exception, (*see* Pet.App.9a, 35a)—and made it even narrower when students speak off campus (again, whatever that even means in the age of electronic learning).

The Third Circuit wrongly criticized the reasonability foreseeability and nexus tests as overly broad, insisting those tests restrict too much student speech. (*See* Pet.App.12a, 28a–31a.) It reasoned that the standards might have made sense in the particular "bad facts" that gave birth to them, but once extended to other facts, their logic breaks down. But none of the *Tinker*-plus standards the lower courts are using is an invitation to schools to engage in the kind of freewheeling policing of speech the Third Circuit apparently fears—and as discussed below, the facts bear out that schools are not acting in that manner. (*See* Part II, App'x, *infra*.)

2. Perhaps more importantly, however, the Third Circuit provides no workable standard itself.

Bad facts may make bad law, as the Third Circuit posits. (*See* Pet.App.28a.) But the inverse is not necessarily true; good facts don't necessarily make good law. And, under the supposedly good facts of this case, the Third Circuit has not made good law. Instead, the Third Circuit has responded to fear of school overreach by prohibiting educators from exercising even properly bounded judgment on matters of pedagogy, something the *Tinker*-plus courts rightly allow.

The on-campus versus off-campus test the Third Circuit adopted is, given electronic classrooms and social media, no easier to apply than either of the *Tinker*-plus standards other courts have adopted. Further, even the Third Circuit itself was unwilling to rule out school authority to address off-campus speech when the facts were bad enough—involving "off-campus speech threatening violence or harassing particular students or teachers." (Pet.App.34a; *see also* Pet.App.35a.) But, as the example cases below show, when schools do police off-campus speech under the two existing *Tinker*-plus standards, it is often to address those very types of speech.

3. If the Court were to agree that the reasonable-foreseeability and nexus *Tinker*-plus standards are too broad, it should articulate a narrower standard instead of adopting the Third Circuit's standard. School officials should not be left to guess whether student speech, which will often be through social media, is on or off campus (something they may have no ability to know). Nor should they be left to guess whether they have authority to address off-campus threats and harassment that are likely to

have the sort of on-campus effects that *Tinker* empowered schools to address. The Court should have confidence that school officials will have better things to worry about than stretching any such authority to interfere with students' off-campus lives.

In sum, what the lower courts have done in applying *Tinker* to off-campus speech has hardly been an invitation for schools to exercise a general police power over student speech. Instead, they have endeavored to do what *Tinker* did—balance student's free-speech rights against the need for schools to maintain discipline in the learning environment. If those lower courts have struck the balance incorrectly, the Court should right the ship by articulating the correct *Tinker*-plus standard, not sink the ship by leaving schools without the leeway they need to maintain discipline in an era of digital learning and social media.

II. Schools are policing off-campus student speech only infrequently and usually in extreme circumstances.

According to the Third Circuit, off-campus speech is beyond the reach of school officials under *Tinker*. (*See* Pet.App.31a.) Off-campus speech, so the Third Circuit said, is any speech that is not in "the school context" or does not "bear[] the school's imprimatur." (Pet.App.15a, 31a.)

If the Court adopts the Third Circuit's outlier approach, schools will sometimes be powerless to address serious disruptions of the school environment, to punish sources of in-school mayhem, and to ensure an orderly environment. That is not conjecture. In-

stead, experience proves it is true. Since January 1, 2010, there have been at least forty off-campus student-speech cases resulting in reported decisions of some type from a federal court. *See* Appendix.[2]

But experience also shows that those cases are relatively uncommon. The forty off-campus student-speech cases represent only a small fraction, about 15 percent of the 266 federal student-speech cases during that same time period.

The Court should draw at least two conclusions from those cases. First, school officials have not been overzealous in policing off-campus speech. Second, even if the percentage of students schools punish for off-campus speech is small, the problems off-campus speech can cause in the school environment are significant.

1. There are currently about 76.1 million students in the United States, ranging from kindergarten through college.[3] For context, the number was 77 million in 2011.[4] So the total number of students nationwide has been relatively steady.

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[2] Counsel created this Appendix by reviewing in Westlaw every federal court decision citing *Tinker* since January 1, 2010. Given that the decisions are at varying procedural stages, and some cases undoubtedly settled without resolution, the Appendix includes all cases located that raise an issue of off-campus student-speech regardless of the litigation's ultimate outcome.

[3] *See* Back to School Statistics, National Center for Education Studies, https://tinyurl.com/udy2ibk6.

[4] *See* Back to School: 2011-2012, U.S. Census Bureau, https://tinyurl.com/4pzg4n6r.

The small number of *Tinker* lawsuits shows that schools are not taking it upon themselves to act as some sort of free-speech police. Even though there are surely students punished for their speech who do not bring federal court cases, only a miniscule fraction of students ever suffer any consequence at school for their speech. Only an even smaller fraction suffer consequences for speech that occurred off campus. And only an even smaller fraction suffer anything more than routine school discipline—detention, parent conferences, etc.

In other words, even as five other circuits[5]—composed of twenty-seven states and about 55 percent of the nation's population, which does not include the school districts outside those circuits that have relied on those decisions—have allowed school officials to punish off-campus speech, school officials have not used this authority as carte blanche to conduct wide-ranging inspections of what students say away from school. To the contrary, school officials have generally punished off-campus speech exactly when *Tinker* permits officials to punish on-campus student speech: when that speech would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." *Tinker*, 393 U.S. at 509. And to the extent any have exceeded *Tinker*, existing law already provides a remedy.

2. As the cases in the Appendix demonstrate, off-campus speech can have significant effects

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[5] The Second, Fourth, Fifth, Eighth, and Ninth Circuits. (*See* Pet.App.25a-27a (discussing these cases).)

in the classroom. Whether on Twitter, Facebook, Snapchat, or through some other (typically Internet-based) means, speech that does not occur on school grounds or at a school event can disrupt school just as easily as something said in a cafeteria or classroom. In fact, given how quickly things spread online, online speech may cause larger disruptions and spread even faster, regardless of where the speech physically occurs.

School officials need the ability to maintain order and discipline in those situations. Indeed, not being able to act would undermine *Tinker*'s fundamental ideas of healthy, vibrant exchanges of ideas and a safe, orderly school environment. *See id.* at 512–13.

In addition to the examples of disruptive off-campus speech in the Appendix, other real-world—not hypothetical—examples (including one from one of the Alabama School Districts' schools) show why school officials need to be able to act when off-campus speech upsets things at school.

- High school football players spread a social media post of a picture of the police officer with his knee on George Floyd's neck, with their school's name over the officer and the rival school's name over Floyd.[6]

- Students posted a photograph to Instagram of themselves holding fake guns and a poster saying "I

[6] *See Huntsville, Grissom High School Football Game Postponed Due to "Racially Motivated" Social Media Posts*, Waaytv.com (Sept. 2, 2020), https://tinyurl.com/o8p5iiox.

hate everyone, you hate everyone. Let's shoot up the school at homecoming."[7]

- A student took a photograph of a teacher in the classroom and photo shopped the image to look like pornography. The student then shared the photo-shopped photograph via Snapchat with classmates.[8]

- A basketball team competed at and won state basketball championship. Following the game, team members tweeted racist comments, including: "All hail white power. #HitlerIsMyDad," "#kkk," "#rosaparks," "#lightthecross," "#wewhite," and "Not only did we beat Grand Blanc but we're all white."[9]

- Students posting to a Facebook group named the "4th Reich's Official Group Chat." Students posted rape memes, messages championing "white power," and comments about wanting to kill Black and Jewish people. Members were asked to "recruit new

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[7] *See Local Teens Face Charges for Posting School Threat on Social Media*, NBC2News (Sept. 15, 2016), https://tinyurl.com/3ob4kozu.

[8] *See NE Lauderdale High Students Face Felony Charges*, Meridian Star (Feb. 1, 2017), https://tinyurl.com/r20pibhm.

[9] *See Shocking Racist Tweets Follow High School Basketball Win by All-White Team*, MichiganLive (Mar. 15, 2014, updated Jan. 20, 2019), https://tinyurl.com/h8btwyqt.

members" so that they could "complete their mission."[10]

The Third Circuit's approach leaves school officials in a bind. Either they can punish this kind of disruptive speech and risk violating a student's First Amendment right. Or they can abandon their campuses to havoc, disruption, and cyber-bullying but avoid a lawsuit. It is easy, however, for the Court to avoid placing schools in such a conundrum. The Court can reject the Third Circuit's conclusion and instead hold, as a majority of circuit courts has, that *Tinker* allows school officials to punish student speech, whether on-campus or off-campus, that is reasonably likely to lead to a material and substantial disruption of school.

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[10] *See Nazi-Themed Facebook Group in Boulder Valley Schools a Sign of Political Rhetoric, Groups Say*, Denver Post (Oct. 18, 2016), https://tinyurl.com/eez4yfu8.

CONCLUSION

For these reasons, the Alabama School Districts request that the Court reverse the Third Circuit's decision and adopt a *Tinker*-plus standard that permits school districts to address off-campus speech that is reasonably likely to lead to a material and substantial disruption of school.

Respectfully submitted,

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APPENDIX

APPENDIX

Off-Campus Student Speech Cases Since 2010

- *A ex rel. A v. Saline Area Sch.*, No. 20-CV-10363, 2020 WL 4903762 (E.D. Mich. Aug. 20, 2020) (Snapchats that "repeatedly used the N-word, referenced 'white power,' and posted racist memes")

- *C1.G. v. Siegfried*, 477 F. Supp. 3d 1194 (D. Colo. 2020) (Snapchat showing a student in a World War II-era military hat with a caption: "Me and the boys about to exterminate the Jews")

- *Moore v. Solanco Sch. Dist.*, 471 F. Supp. 3d 640 (E.D. Pa. 2020) (Instagram post showing doctored picture of African-American teammate "carrying a bucket of Kentucky Fried Chicken")

- *Doe ex rel. Doe v. Cavanaugh*, 437 F. Supp. 3d 111 (D. Mass. 2020) (derogatory Snapchats about a high school teammate)

- *Schaefer ex rel. A.S. v. Lincoln Cty. R-III Sch. Dist.*, 429 F. Supp. 3d 659 (E.D. Mo. 2019) (Snapchat with a doctored picture of another student in a casket)

- *Spero v. Vestal Cent. Sch. Dist.*, 427 F. Supp. 3d 294 (N.D.N.Y. 2019) (tweet claiming suspension was based on racism and Snapchat involving a gun)

- *N.Y. v. San Ramon Valley Unified Sch. Dist.*, No. 17-CV-03906-MMC, 2019 WL 5788623 (N.D. Cal. Nov. 6, 2019) (YouTube video of student rescuing an-

other student pretending to be kidnapped by an extremist group)

- *McKinney ex rel. K.P. v. Huntsville Sch. Dist.*, 350 F. Supp. 3d 757 (W.D. Ark. 2018) (social-media post showing student in trench coat with assault rifle)

- *Fenton ex rel. A.F. v. Kings Park Cent. Sch. Dist.*, 341 F. Supp. 3d 188 (E.D.N.Y. 2018) (video via text message showing two students "engaged in sexual activity")

- *Hunt v. Bd. of Regents of the Univ. of N.M.*, 338 F. Supp. 3d 1251 (D.N.M. 2018), *aff'd,* 792 F. App'x 595 (10th Cir. 2019) (Facebook posts claiming that supporters of opposing political party were "f------ ridiculous," "WORSE than the Germans during WW2," and a "disgrace to the name of human")

- *Longoria ex rel. M.L. v. San Benito Consol. Indep. Sch. Dist.*, No. 1:17-CV-160, 2018 WL 6288142 (S.D. Tex. July 31, 2018), *R. & R. adopted*, 2018 WL 5629941 (S.D. Tex. Oct. 31, 2018), *aff'd* 942 F.3d 258 (5th Cir. 2019) (eight to ten "likes" of "inappropriate" social-media posts)

- *Johnson v. Cache Cty. Sch. Dist.*, 323 F. Supp. 3d 1301 (D. Utah 2018) (Snapchat video singing "I don't f--- with you, you little stupid a—b----, I ain't f------ with you")

- *Shen v. Albany Unified Sch. Dist.*, No. 3:17-CV-02478-JD, 2017 WL 5890089 (N.D. Cal. Nov. 29, 2017) (Instagram posts discussing a "'Ku klux starter pack' featuring a noose, a burning torch, a black doll,

and a white hood" and referring to an African-American classmate as a "f------ nappy a-- piece of s---" and a "gorilla")

- *Wilk v. St. Vrain Valley Sch. Dist.*, No. 15-CV-01925-RPM, 2017 WL 3190443 (D. Colo. July 27, 2017) (conversation about "shoot[ing] up the school")

- *Koeppel v. Romano*, 252 F. Supp. 3d 1310, 1315 (M.D. Fla. 2017), *aff'd sub nom. Doe v. Valencia Coll.*, 903 F.3d 1220 (11th Cir. 2018) (sexually explicit text messages to another student)

- *Niziolek ex rel. A.N. v. Upper Perkiomen Sch. Dist.*, 228 F. Supp. 3d 391 (E.D. Pa. 2017) (Instagram video about school shootings)

- *McNeil ex rel. CLM v. Sherwood Sch. Dist. 88J*, No. 3:15-CV-01098-SB, 2016 WL 8944450 (D. Or. Dec. 30, 2016), *R. & R. adopted*, 2017 WL 2129301 (D. Or. May 16, 2017), *aff'd sub nom. McNeil v. Sherwood Sch. Dist. 88J*, 918 F.3d 700 (9th Cir. 2019) (hit list in personal journal)

- *Yeasin v. Durham*, 224 F. Supp. 3d 1194, 1199 (D. Kan. 2016), *aff'd,* 719 F. App'x 844 (10th Cir. 2018) (tweets discussing ex-girlfriend, who was a fellow student)

- *Dunkley v. Bd. of Educ. of the Greater Egg Harbor Reg'l High Sch. Dist.*, 216 F. Supp. 3d 485 (D.N.J. 2016) (YouTube and Twitter posts mocking other students referred to as "Those Hoes Over There")

- *C.R. v. Eugene Sch. Dist. 4J*, 835 F.3d 1142 (9th Cir. 2016) (comments with sexual innuendos directed toward younger students with disabilities)

- *R.L. v. Cent. York Sch. Dist.*, 183 F. Supp. 3d 625 (M.D. Pa. 2016) (Facebook post discussing bomb threat against school)

- *Sagehorn v. Indep. Sch. Dist. No. 728*, 122 F. Supp. 3d 842 (D. Minn. 2015) (tweet discussing sexual encounter between student and teacher)

- *Burge ex rel. Burge v. Colton Sch. Dist. 53*, 100 F. Supp. 3d 1057 (D. Or. 2015) (Facebook post claiming a teacher was a "b----," should be fired, and was "the worst teacher ever")

- *Bradford v. Norwich City Sch. Dist.*, 54 F. Supp. 3d 177 (N.D.N.Y. 2014) (text messages about slapping, punching, kicking, and shooting a classmate, who was referred to as a "b----")

- *Brinsdon v. McAllen Indep. Sch. Dist.*, No. 7:13-CV-93, 2014 WL 12677688 (S.D. Tex. Aug. 11, 2014), *aff'd,* 832 F.3d 519 (5th Cir. 2016), *withdrawn & superseded on denial of reh'g en banc, and aff'd,* 863 F.3d 338 (5th Cir. 2017) (video of class posted on Internet)

- *S.N.B. v. Pearland Indep. Sch. Dist.*, 120 F. Supp. 3d 620 (S.D. Tex. 2014) (electronic messages with photographs like those "typically found in Sports Illustrated's Swimsuit Issues")

- *Jackson ex rel. Jackson v. Pearl Pub. Sch. Dist.*, No. 3:09-CV-353-HTW-LRA, 2014 WL

12895611 (S.D. Miss. Mar. 31, 2014), *rev'd sub. nom. Jackson v. Ladner*, 626 F. App'x 80 (5th Cir. 2015) (vulgar and threatening Facebook message)

- *Nixon v. Hardin Cty. Bd. of Educ.*, 988 F. Supp. 2d 826 (W.D. Tenn. 2013) (tweet threatening to "shoot [another student] in the face")

- *S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771 (8th Cir. 2012) (blog post with "offensive and racist comments as well as sexually explicit and degrading comments about particular female classmates")

- *R.S. ex rel. S.S. v. Minnewaska Area Sch. Dist. No. 2149*, 894 F. Supp. 2d 1128 (D. Minn. 2012) (Facebook post about hating a classmate)

- *Bell v. Itawamba Cty. Sch. Bd.*, 859 F. Supp. 2d 834, 836 (N.D. Miss. 2012), *aff'd in part, rev'd in part & remanded,* 774 F.3d 280 (5th Cir. 2014), *on reh'g en banc, and aff'd,* 799 F.3d 379 (5th Cir. 2015) (rap song posted to YouTube accusing two school coaches of inappropriate contact with female students)

- *Wynar v. Douglas Cty. Sch. Dist.*, No. 3:09-CV-0626-LRH-VPC, 2011 WL 3512534 (D. Nev. Aug. 10, 2011), *aff'd,* 728 F.3d 1062 (9th Cir. 2013) (online chat message threatening to shoot certain classmates)

- *T.V. ex rel. B.V. v. Smith-Green Cmty. Sch. Corp.*, 807 F. Supp. 2d 767 (N.D. Ind. 2011) (sexually suggestive pictures posted online)

- *D.J.M. ex rel. D.M. v. Hannibal Pub. Sch. Dist. No. 60*, 647 F.3d 754 (8th Cir. 2011) (online chat message discussing shooting classmates)

- *Kowalski v. Berkeley Cty. Sch.*, 652 F.3d 565 (4th Cir. 2011) (Myspace page accusing another student of having herpes)

- *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915 (3d Cir. 2011) (Myspace profile pretending to be school principal who liked "f---ing in my office," "hitting on students and their parents," "being a d--- head," and "my darling wife who looks like a man")

- *Layshock ex rel. Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011) (Myspace profile pretending to be school principal who was "too drunk to remember" his birthday and a "big whore")

- *Esfeller v. O'Keefe*, 391 F. App'x 337 (5th Cir. 2010) (threats to ex-girlfriend via email and social media)

- *J.C. ex rel. R.C. v. Beverly Hills Unified Sch. Dist.*, 711 F. Supp. 2d 1094 (C.D. Cal. 2010) (four-minute video posted to YouTube calling another classmate a "slut" and "the ugliest piece of s--- I've ever seen in my whole life")

- *Evans v. Bayer*, 684 F. Supp. 2d 1365 (S.D. Fla. 2010) (Facebook page inviting students to "express your feelings of hatred" about a particular teacher)