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## For students, a right to be mean online?

With schools meting out discipline for what they see as cyber-bullying, some courts, parents and free speech advocates are pushing back.

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By Victoria Kim  
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One morning in May 2008, an eighth-grader walked into Janice Hart's office at a Beverly Hills school crying.

She was upset and humiliated and couldn't possibly go to class, the girl told the counselor. The night before, a classmate had posted a video on YouTube with a group of other eighth-graders bad-mouthing her, calling her "spoiled," a "brat" and

a "slut." Text and instant messages had been flying since. Half the class must have seen it by now, she told Hart.

Hart took the problem to the vice principal and principal, who took it to a district administrator, who asked the district's lawyers what they could do about it. In the end, citing "cyber-bullying" concerns, school officials suspended the girl who posted the video for two days. That student took the case to federal court, saying her free speech rights had been violated.

Last month, a federal judge in Los Angeles sided with her, saying the school had gone too far. Amid rising concerns over cyber-bullying, and even calls for criminalization, some courts, parents and free-speech advocates are pushing back. Students, they say, have a 1st Amendment right to be nasty in cyberspace.

"To allow the school to cast this wide a net and suspend a student simply because another student takes offense to their speech, without any evidence that such speech caused a substantial disruption of the school's activities, runs afoul" of the law, U.S. District Judge Stephen V. Wilson wrote in a 60-page opinion.

"The court cannot uphold school discipline of student speech simply because young persons are unpredictable or immature, or because, in general, teenagers are emotionally fragile and may often fight over hurtful comments," he wrote.

Schools' ability to limit student speech, from armbands protesting the Vietnam War to banners promoting marijuana use, is an age-old issue that has been repeatedly tried and tested in the courts. But with teens' social lives moving increasingly to cyberspace, where what might have previously been private bickering is reproduced, publicized and documented for all to see, school officials find

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themselves on unfamiliar ground in dealing with e-mails, instant messages, profile pages, videos and the like that may result in hurt feelings or something more serious.

Free-speech advocates said the notoriety of recent cases, such as the Missouri girl who committed suicide after a mean-spirited MySpace message was sent, have led schools to overreact and excessively crack down on student expression when it comes to the Internet.

"It's better to have a lawsuit and lose some money than have a situation where a student commits suicide," said Eugene Volokh, a 1st Amendment expert and UCLA law professor who has criticized a bill in Congress that would make cyber-bullying punishable by up to two years in prison. "People don't appreciate how much the 1st Amendment protects not only political and ideological speech, but also personal nastiness and chatter. . . . If all cruel teasing led to suicide, the human race would be extinct."

The murkiness of this area of law and educational policy has resulted in legal challenges across the country over school officials' restriction of student speech or discipline meted out in such cases.

Attorneys and experts said court decisions have been "all over the map," offering little clarity to confused school administrators. The U.S. Supreme Court has yet to take up a case involving student speech online; the governing decision is from the 1969 Tinker vs. Des Moines School District case, which held that student speech could not be limited unless it caused substantial disruption on campus.

"We're in a rapidly evolving area of law with relatively few guidelines and remarkably little that has been charted," said Robert O'Neil, director of the Virginia-based Thomas Jefferson Center for the Protection of Free Expression.

O'Neil said that when a true threat is made, and when speech is made using school computers, schools have clear authority to regulate students' speech. But when something falls in the gray area between an expressed threat and mere teasing, and students are accessing the Internet outside the school's walls, administrators are faced with a tricky calculus.

"Everybody is justifiably confused about what they can and cannot do," said Witold Walczak, an attorney with the American Civil Liberties Union.

In Pennsylvania, a student sued his school district after he was suspended for 10 days and placed in an alternative education program for creating what he claimed was a parody MySpace profile of the school principal. On the website, the student referred to the principal as a "big steroid freak," and a "big whore," among other things, and stated that he was "too drunk to remember" the date of his birthday.

U.S. District Judge Terrence McVerry found that even though the profile was unquestionably "lewd, profane and sexually inappropriate," the school did not have the right to restrict the student's speech because school officials were not able to establish that the profile caused enough of a disruption on campus.

"The mere fact that the Internet may be accessed at school does not authorize school officials to become censors of the World Wide Web," he wrote.

Walczak, the ACLU attorney who argued the case, said censoring is often the "easy way out" for schools that want to be able to say they did something about the situation rather than stand by and watch.

"The Internet doesn't change what students say about other students or school officials, it just makes it more apparent to a larger number of people," he said.

The school district has appealed to the 3rd Circuit Court of Appeals, where a decision is pending.

In Florida, the ACLU sued a principal on behalf of a student who was suspended and removed from her honors class for alleged cyber-bullying. Katie Evans had created a Facebook page criticizing an English teacher as "the worst teacher I've ever met" and invited others to express their "feelings of

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hatred."

Her attorney, Matthew Bavaro, said the reach of the Web was irrelevant to whether students are allowed to express themselves freely.

"The audience, whether it's one person or 1 billion people, doesn't change that Katie still had a 1st Amendment right," Bavaro said.

In the Beverly Hills case, the student's lawsuit said her "speech" was entirely off campus and off-limits to the school administrators' regulation. The four-minute, 36-second video, in which a group of friends is chatting at a restaurant four blocks from campus, could not even be viewed at school because YouTube is blocked on the school's computers, her attorney contended.

Judge Wilson ruled that school officials had the authority to investigate the matter because the student told several of her classmates to watch the video, and it was foreseeable the video, or talk of it, would quickly make its way to the campus of Beverly Vista School. The video was "designed in such a manner to reach many persons at once," making it different from earlier cases involving school newspapers or a violent drawing, he found.

However, he ruled that the chatter in the video did not rise to a level that would cause enough disruption at the school to warrant the discipline.

"The fear that students would 'gossip' or 'pass notes' in class simply does not rise to the level of a substantial disruption," he wrote.

The plaintiff's attorney, Evan Cohen, who is also her father, said the case highlighted the school district's failure to realize the limits of its authority.

"Yeah, sure, they can fall back on cyber-bullying, but when you actually ask them questions and dig down deep into their understanding, they think it's OK for them to be a super-parent," he said.

Cohen's daughter, now a high school sophomore, is glad to put the case behind her and move on with her life, he said. She will be awarded nominal damages of \$1 from the school, he said, and her two-day suspension will probably soon be removed from her academic record.

Attorney Gary Gibeaut, who represented the Beverly Hills Unified School District, declined to comment, saying the district had not decided whether to appeal the decision.

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