Student Publications: Legislation and Litigation

Determining appropriate student expression in school-sponsored media involves legal rules and ever-evolving societal norms.

Earlier this year, Oregon’s governor signed a bill giving public high school student journalists the right to exercise freedom of speech and press in school-sponsored media. Although other states have similar laws, the most recent was enacted more than 10 years ago. In addition, the Oregon law is the first in the nation to protect both high school and college student journalists in one statute.

Oregon’s new law represents a potentially bright spot in the area of student publications. Unfortunately for school leaders, where various products of school-sponsored student journalism (particularly yearbooks) are concerned, such issues as student editorial discretion, censorship, and free speech continue to be sources of controversy.

Just a Kiss?
In some school districts, students are permitted to pay a fee to include a personal tribute page in their school’s yearbook. During the 2006–07 school year, a male high school student in Newark, NJ, paid $150 for his special yearbook page. Along with some other photographs, his page contained a 4.5 × 5 inch picture of him with his head turned over his shoulder, kissing his boyfriend.

A school official saw the page and was reportedly worried that the picture of the two males kissing might upset parents. Consequently, the official instructed staff members to black out the photo in every copy of the school’s 2007 yearbook. When the yearbooks were distributed, controversy ensued, and a local gay rights group publicly condemned the actions of the school officials involved.

According to an Associated Press report, the school district’s superintendent had initially described the photo as “illicit.” According to a statement released by the school district, however, the involved school officials apparently redacted the photo because they first thought that the student to whom the tribute page was dedicated was not a student at the school.

The school district did not have a rule about including pictures of male students kissing one another in the school’s yearbook. Thus, the superintendent eventually issued an apology to the student and the district made unredacted versions of the yearbook available to students who wanted them.

A Revealing Complaint
The “kiss photo” yearbook incident represents a somewhat predictable, although unfortunate, instance of censorship. A separate incident—also involving a New Jersey high school yearbook—provides a contrary illustration of lack of oversight and editorial review.

A male former student filed suit against some New Jersey school district officials, members of his high school’s yearbook staff, and the yearbook publisher for publishing a revealing picture of him in his school’s 2001 yearbook. The student’s lawsuit stemmed from a photo taken of him playing basketball wearing boxer shorts under his uniform, rather than an athletic supporter, so the picture partially revealed his genitals.

According to the student’s complaint, when the school yearbook was distributed to senior students, it garnered unwanted attention. The student’s mother asked the principal to stop further distribution. Eventually school officials asked seniors to return the books. The picture of the student did not appear in copies that were subsequently distributed, but the plaintiff student asserted that a number of seniors had retained copies of the yearbook that contained the photo.
The student claimed that he suffered emotional distress and that school officials breached their supervisory duties by allowing the photo to be published. The student also argued that the school officials and yearbook staff members who were named in his lawsuit acted with actual malice and were guilty of willful misconduct and so should be liable to him under the Tort Claims Act. Perhaps more worthy of note, the plaintiff’s attorney asserted that under a New Jersey law, publishing the photo amounted to child pornography.

A district court judge ruled in favor of the school district and the yearbook staff members because the plaintiff student could not meet the standard of proof for his claim of emotional distress. A state court of appeals affirmed the lower court’s dismissal of the case, finding that there was no willful misconduct or actual malice on the part of the yearbook staff and school officials: “At most, some of the education defendants may have been negligent in failing to act more quickly to impound published copies of the yearbook once they discovered that it contained an objectionable photograph.” The court of appeals also rejected the plaintiff student’s claim concerning the state’s child pornography statute.

**Stolen Snapshots**

School officials’ censorship of (or failure to censor) content is just one issue that arises in the context of student run, school-sponsored media. A recent incident in a high school in the Northeast raises interesting questions about whether student journalists are conscious of the legal aspects involved in publishing a school yearbook.

A faculty adviser told yearbook staffers at a Bethesda, MD, high school to not use photos and images from popular social networking Web sites, such as MySpace.com and Facebook. Unfortunately, the adviser went on maternity leave. When the publication deadline drew near, a number of student yearbook staff members rushed to find appropriate content to fill the yearbook. Some of them found that content on Facebook, and when the yearbooks were distributed, many students came face-to-face with their personal photos from the popular Web site.

According to published reports, students’ reactions varied. Some expressed a sense of personal violation akin to be stalked, and others said that it felt weird or shocking to see their “private” photos in the yearbook. The school’s principal has reportedly indicated that every photo included in the school’s yearbook will be credited and that students who are members of the yearbook staff may be asked to take a basic journalism course that would include instruction on ethics and plagiarism.

**Editorial Independence**

The Facebook photos in the yearbook and the photos of the exposed basketball player represent one side of the debate against providing entrenched legal protections for student journalists. That is, without appropriate adult supervision, students may include inappropriate material in school-sponsored publications. On the other side, as with the kissing case, school officials can be unclear about when adult editorial guidance ends and unconstitutional censorship begins.

Recently, student yearbook staff members at a New York high school threatened to sue school administrators who were making editorial changes to yearbook content that the students felt crossed constitutional lines. The student journalists defended their decision to include approximately 100 jokes in...
the yearbook alongside student club photos. School officials reportedly halted production of the yearbook because in the past, some of the jokes had been viewed as offensive. The issue was resolved without a lawsuit, but the monetary costs associated with formal legal action make even the threat of litigation over school publications something that school leaders should take seriously.

Perhaps that’s why Arkansas, California, Colorado, Iowa, Kansas, Massachusetts, and now Oregon have laws in place that protect student journalists against censorship of school-sponsored publications. The Oregon law was inspired by a bill from Washington State that would have given students the right to exercise freedom of speech and of the press in school-sponsored media. Arguments over the Oregon bill included assertions that a law protecting the expression of student journalists might encourage students to publish inappropriate material without proper supervision and direction from adult school officials. Other opponents worried that such a law could make high schools (and universities) more susceptible to lawsuits that are related to the content of student publications.

Despite objections, Oregon’s student press freedom law passed. It contains a clause that limits monetary damages to $100. The law also does not prevent student advisers from being disciplined for failing to censor unlawful student expression. The bill’s supporters are claiming victory and are hoping that this and similar legislation represent a movement toward protecting free speech and away from school censorship of student publications.

Find the Line

Although they are slightly different, each of the controversies described in this article highlights school officials’ responsibility to help determine the appropriate level of faculty oversight for student publications and to delineate how decisions are made concerning what is and is not appropriate content for a school yearbook. School leaders can help head off similar controversies by establishing clear and objective journalistic guidelines for all school publications and by ensuring that students, faculty members, and administrators understand and appreciate those guidelines. Such guidelines could require student journalists to look for consistency in student portraits and review all editorial content to ensure that it is equitable, accurate, and inclusive and that the messages conveyed by that content represent the school and its students well.

On the other side, school officials should always be mindful of their school’s censorship policies and First Amendment and other legal protections that are related to student publications. It is best to plan how to respond to content that is deemed unbecoming before it turns up in a school publication. Schools might also do well to require that student journalists receive instruction on the legal aspects of publishing, such as copyright law and plagiarism.

In the end, the line demarcating what is and what is not appropriate in school-sponsored media will always be a function of both hard-and-fast legal rules and ever-evolving societal norms. For school leaders, the results will no doubt continue to be controversial and challenging, but will hopefully sometimes be legally enlightening as well.