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eCommons Citation

Russo, Charles J. and Heath, Marcus, "Teacher Blogging Redux: Post with Caution" (2016). *Educational Leadership Faculty Publications*. 188.

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Teacher Blogging Redux: Post with Caution

By Charles J. Russo, J.D., Ed.D., and Marcus Heath

Munroe highlights the need for school business officials and other education leaders to be vigilant about teachers' use of social media.

In the December 2014 issue of *School Business Affairs*, this column (Russo 2014) addressed a case from Pennsylvania, *Munroe v. Central Bucks School District* (2014), that explored the free speech rights of public school teachers who blog on the Internet.

In *Munroe*, a school board in Pennsylvania dismissed a tenured high school teacher who posted controversial, derogatory remarks about her students and others on her personal blog. The Third Circuit subsequently affirmed that insofar as the blog entries were disruptive to school operations, the teacher's dismissal did not violate the First Amendment (*Munroe* 2015).

Munroe highlights the need for school business officials (SBOs) and other education leaders to be vigilant about teachers' use of social media. Using *Munroe* as a departure point, this column first reviews the facts and judicial rationale in *Munroe*, because it provides food for thought for education leaders, and then offers updated recommendations for SBOs, their boards, and other education leaders to consider in developing policies to regulate teacher blogs.

Facts in *Munroe*

Beginning in the fall of 2006, the first of her four years as a high school English teacher, the plaintiff received satisfactory performance evaluations. She received tenure in 2010.

In August 2009, the teacher began a blog under the name "Natalie M" but did not reveal where she worked, lived, or the names of her students. The teacher claimed that she started the blog to keep in touch with friends by limiting her posts to personal matters, such as her food and film preferences and her yoga classes. According to the teacher, she intended her blog to be viewed only by her friends, not the public.

The teacher claimed that her blog, which was not password-protected, never had more than nine subscribers (a statement belied by the furor her posts caused). Between August 2009 and November 2010 (*Munroe* 2015, p. *1), she posted 84 entries, occasionally addressing her coworkers, the administration, her students, and their parents.

On April 3, 2010, the teacher blogged about "Things from This Day That Bothered Me," identifying multiple work-related issues (*Munroe* 2015, p. *3). She continued to blog about honor and integrity, student work habits, and her negative attitude toward her job and her students, until board officials learned of the blog's existence in February 2011. Among her musings about her students and their parents, the teacher blogged:

A complete and utter jerk in all way . . . lazy . . . Dunderhead . . . Complainer . . . Rat-like . . . Just as bad as his sibling. Don't you know how to raise kids? . . . Frightfully dim . . . Dresses like a street walker . . . Whiny, simpering grade-grubber . . . with an unrealistically high perception of own ability level . . . Utterly loathsome in all imaginable ways . . . There's no other way to say this: I hate your kid. (p. *3)

In early February 2011, the day after a reporter Emailed the superintendent about the blog, the principal met with the teacher to place her on paid suspension. (At that time, the board lacked a policy prohibiting teachers from blogging on their own time while in school, but subsequently adopted one [*Munroe* 2015, p. *5].)

In his deposition, the principal described how the teacher's posts created a major disruption in the school: "Kids were furious. They were livid. The calls that were coming in from parents, the e-mails that were coming in, kids had copies of it (blog transcripts) and they were distributing it in the halls" (*Munroe* 2015, p. *5). The teacher even

had to be escorted from the building for her own safety. Additionally, the principal received Emails from parents stating that they did not want the plaintiff to teach their children, granting over 200 “opt-out” requests to excuse students from her classes (p. *5).

The story gained nation attention when various media outlets interviewed the teacher. She went on maternity leave, scheduled before the blog was discovered, from March 1, 2011, until the end of the school year. On June 15, 2011, the principal completed the teacher’s evaluation, rating her performance for the previous school year as unsatisfactory. The basis for the negative rating included ineffective instructional delivery practices and inappropriate use of a “nanny cam” during teaching hours; it also cited her blog posts, indicating that the teacher demonstrated “inappropriate or disrespectful interactions between teacher and students” and a “lack of knowledge of the Professional Code of Conduct” (*Munroe* 2015, p. *6). Moreover, the superintendent filed a misconduct complaint against the teacher with the Pennsylvania Department of Education that was dismissed because of legal insufficiency.

The teacher received negative performance evaluations for the 2011–12 school year that did not reference her blog or its effects. On June 1, 2012, the board notified the teacher of its intention to terminate her employment, and she was dismissed on June 26, 2012 (*Munroe* 2015, p. *7). The teacher then filed suit under Section 1983 of the Civil Rights Act, alleging that the board, principal, and superintendent violated her First Amendment rights on the basis of the content of her blog posts.

Judicial History/Rationale

A federal trial court in Pennsylvania granted the school board’s motion for summary judgment, holding that education officials did not violate the teacher’s right to free expression in

terminating her employment (*Munroe* 2014). The court ruled that the teacher’s posts were so disruptive that they were not entitled to First Amendment protection.

On further review, a divided Third Circuit affirmed in favor of the board. The court opened its analysis by noting its reliance on the balancing test from *Pickering v. Board of Education of Township High School District* (1968), the first Supreme Court case on the free speech rights of public school teachers. The court pointed out that for a teacher to assert a retaliation claim in violation of the First Amendment, one must prove three elements:

- (1) [one’s] speech is protected by the First Amendment and (2) the speech was a substantial or motivating factor in the alleged retaliatory action, which if both are proved, shifts the burden to the employed to prove that (3) the same action would have been taken even if the speech had not occurred. (*Munroe* 2015, p. *9)

Returning to *Pickering*, the court maintained that for speech to be constitutionally protected, a teacher must speak as a private citizen rather than as an employee, on a matter of public concern, and the government must lack an adequate justification for treating the person differently from a member of the general public based on its need to promote efficiency in the delivery of public services—here, education.

The Third Circuit next turned to the two bases on which it affirmed the earlier order in favor of the board.

First, the court reluctantly agreed that insofar as the teacher occasionally blogged about academic integrity, honor, and the importance of hard work, her posts satisfied *Pickering*’s public concern element.

Second, although conceding that the teacher’s speech was arguably on a matter of public concern, the court considered whether the board’s “legitimate and countervailing interest, as an employer, in

‘promoting workplace efficiency and avoiding workplace disruption’” (*Munroe* 2015, p. 14) outweighed her rights. Explaining that the balancing test involves a sliding scale, the court reviewed the disruption that the posts created and whether they were proportional to the public importance.

Like the trial court, the Third Circuit voiced its concern over whether the teacher’s blog posts eroded the trust she shared with her students. The court added that teachers occupy an almost unique position of trust not found in many other types of public employment such that her “expressions of hostility and disgust against her students would disrupt her duties as a high school teacher and the functioning of the School District” (p. *18).

The Third Circuit thus rejected the teacher’s contention that the public has a high interest in her blog posts and subsequent media statements. If anything, the court reasoned that the plaintiff failed to adopt a conciliatory approach as she defended the disruptive posts to the media.

The court rebuffed the plaintiff’s claim that the public should have been interested in her thoughts about education given her status as a public school teacher, as she seemed to be oblivious of their effect on her students and school. The court decided that the teacher’s speech was entitled to only minimum weight under *Pickering* because of its disruptive effect on school operations. In reiterating that the teacher referred to her students using such terms as “the devil’s spawn . . . [and] Rat-like” (p. 821), the court upheld her dismissal because her speech was not protected by the First Amendment.

The dissenting member of the Third Circuit would have denied the board’s motion for summary judgment and would have allowed the dispute to proceed to trial. The dissent questioned whether the teacher’s having spoken with the national media may have supported her First

Amendment retaliatory discharge claim.

Recommendations

Munroe highlights the need for education leaders to adopt up-to-date, comprehensive acceptable-use computer policies for teachers and other staff members who choose to exercise their First Amendment speech rights by blogging or commenting elsewhere on the Internet via social media. Clear policies are essential to help reduce, if not eliminate, potential controversies and harm that teachers' remarks can engender, particularly if they are not on matters of public concern, when blogs and other Websites are accessed by students, their parents, colleagues, or the general public.

As a preliminary matter, given the relative newness of blogging when *Munroe* arose, and in no way faulting the board, it is worth recalling that officials developed a policy only after the controversy erupted. Consequently, *Munroe* should serve as a teachable moment for district officials, spurring them to think proactively by considering the following points in policy development or revision.

1. Consistent with general guidelines for policy development or revision, boards should assemble broad-based teams that include a board member; a representative of the district's leadership team such as the SBO; representatives of teachers, other employees, and possibly their unions; parents; and other community members. Having broad-based support should help policies gain wider acceptance insofar as various constituencies contributed to their creation.
2. Policies should remind teachers that if they intend to exercise their free speech rights by blogging or posting on social media sites, they are subject to the *Pickering* test. In other words, policies should make it clear that teachers and other employees must limit posts to nonschool-related issues while avoiding personal matters arising in the course of their employment, because disruptive speech on topics not of public concern is unlikely to be protected by the First Amendment.
3. Policies should stipulate that insofar as district-owned and operated computers and systems are school board property, their use can be restricted to legitimate academic and administrative purposes, thereby forbidding access to personal blogs and social media sites during work hours or when being used from home. Such an approach may afford boards the option of disciplining or dismissing educators for insubordination for violating clearly established policies, thereby avoiding the thorny First Amendment questions surrounding speech.
4. Policies should remind educators that once they post on their blog or on social media sites, their words take on lives of their own, seeming to exist independently in cyberspace, all but ensuring that they cannot be retrieved or changed as they wait to be discovered as in *Munroe*. As such, policies should advise teachers and others to be careful about the content of their posts.
5. Policies should identify possible sanctions—for example, loss of access to computer systems, written reprimands, suspensions, or dismissals—for those who engage in more serious offenses, such as making disruptive or inappropriate blog posts, as in *Munroe*. Those provisions should specify the due process protections afforded educators who are charged with violating board policies along with the steps to be followed when and if disciplinary sanctions are imposed.
6. As part of the process of keeping teachers and other staff members abreast of new board policies, education leaders should provide

professional development sessions to explain those provisions. Keeping teachers informed is crucial, because the speed at which technology evolves continues to outpace the ability of the law to keep up with emerging developments, ensuring the need to keep all up-to-date to avoid potentially costly legal challenges.

7. Education leaders should update their computer use policies for personnel annually. Updating acceptable computer use policies relating to emerging issues such as educator blogging is essential, because, as noted in the previous point, given the speed with which advancements in technology occur, it is crucial to ensure that rules are consistent with changes in both the law and technology. Further, policies should be reviewed between academic years rather than in the immediate aftermath of controversies so that education leaders have time for critical reflection before proceeding.

Conclusion

It seems that the only constant in the world of technology is continuous change. Aware of that, and in light of *Munroe*, education leaders should devise policies designed to encourage employees to engage in the responsible, nondisruptive use of the Internet whether posting on blogs or other types of social media. To avoid conflict and to ensure smooth school operations, then, all members of the school community should be aware of board policies and should act responsibly in posting online.

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- Pickering v. Board of Education of Township High School District*, 391 U.S. 563 (1968).

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work ethic, or communications skills unless they are dealing with a specific instance of failure such as when the employee is chronically late or is dressed inappropriately or fails to follow through or has a conflict with a coworker. In other words, the topic comes up when the leader notices a deficit in one or more soft skills—when the employee does something “wrong.”

Yes, they are adults. Yes, they should already know how to manage themselves and solve problems and play well with others. But you are the leader. If you manage even one person, it is part of your job to ensure they develop these skills if they are lacking in any way.

At the very least, build soft skills development of your staff into your regular management routine. Talk about the high-priority soft skills in team meetings and during your ongoing one-on-one dialogue with every person you manage. Focus on the high-priority behaviors in your organization, your team, in each role, or on those that are particular focal points for particular individuals. Trumpet the broad performance standards regularly. Just like every other aspect of performance, build

it into your team communications, and talk about it on a regular basis. Require it. Measure it. Reward people when they do it. Hold people accountable when they don't.

Success for All

Certainly, some young employees need more attention than others. But they all need your attention. The superstars want to be recognized and rewarded, but they also want managers who are in a position to help them do more, better, and faster and earn more for their hard work. Low performers are the only ones who don't want their managers' attention, but they need it more than anyone. Mediocre performers—the vast majority of employees who are somewhere in the middle of the performance spectrum—often don't know what they want from a manager. But the fastest way to turn a mediocre performer into a low performer is to leave that person alone without any guidance, direction, support, or coaching. A leader's job is to lift up all those employees and help them do more work better every step of the way—not just because that's “good for business,” but because continuous

improvement is the key to keeping young workers focused and motivated.

The fastest way to turn a mediocre performer into a low performer is to leave that person alone without any guidance, direction, support, or coaching.

Gen Zers want managers who know who they are, know what they are doing, and are in a position to help. They want managers who spend enough time with them to teach them the tricks and the shortcuts, warn them of pitfalls, and help them solve problems. They want managers who are strong enough to support them through bad days and counsel them through difficult judgment calls. They want to know you are keeping track of their successes and helping them get better and better every day.

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live at least 1.5 miles from school or if there is condition that makes walking a hazard. Special-education bussing is also claimable, as are vocational programs. Noncurriculum field trips are not claimable. They consist of extracurricular activities, summer school, and athletic and academic contests. If a district owns its fleet, such direct costs as salary and benefits may be included. Certain benefits are not claimable. They include Medicare, Social Security, Illinois Municipal Retirement Fund, and unemployment insurance payments.

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