

Public-School Teachers and Social Media: Understanding Free Speech and Constitutional Limitations

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ABSTRACT

Constitutional protections are unalienable rights in the United States for most citizens. However, public employees are held to a higher standard due to set legal precedents regarding First Amendment protections and rights. Free speech, freedom of expression, and freedom of association are foundational rights of the United States for citizens working in the private sector, and public sector with untaught conditions. Limitations imposed on public-school teachers are historically difficult to decipher and navigate. Due to substantial technological advances in nearly every aspect of modern society, interpretations of current precedents may not be inherently viewed as applicable in regards to public-school teachers' freedom of expression relating to individual social media usage.

In this research paper, various landmark decisions, including *Pickering v. BOE Township (1968)* and *Melzer v. BOE New York City (2003)*, are analyzed and applied to current societal concerns relating to public-school teachers' social media usage and content. Recommendations for public-school teachers and administration encompass modeling pro-social behaviors, comprehensive social media policies, enhancing digital citizenship, and ethical decision-making practices.

Introduction

Technology has progressed at such a substantially impressive rate, making it difficult to contribute to society without access to technology. Due to technological advances, society can hardly function productively without access to computers, tablets, smartphones, and even social media. With technological advances and innovative processes becoming more apparent, it is unsurprising various forms of technology have made way into public-school classrooms. Many teachers utilize platforms, e.g., Canvas and Quizlet, to interact with students. These platforms, and others alike, are excellent tools to utilize in order to keep students engaged while facilitating a positive and productive learning environment.

While technological advances and educational online platforms are not typically heavily debated subjects, there are still many unanswered questions regarding public-school teachers' freedom of expression and its relation to social media. Social media has been the center of much controversy regarding the rights of public-school teachers, in regards to freedom of expression. Does the First Amendment apply to all teachers regardless of what they post online, or are there certain limitations and expectations that must be upheld? In order to identify how the First Amendment applies to public-school teachers and their social media presence, there must be a thorough examination and analysis of how public employees' rights are limited in regards to freedom of expression.

Case Law Analysis

While there may not be substantial evidence or case law directly related to public-school teachers' social media content, there are numerous cases that have set precedents for public employees relating to legally exercising freedom of expression. By thoroughly examining several cases directly relating to public employees, and their rights pertaining to free speech and freedom of association, then the rights of public-school teachers regarding personal social media content and its limitations can accurately be identified.

Pickering v. BOE Township (1968)

Marvin Pickering was dismissed from his position as a public-school teacher in Will County, Illinois after contacting a local newspaper with information regarding a proposed tax increase allegedly benefiting the school. Pickering was ultimately concerned because of his prior knowledge of the board misallocating funds from previous tax increases. The letter sent to the local newspaper indicated a previous bond from 1961 was misallocated and highlighted many discrepancies pertaining to the whereabouts of the funds (*Pickering v. BOE Township, 1968*, p. 566). The Board held a hearing, leading to the termination of Pickering. A lawsuit was filed in state court on the grounds of freedom of expression. The Illinois Supreme court ruled in favor of the school district because the Board asked him not to speak on the internal operations of the school, and that Pickering knew he must forfeit some rights considering he was a public employee. However, the Illinois court conceded to a crucial particularity of the case, if Pickering was not a public-employee, he would undoubtedly have the protected right to express his concerns (*Pickering v. BOE Township, 1968*, p. 568). Pickering ultimately appealed the decision because he felt his rights as a public employee were being too limited and would lead to a "slippery slope" regarding how much power government entities have over public employees and their interest in public matters.

When the appeal was filed, the Supreme Court disagreed with the Illinois Supreme Court on the grounds that the decision would overly limit public employees' rights pertaining to free speech. The Supreme Court analyzed the letter that was sent to the local newspaper in order to determine if Pickering's concerns were a matter of public interest. The Court reaffirmed the Illinois Supreme Court's analysis and agreed that tax increases and misallocation of tax dollars were of public interest. The Supreme Court ruled:

The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. (*Pickering v. BOE Township, 1968*, p. 568)

Pickering v. BOE Township (1968) set a conceptual framework that allows courts to test the validity of a public employee's claims, as well as a deciding factor in order to determine if a public employer violated a public employee's free expression under the First Amendment. The framework is simple, yet has a multitude of interpretations based on specific considerations relating to the particularities within individual cases:

1. Is the individual speaking as a private citizen?
2. Is the speech, or expression, concerning a matter of public concern?

This framework was used to conclude Pickering's termination was illegitimate and ruled unconstitutional because the letter written to the newspaper contained public information regarding taxes and Pickering's concerns regarding how the Board would allocate the funds were of public concern.

Connick v. Myers (1983)

Sheila Myers was an Assistant District Attorney in Louisiana who was ultimately terminated by her supervisor, Connick, because she did not want to be transferred to a different division of the criminal court as a prosecutor. Due to

Myers' frustrations, she distributed copies of a questionnaire to her colleagues. The questionnaire aimed to offer insight into employees' attitudes towards management, policies, and lack of morale. After Myers' termination, a lawsuit was filed stating the termination was unconstitutional due to Myers exercising the constitutional right to free speech (*Connick v. Myers*, 1983, p. 142). The district court ruled in Myers' favor and she was reinstated as an Assistant District Attorney. Connick filed an appeal in attempts to remove Myers as an employee. However, the Court of Appeals affirmed the decision of the District Court. In a final attempt, Connick petitioned for a review by the Supreme Court.

The Supreme Court applied the *Pickering Test* that was established as a necessary framework in order to validate public employees' right to freedom of expression in *Pickering v. BOE Township* (1968). After applying the *Pickering Test*, the Supreme Court affirmed:

1. Myers was not speaking as a private citizen, but rather as a public employee of the District Attorney's Office (*Connick v. Myers*, 1983, p. 170). The decision was straightforward, considering the questionnaire was dispersed in the workplace.
2. Myers' intention was not of public concern, but rather personal interest (*Connick v. Myers*, 1983, p. 170). Myers did not attempt to show the public any kind of wrongdoing by the District Attorney's Office. However, the court did conclude workplace morale is directly related to a department's efficiency. This was not taken into much consideration since Myers' questionnaire displayed a total dissatisfaction with her new proposed job duties (*Connick v. Myers*, 1983, p. 148).
3. The District Attorney's Office did not have to tolerate any kind of behavior that 'would disrupt the office, undermine authority, and destroy close working relationships' (*Connick v. Myers*, 1983, p. 154).

Formation of the *Pickering-Connick Test* as a Judiciary Framework

The ruling of *Connick v. Myers* (1983) was a landmark decision that led to the formation of the most utilized framework in the United States that ultimately decides if a public employee's free expression is justified. The framework is commonly referred to as the *Pickering-Connick Test* and has been used in many decisions since the 1980s.

The complete framework consists of three main components, the first two set by *Pickering v. BOE Township* (1968), and the third set by *Connick v. Myers* (1983):

1. Is the individual speaking as a private citizen?
2. Is the speech, or expression, concerning a matter of public concern?
3. Does the situation at hand interfere with job duties, relationships or cause general disruption?

Melzer v. BOE New York City (2003)

The Peter Melzer, a former teacher for the City of New York City at a high school in the Bronx claimed his termination of employment was unconstitutional and was being discriminated against, due to his membership and involvement in the North American Man/Boy Love Association (NAMBLA). Melzer admitted to being sexually attracted to boys and teenagers until they reach the age of sixteen, as well as being an active member in NAMBLA.

The Supreme Court of the United States described NAMBLA's goal and purpose as:

NAMBLA's stated primary goal is to bring about a change in the attitudes and laws governing sexual activity between men and boys. It advocates the abolition of laws governing the age of consent for such activity and the abolition of laws that limit freedom of expression, including child pornography laws. (*Melzer v. BOE New York City*, 2003, p. 189)

Melzer was an extremely active member of NAMBLA and attended conferences in Europe while co-founding NAMBLA's magazine, the Bulletin.

The Board first became aware of Melzer's NAMBLA membership in 1984 through an anonymous letter. The Board began an investigation and Melzer denied being part of the association. No administrative action was taken at

the time. The Investigation was reopened in 1993 by the new Special Commissioner of Investigation for the school district. During the investigation, the local news station ran stories regarding teachers who were a part of NAMBLA, which featured a secretly recorded video of a NAMBLA meeting. Melzer was identified through the video (*Melzer v. BOE New York City, 2003*, p. 191). After Melzer was publicly identified, the school district was in an uproar.

Parents were extremely upset after the new evidence Melzer surfaced. Parents threatened to remove their children from the school district if Melzer was allowed to return to his position as a high school science teacher. They also threatened to protest the ethics of the school district while bringing it to the media. The board decided that Melzer was not to return to his position because it would be detrimental to the success and overall functioning of the school. The Commissioner of Investigation reported that ‘serious disruption, as well as permanent loss of parental confidence is inevitable if Melzer is returned to the classroom’ (*Melzer v. BOE New York City, 2003*, p. 191). The Board also concluded that Melzer’s association with NAMBLA was largely reported and would ultimately lead to disruption within the school community and classrooms, making it difficult for Melzer to effectively meet his job responsibilities. Melzer filed a lawsuit stating the decision led to wrongful termination and alleged a violation of his freedom of speech and association.

The Court used the *Pickering-Connick Test* to determine if the termination was justified. Even though Melzer arguably met the first component of the test, speaking as private citizen, the court ultimately ruled in favor of the school board due to “the balancing test is less a matter of calculating and competing absolute values than it is a process that looks at all circumstances in a given situation and determine which interest weighs more heavily” (*Melzer v. BOE New York City, 2003*, p. 197). The Court affirmed the initial decision to terminate Melzer was constitutional due to the level of the disruption that it caused within the school district.

This case set many crucial precedents that may be overlooked due to the case often being portrayed solemnly as a pedophilic case with no emphasis on the rights of public employees. One major precedent the case set is freedom to associate and freedom of expression are treated in the same manner, in regards to the rights of public employees. Another impressive precedent that was set by this decision is that the *Pickering-Connick Test* is the ‘appropriate standard where both expressive and associational activities are involved’ (*Melzer v. BOE New York City, 2003*, p. 196). This concludes that the *Pickering-Connick Test* can be applied to all cases where a public employee’s association or membership is being questioned.

Munroe v. Central Bucks (2015)

Natalie Munroe was a public-school teacher in Pennsylvania who started a public blog under the name “Natalie M.” The blog consisted of disreputable rants regarding assigned job duties, the school’s administration, students, and parents in an offensive manner. Many of her writings relied on “humorous” anecdotes and name-calling, including: ‘Lazy Asshole,’ ‘Rat-Like,’ ‘Frightfully dim,’ and ‘Don’t you know how to raise kids?’ (*Munroe v. Central Bucks, 2015*, p. 8).

Overall, the content of the blog was unprofessional and worrisome, considering Munroe’s views of the entire school community were negative and callous. The Board became aware of the blog after the media contacted the school searching for insight regarding the content of the blog, and to determine how students accessed and circulated it on social media. The principal printed off the blog and presented it to Munroe in a meeting, which led to her initial termination (*Munroe v. Central Bucks, 2015*, p. 462). The principal expressed that students were upset and could not believe their teacher thought of them in such a manner. Parents were also calling the school’s administration demanding answers and policy changes. There were talks of riots and various forms of protests. During the initial discovery period of the lawsuit, the principal remained diligent in the initial deposition by expressing how the blog disrupted the entire school’s community in detail.

The *Pickering-Connick Test* was applied to the case in order to determine if Munroe’s termination was constitutional. Ultimately, the Court ruled that the termination was constitutional based off of the absence of public concern and the disruption the blog caused, and would continue to cause if she remained employed. However, Munroe

and her legal team attempted to argue that she was writing as a private citizen venting about work-related stressors. However, the Court applied a very important precedent set by *Garcetti v. Ceballos (2006)*.

The court concluded in *Garcetti v. Ceballos (2006)* that when a public employee speaks about their job duties and administration, they are speaking as public employees and not private citizens. This ruling reinforces the precedent regarding certain speech and expressions are not necessarily protected by the First Amendment. Due to the Court's application of *Garcetti v. Ceballos (2006)*, Munroe ultimately did not meet any components of the *Pickering-Connick Test* and Munroe's termination was ruled as constitutional.

Recommendations for Public-School Teachers & Administration

Digital Citizenship and Social Media Usage Policies

It is crucial to exemplify how fairness, integrity and digital citizenship applies to public-school teachers and the use of social media. Many believe social media usage is intuitive while disregarding consequences that could materially change their everyday lives. In order to promote and ensure integral digital citizenship, an implementation of guidelines and a policy regarding social media usage must be priority for all public-school districts.

Obtaining approval and support for the implementation of new policies can often be difficult. If a district already has a social media policy implemented, a review of the current policy may be necessary in order to comprehensively address issues and set expectations. For instance, a comprehensive policy including standards and relevant laws in regards to freedom of expression is necessary. Comprehensive social media policies promote short-term and long-term success for both the school district and teachers and leads to a greater understanding of expectations set out by the district and the Supreme Court. Straightforward comprehensive policies also foster and facilitate open communication between the employer and employees.

Ethical Decision Making and Considerations of Online Associations

Legal and ethical decisions within a school district are crucial to combat biases while protecting oneself against misunderstood laws and statutes. Legal dilemmas will always occur in the public education system. However, a presentation of the reviewed court cases may lead to an enhanced understanding of public-school teachers' rights within the First Amendment overall. Misunderstood legal interpretations inevitably leads to complex litigation, which can be avoided if both the employer and the employee know their rights regarding their individual social media usage.

For instance, it is unsurprising free speech also comprises blogs and Facebook posts. However, *Melzer v. BOE New York City (2003)* established freedom to associate is also considered a limited right for public employees. This precedent should be taken into consideration as public-school teachers "react" to various Facebook posts and "like" pages that may inherently be obscene or inappropriate (Schroeder, 2013). Clear expectations and guidelines will aid in fostering a more cohesive understanding of rights in regards to public-school teachers and social media.

Supporting Students and Preserving Emotional Intelligence

Modeling ethical behavior is a core value every teacher should be expected to uphold. There will always be students who are inattentive in class. There will always be disruptive students. There will always be students who have cognitive disabilities and require more understanding and empathy. *Munroe v. Central Bucks (2015)* is a conspicuous example of what to avoid doing online as a public-school teacher. However, this case ultimately exemplifies the harsh realities of society. There will always be people who criticize and belittle others. Teachers are not solely responsible for merely teaching a subject: they are also responsible for modeling emotional intelligence and critical thinking skills. Modeling pro-social behaviors and mindfulness, a form of social learning, motivates students to do the same and

creates a more positive and productive learning environment according to Leonard Barolli (2006, cited in Hsiao & Brusilovsky, p. 5). Implementing empathetic trainings while focusing on effective coping-mechanisms could be the first necessary step to ensuring all teachers are able to model ethical behavior. Modeling pro-social behaviors and utilizing ethical educational platforms create productive and ethical learning environments.

Conclusion

For public-school teachers, it is crucial to understand rights are more limited than those working in the private sector, and may be even more limited than other public employees. This is due to the nature of the job and the groups of people teachers interact with on a daily basis. Students have the right to feel physically and emotionally safe in their school and around teachers. Before posting or commenting on questionable material on social media, briefly consider potential repercussions. This is even more crucial when posting or commenting on specific job duties or specific people that make up the school's community and administration.

The *Pickering-Connick Test* may serve as an unofficial aid while remaining diligent in regards to individual social media content. Take into consideration whether or not a post or comment on social media is being relayed as a private citizen regarding a matter of public concern, based off the criteria established *Pickering v. BOE Township (1968)*. Freedom of expression regarding a public employee commenting on official job duties, or any other relevant factors that directly relate to the job, is not a constitutionally protected right, a precedent set by *Garcetti v. Ceballos (2006)*. Consider if social media interaction may lead to a disruption within the classroom, school, or even an entire district. Disruptions can lead to chaos and ruined professional and personal relationships, which *Connick v. Myers (1983)* exemplifies. Remain diligent and prepared to defend any association with a community, group, or online page while acknowledging that any obscene or inappropriate communities you may associate with on social media can result in lawful termination from your position, as established by *Melzer v. BOE New York City (2003)*.

Let the ruling of *Munroe v. Central Bucks (2015)* serve as a reminder, anonymity is not guaranteed online, even if one does not specifically identify themselves. As previously stated, teachers are held to a higher standard than other public employees due to the nature of the job. Understanding individual rights for public employees in relation to social media is crucial, not only in order to know there are legal grounds to pursue litigation, but also to set a precedent for incoming public-school teachers that were raised in a world of constant advancement of technology. By gaining a coherent understanding, both incoming and tenured public-school teachers can be held accountable while having transparent guidelines that may have never considered previously before accepting a job as a public-school teacher.

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