

Cyberbullying *and the*

First Amendment



2019 Civics Essay Contest Sponsored by the Federal Bar Association

The First Amendment provides that “Congress shall make no law ... abridging the freedom of speech ...”

But the First Amendment does not protect all speech. Cyberbullying, defined as bullying by use of internet communications, raises particular concerns over the serious negative effects when it involves middle school and high school students. Is cyberbullying protected by the First Amendment and to what extent? States are enacting new legislation requiring schools to address cyberbullying by students, but how does this legislation balance the First Amendment rights of students?

State laws are requiring schools to address cyberbullying, under the authority that allows a school to address conduct that creates a hostile environment at school or substantially disturbs the classroom or the education process. These laws require schools to monitor and respond to online bullying even if it takes place outside the school or beyond the school hours or even beyond the school year. When public schools address conduct that occurs outside of school, are they violating the First Amendment rights of students? How does legislation which addresses cyberbullying balance the First Amendment rights of students?

In [*Tinker v. Des Moines Independent Community School District*](#) (1969), the United States Supreme Court held that students have First Amendment rights, but schools may restrict student speech to the extent necessary to “avoid material and substantial interference with schoolwork or discipline.” The *Tinker* Court held that in the absence of an actual disturbance on campus, the school could not discipline the students for wearing anti-war armbands. Almost 40 years later, the Supreme Court made it clear in [*Morse v. Frederick*](#) (2007) that a school has the right to restrict speech promoting drug use at a school-sponsored, off-campus event.

Tinker was decided before the internet existed. Do the *Tinker* standards allow schools to address off-campus, online bullying? Are the laws requiring schools to address online bullying unconstitutional for allowing schools to punish a student for a private comment that takes place entirely outside of the school setting? In [*Wisniewski v. Board of Education*](#), an appellate court held that a school could discipline a student for internet postings outside of school when the online posting caused a substantial disruption at the school, and the student should have foreseen that the internet speech could be accessed on school grounds. Does this mean that because all online postings can be accessed from school, all student internet speech is subject to school monitoring and discipline? In [*Bell v. Itawamba County School*](#), an appellate court held that school officials could discipline a student for off-campus posting of a video when the school reasonably understood the speech to threaten, harass, and intimidate a teacher, based on the possibility of disrupting the school. Does the standard applied by these two appellate courts swallow the *Tinker* distinction between speech connected to the school and speech outside the school?

The Federal Bar Association invites middle and high school students to address the complex issue of balancing the rights of free speech and the prevention of cyberbullying. Students should discuss the *Tinker*, *Morse*, *Wisniewski*, and *Bell* cases and specifically address the *Tinker* standard of off- and on-campus speech. Is this standard appropriate to address cyberbullying? Is *Tinker* outdated? Should it be expanded? Are the appellate cases applying a standard that swallows the *Tinker* distinction between speech connected to the school and speech outside the school? Are the courts allowing the schools to violate the students’ First Amendment rights based on private speech? Students should discuss the First Amendment concerns with allowing schools to monitor and address student internet speech outside of the school, specifically how to balance the concerns over cyberbullying with the First Amendment concerns over allowing schools to monitor and punish internet speech outside of school.

2019 FBA Civics Essay Contest Rules

Who May Enter

The contest is open to middle and high school students enrolled in public, private, parochial and charter schools and home-schooled students of equivalent grade status in the United States and its Territories. Middle school students are defined as those in grades 6-8. High school students are those in grades 9-12.

Essay Length and Format

The maximum essay length in the Middle School Division is 500 words, and the maximum length is 1,000 words for high school entries. While not required, proper use of footnotes and bibliographies will be credited during judging. Footnotes and bibliographies will not be included in the word count. Essays must be submitted with a completed entry form, available at <https://www.surveymonkey.com/r/V9BZXPP>. Accepted file formats are Microsoft Word and PDF. The online entry form provides instructions for uploading documents.

Entry Deadline

Entries accepted from November 15, 2018, through 11:59 p.m. Pacific Time on January 22, 2019. Winners will be notified no later than March 1, 2019.

Judging

Essays will be evaluated based on the following criteria:

- Understanding of constitutional principles – 40 points
- Clarity and effectiveness in expressing the theme – 30 points
- Grammar, spelling and composition – 25 points
- Use of footnotes, bibliographies – 5 points

Prizes

Middle School Division: First place, \$750; Second place, \$500; Third place, \$250

High School Division: First place: \$1,500; Second place: \$1,000; Third place, \$500

Release Forms

Should you become a finalist in the contest, you will be required to submit a release form allowing the Federal Bar Association, at its option, to publish your essay on its website and in print publications. In addition, contest winners will be required to provide and authorize use of photographs of themselves in contest-related promotional materials.

Copyright

Adherence to all copyright laws and fair use practices is required. Visit www.fedbar.org/Civics19 for more information and resources.

Disqualification

Reasons for disqualification include: incomplete entries, off-topic essays, providing false information, committing plagiarism, not meeting the submission deadline, and not providing a release form if requested.

For updated information and resources, including downloadable case decisions, visit

www.fedbar.org/Civics19