

### Taking It to Court

The following court cases are some of the ones that have considered the ability and right of schools to intervene and discipline students for cyberbullying, even when it takes place off-campus.

*Tinker v. Des Moines Independent Community School District* (1969): This famous case concluded that students do have free-speech rights at school. "A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments." Students have constitutional rights under the First Amendment. Those rights, however, do not grant students the right to substantially interfere with school discipline or the "the rights of other students to be secure and to be let alone."

*New Jersey v. T.L.O.* (1985): This important case found that searches of student property can be conducted by school administrators if there is a reasonable suspicion that a school policy or law has been violated. This standard is less strict than the probable cause standard for searches by the police in settings other than school. The court stated that the rights of children and teens are not the same as those of adults, and that school officials have a responsibility to maintain the discipline necessary for education. Therefore, a "school official may properly conduct a search of a student's person if the official has a reasonable suspicion that a crime has been . . . committed, or reasonable cause to believe that the search is necessary to maintain school discipline."

*Bethel School District No. 403 v. Fraser* (1986): This case stated that there are some limits to a student's free-speech rights at school, saying that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." The Supreme Court ruled that there is an important difference between nondisruptive expression and "speech or action that intrudes upon the work of the schools or the rights of other students."

*Davis v. Monroe County Board of Education* (1999): This case concluded that if a school knows about harassment or other hurtful actions against students and doesn't respond effectively to stop it, the school and its officials may be held responsible. It said, in part, "the common law, too, has put schools on notice that they may be held responsible under state law for their failure to protect students from the . . . acts of third parties."

*J.S. v. Bethlehem Area School District* (2000): This case about a student who created a website threatening his algebra teacher determined that schools can discipline students for their off-campus electronic speech—*especially* if it's threatening. The court's decision read, in part, "school officials are justified in taking very seriously threats against faculty and other students."

*Wisniewski v. Board of Education of Weedsport Central School District* (2007): This case was about Aaron Wisniewski, an 8th grader who created an instant messaging buddy icon showing a gun firing at a man's head, and including the words "Kill Mr. VanderMolen" (one of Aaron's teachers). The court declared, "the fact that Aaron's creation and transmission of the icon occurred away from school property does not necessarily insulate him from school discipline. We have recognized that off-campus conduct can create a foreseeable risk of substantial disruption within a school."

*Kowalski v. Berkeley County Schools* (2011): The court decided in Kara Kowalski's case that schools can discipline students for their online speech, within certain boundaries (including those established by the 1969 *Tinker* case). The court said, "Kowalski used the Internet to orchestrate a targeted attack on a classmate, and did so in a manner that was sufficiently connected to the school environment as to implicate the School District's recognized authority to discipline speech which 'materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school and collid[es] with the rights of others.' "

For more information about cyberbullying, the laws, and their effect on you, check out *Teen Cyberbullying Investigated: Where Do Your Rights End and Consequences Begin?* by Judge Tom Jacobs.