

The Manila Times
Wednesday, January 24, 2018
A5 and A6

Balancing students' freedom of speech and expression in social media and the school's right to discipline

BY JOSEPH NOEL M.
ESTRADA

IN 1968, three public school students in Des Moines, Iowa, USA, were suspended from school for wearing black armbands to protest the government's policy in Vietnam. They filed a case against the school for damages and sought an injunction against banning the wearing of armbands. It was held that the students in wearing armbands were quiet and passive. They did not impinge on the rights of others. Their conduct falls within the protection of free speech. It was also held that 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.

This is the decision in the landmark case of *Tinker v. Des Moines*, known for the opinion of the court delivered by Justice Fortas saying, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

In 1988, 20 years after the *Tinker* case, three students in a private college in the Camarines Norte, Philippines, were not allowed to re-enroll for leading student mass actions against the school. The students filed an injunction and invoked their rights to peaceable assembly and free speech. It was held by the Supreme Court that while the authority of educational institutions over the conduct of students must be recognized, it cannot go so far as to be violative of constitutional safeguards.

Permissible limitations

While the highest regard must be afforded the exercise of the rights to free speech, this should not be taken to mean that school authorities are virtually powerless to discipline students. This was also made clear in *Tinker*, where it declared that, "conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.

Millennials and generation Zs

Fast forward to present times. Students no longer need to assemble in the streets to express their views and be heard, they simply need to post, tweet, or make a shout-out. Student interactions are no longer limited in the school cafeteria, school Batibot, and quadrangle. Viber chats and messenger groups are the new tambayan.

Several college students of a well-known university in the Philippines one day created a Facebook page. They called it Secret Files. The site encourages submission of "secret files" from students and faculty in the university who are not required to divulge their identity, but is voluntary. The Facebook page may be accessible by the public and is administered by the student-creators themselves. The page provides a disclaimer that it does not vouch or guaran-

tee the accuracy of the events or circumstances submitted therein by contributors.

As a result, the FB secret files became a "virtual laundromat" or worse, a "virtual bathroom wall." The anonymity encouraged gossips bringing out the worst in students and faculty. Women students became the target of lascivious posts, if not hate and weight insults. Fraternities and sororities cruelly attacked each other on the Page.

While it encouraged free expression, there was nothing positive coming out of it. It mined friendships, relationships and harmonious relations between the students and the school administration. The university felt helpless to go after the organizers who continue to hide in fictitious names and accounts.

Meanwhile, in another school, a Grade VI student secretly took a photo of his teacher's undershirt, and posted it on FB. Not only did he post it, he created a fake account of his teacher and made the photo of her undershirt her profile picture. Poor teacher.

In another instance, a college student frequently tweeted vulgar and lewd statements in reaction to posts about current events. But he did this after class, at home in the comfort of his bedroom.

* MILLENNIALS

* SOCIAL MEDIA

As more and more students go online and anonymity is an easy option, risky behaviors, i.e. cyberbullying, cyberharassment, and sexting, are likely to be developed if not addressed early in school. This may lead to more serious problems such as extortion, child pornography, fake news, and cybercrimes.

Extent of schools' authority

In this digital age, are student posts and conduct in social media covered by the right to free expression? Does the school's disciplinary authority to discipline extend to student conduct in cyberspace?

In the case of *Jose Angeles v. Sison*, the court recognized that a school has a dual responsibility to its students. One is to provide

opportunities for learning and the other is to help them grow and develop into mature, responsible, and worthy citizens of the community. Discipline is one of the means to carry out the second responsibility.

The general rule is that the authority of the school is co-extensive with its school grounds, so that any action taken for acts committed outside the school premises should, in general, be left to the police authorities, the courts of justice, and the family concerned.

But this rule is not rigid. There are instances when the school might be called upon to exercise its power over its students for acts committed outside the school and beyond school hours in the following: a) in cases of violations of school policies or regulations occurring in connection with a school sponsored activity

off-campus; or b) in cases where the misconduct of the student involves his status as a student or affects the good name or reputation of the school.

And in the recent case of *Vivares v. St. Theresa's College*, this principle recognizing the authority of the school to discipline students for off-campus conduct has further been extended to students' conduct on Facebook.

Students, like all citizens, continue to enjoy their freedom of speech and expression. This protected speech and expression extends to their posts and conduct in social media and cyberspace. However, the school may impose disciplinary action against students (and even teachers) if, after due process and investigation, it can be shown that the conduct or posts in the cyberspace: 1) disrupts activity in

the school or substantially interferes with school policies; 2) impinges on other people's rights; 3) violates the school's code of discipline; 4) damages the school's reputation; and 5) goes against the school's standards of morality, propriety and decency.

While indeed, students do not shed their constitutional rights at the schoolhouse gates, this right is not absolute as the exercise of this right is limited by school disciplinary policies. This limitation extends to off-campus activities and even outside of school hours and even in social media.

After all, students continue to be students even when they login on Facebook, Twitter, and IG. The continuing requirement to observe school discipline and proper conduct cannot be whittled down

► EstradaA6

■ ESTRADA FROM A5

Balancing students' freedom

simply because the acts are done in cyberspace. In fact, the standards of discipline as set by the school policy should be higher for conduct in social media and cyberspace.

After all, isn't the real test for discipline such as honesty, integrity, standing up for truth, and propriety, is when no one is watching, when no school authority is looking, and when it is easy to escape responsibility?

The author is the corporate secre-

tary and legal counsel of The Manila Times, and managing partner of Estrada & Aquino Law Co. He is also the legal counsel of the Coordinating Council of Private Educational Associations (CO-COPEA), Catholic Educational Association of the Philippines (CEAP), Philippine Association of Private Schools, Colleges, and Universities (PAPSCU), and the Philippine Accrediting Association of Schools, Colleges, & Universities (PAASCU).