

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FORDHAM**

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Jeremy DRUMMOND, :
 :
 : **DECISION**
 : **and**
 Plaintiff, : **ORDER**
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 v. : **Civ. No. 05-0921**
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 Lincoln School District and :
 The STATE OF FORDHAM :
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 Defendants. :
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KAUFMAN, District J.

FINDINGS OF FACT

Lincoln High School (“Lincoln High” or “LHS”) is a small public high school located in Lincoln, a city in the state of Fordham. Approximately 80,000 people reside in Lincoln, and Lincoln High has 2,040 students currently enrolled. The high school includes grades nine through twelve and has between 400 and 600 students in each grade. Lincoln High has a distinguished reputation throughout the state for having a superior academic program and is known specifically for its math, science and computer classes. Each year, its graduating class ranks among the top schools in the state for its number of admissions to Ivy League and Engineering undergraduate programs. Lincoln High’s campus includes four large academic buildings and three additional complexes, which house the art, music and athletic programs. However, Lincoln High’s technology center is what attracts many students and parents.

The Murray Technology Lab was built in June 2002, and was upgraded during the summer of 2004. The Lab now contains 150 state-of-the-art computers, ten color scanners and 50 laser printers. For the first time, Lincoln High also decided to purchase 40 brand new laptops which the students may “check out” for use during class, lunch or study times. Although Lincoln High allows students to bring their own laptops to school, only the school’s laptops and computers may access the Lincoln High network to use the Internet. The school feared that if students were to use their personal laptops to access the Internet, the school would become susceptible to various computer viruses.

Limiting student misuse of the Internet had been a hot topic among Lincoln High officials before the technology lab was upgraded. The school wanted to ensure that students on campus would have access to Internet sites that would assist the students in completing their assignments (e.g., on-line encyclopedias, reference materials, news providers) but at the same time was anxious to prevent access to lewd or inappropriate websites that were inconsistent with educational purposes. LHS considered implementing filtering software to prevent access to inappropriate sites. Following the discussion, the school concluded that such software would be too difficult to implement, given the endlessly changing Internet content, and might have the unintended effect of restricting access to legitimate, educational sites. Therefore, Lincoln High concluded that it would not use filtering software but would instead require enrolling students to sign the Lincoln High Internet and Network Use Policy (“Internet Policy”) (see Appendix II). The Internet Policy sets forth guidelines as to what websites are appropriate for access on school property and with school computers and states in pertinent part:

Legitimate use of the Internet is specifically for educational purposes only. . . . Technology administrators may review student files and communications made over the school's system to maintain system integrity and ensure that users are using the school's system responsibly.

Each student is also assigned a username and password in order to log on to any school computer, and a school email address that he may use throughout his time at Lincoln High. Additionally, LHS introduced a new Laptop Check-Out Program, whereby each time a student checks out an individual laptop, he must hand in a written permission form signed by a teacher, and he must sign a Laptop Agreement (see Appendix III) that reiterates his original agreement to abide by the school's Internet Policy. Lincoln High decided that they would implement a sliding scale to determine punishment for violations of either the Internet Policy or the Laptop Agreement: the more egregious the action (e.g., stealing a school laptop), the harsher the punishment (e.g., suspension or expulsion). Although no specific chart of appropriate punishment was ever devised, most violations of the Internet Policy were addressed by detentions, restricted computer privileges or required study halls. No previous violation received more than two days' suspension.

Lincoln High employs three Technology Administrators who offer technical assistance and support for all the student computers. These administrators also monitor use of the student network through the central server, which allows the technology department to view every student computer and laptop individually. Student-owned laptops cannot be monitored by the Lincoln High Tech Department because such computers cannot access the school network.

The monitoring process at Lincoln High is very similar to that used by most colleges and universities around the country. Through the server each Technology Administrator can access the programs, the files and the screen views of every single computer that is logged on to Lincoln High's network. The administrators conduct random searches throughout the day of student

computer usage and student email accounts. However, Lincoln High also developed a more extensive monitoring system for those students whom it believed were “problem students.” Soon after the computers were installed in the technology lab, Lincoln High officials drew up a list of those students who: 1) were involved in previous bad acts at Lincoln High, 2) had gotten into some trouble with the police, or 3) were suspected troublemakers due to their poor attitude or performance in school. The Technology Administrators monitor each of these students by watching the student’s screen view throughout their computer session, and by reading every email that the student sends or receives through their school email account.

When the 2004 school year began at Lincoln High, students were anxious to use the new computer lab and laptops. The Laptop Check-Out Program became increasingly popular and soon the Technology Administrators had to enforce time limits on student usage in order to assure a fair distribution of the laptops. Even though the lab was consistently full and each laptop was always checked out, the Technology Administrators managed to monitor each student’s computer usage, and continued with their random checks of student email accounts and computer screen views.

On October 2, 2004, Jeremy Drummond checked out a laptop during his lunch break so that he could research an extra credit assignment for his English class. Drummond was an eighteen-year-old senior at Lincoln High and had been involved in a school vandalism prank the previous year. However, Drummond maintained a clean record and a steady 3.4 GPA throughout the rest of his junior year. Drummond was also the star quarterback for the Lincoln High Eagles and was so popular on and off the field that he earned the nickname “Delicious Drummond.” Notwithstanding the fact that the vandalism incident seemed to be an aberration on his record, Drummond still remained on the list of “problem” students who required extra

monitoring. Therefore, whenever he used a school laptop or computer, one of the Technology Administrators would watch his computer screen remotely throughout his entire session and would read through any and all files on the computer once it was returned.

On this particular day, after he had finished researching the extra credit assignment, Drummond decided to check his Hotmail account and email his friend, Khris Marks, about a personal website he had made over the weekend. The email to Marks stated in full, “i created a website this weekend, and after what we talked about in class, i thought you would find it funny. i’m so twisted. lol. check it out at www.jdrummond.net.” The website address in the email was an active hyperlink.

Dave Alviti, the Technology Administrator watching Drummond’s screen at the time, read over the email and printed out the screen view. Alviti then followed the link that was provided in the email and found Drummond’s site. The title of the website was “Deliciously Demented,” and there were dated journal entries written for the previous three days. The entry for October 2nd read:

Lincoln High is a prison. I can’t do anything and the teachers treat us like criminals. Everyone there is so lame and I can’t believe that the government has let the school stand this long. I hope it burns to the ground. The students shouldn’t stand for this mistreatment anymore. And for those psycho teachers reading this, find something better to do with your time. No this is not a threat, you losers.

The entry went on to express further critical views of the school and faculty and included vulgar language, which will not be repeated here. At the bottom of the website was a link to another webpage created by Drummond that was entitled “Late Breaking News: Lincoln High Blows Up. Students Don’t Care.” That link led to a mock news story depicting how the school was blown up in a “suspicious” bombing. There was a picture of Lincoln High at the top of the page, and at the end of the story was a line that read, “For you idiots out there that didn’t catch

on, this story is obviously NOT true” (capitalization in original). There were also various links on that page which led to sites about bomb preparation and one link to a page entitled “How to create a bomb.” There is no indication that Drummond had any involvement in the creation or maintenance of any of those linked sites.

Once Drummond returned the laptop, Alviti searched through Drummond’s computer log from the beginning of the school year, but did not find any evidence that he had accessed that personal website from any school computer. Alviti printed out a copy of Drummond’s homepage and the mock news story and brought all the documentation to the principal, Joanna Crowley. Crowley called Drummond into her office, told him she knew of the email to Marks and the website and warned him that he would be appropriately disciplined. Crowley also told Drummond “you better clean up your website or take it down if you don’t want to be punished even more than what I have in mind right now.” Drummond removed his website from the Internet that same night. In a letter dated October 10, 2004, Crowley informed Drummond’s parents that he would be suspended for a week for violating the Internet Policy because he accessed personal email from a school computer. The letter further stated that Drummond would no longer be able to check out personal laptops and that he would not be allowed to use the Internet at school for the rest of the year. At that time, Drummond was still in the process of applying to colleges and a suspension on his record was reported to every college to which he had applied, including those that were scouting him for their football programs. In late November, Drummond’s first choice college accepted him for early admission, but refused to offer him any athletic scholarship money because of the recent “indiscretion.”

DISCUSSION

I. THE LINCOLN HIGH COMPUTER MONITORING POLICY DID NOT VIOLATE JEREMY DRUMMOND'S FOURTH AMENDMENT RIGHTS.

Plaintiff Jeremy Drummond contends that Lincoln High's monitoring policy, which includes reading personal emails, constituted an unreasonable search and violated his Fourth Amendment rights. He seeks to have the policy declared unconstitutional. For the following reasons, Plaintiff's request is DENIED.

This is a case of first impression in the Fourteenth Circuit. The particular area of privacy involving student use of school computers has not been developed fully. Regardless, this Court holds that Drummond had no reasonable expectation of privacy while using school computers, and that Lincoln High's monitoring policy was constitutional.

A. Students retain limited privacy rights on school grounds.

Students have a constitutional right under the Fourth Amendment to be free from unreasonable searches and seizures while on school premises. New Jersey v. T.L.O., 469 U.S. 325, 334-37 (1985). A search or seizure, in order to pass constitutional muster, must be "justified at its inception" and must be "reasonably related in scope to the circumstances which justified the interference in the first place." Id. at 341 (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)) (internal quotation marks omitted). Under ordinary circumstances, a school official's search of a student will be justified "at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. See Porter v. Ascension Parish School Board, 393 F.3d 608, 622 (5th Cir. 2004). Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. T.L.O., 469 U.S. at 341-42.

1. Lincoln High's monitoring of Drummond's computer use and reading of Drummond's email were justified on the basis that Lincoln High had a compelling interest and reasonable grounds to conduct such a search.

The Supreme Court has recognized that close supervision of school children is necessary in order to maintain a suitable educational environment. T.L.O., 469 U.S. at 341. Moreover the Court allows, in a school setting, "the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." Id. Lincoln High has a compelling interest in deterring violent conduct, and therefore their decision to monitor students' computer usage was appropriate. See Milligan v. City of Slidell, 226 F.3d 652, 655 (5th Cir. 2000) (noting that protecting students and deterring violent acts are "compelling government interests").

Furthermore, Lincoln High had reasonable grounds to conduct their search of Drummond's personal email. If students have been ill-behaved in the past, it is reasonable to believe that they will act in a similar manner in the future. The list of suspected students who would be more closely monitored was therefore justified. Schools must not simply sit back and wait for tragedies to occur. If public school authorities reasonably believe that a student is a threat to the school or to the other students, then that school has a sufficient basis to monitor those students more closely and search through those documents which the student makes accessible on campus. See Stockton v. City of Freeport, 147 F.Supp.2d 642, 646 (S.D. Tex. 2001) (finding that discovery of a threatening letter on school property justified detention of suspected students, and noting that "officials in the Columbine massacre were harshly criticized for *failing* to take action regarding prior signs of problems.").

2. The search was reasonable in scope and not overly intrusive.

Monitoring a student's computer use is neither overly broad nor overly intrusive. Unlike searches of personal property, there is no inherent physical aspect to searching through computer

files or emails. Compare Porter, 393 F.3d at 623 (holding that a search of a student's book bag and person did not constitute a violation of the student's Fourth Amendment rights because the search was not overly intrusive). Therefore, any search done of computer documents is even less intrusive than a search of a locker, a book bag or pockets because there is no invasion of physical space.

Additionally, Lincoln High's search of Drummond's email was narrow in scope. There is no indication that Lincoln High searched through any emails in Drummond's Hotmail account, which were not readily apparent on his screen. Moreover, Lincoln High's extended search into Drummond's personal website was justified by the suspicious language used in his email to Marks. Not only did Drummond mention the school in his email, but his use of the word "twisted" gave Alviti reasonable belief that something was amiss. The powerful interest of promoting school safety justified the minimal scope of the search in this case. See Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 661 (1995) (when assessing the scope of school searches, the relevant inquiry is whether the interest being protected is "*important enough* to justify the particular search at hand"). This Court holds that Lincoln High had a legitimate interest in monitoring student emails for the purpose of school safety and such monitoring was not overly broad or overly intrusive.

B. Students have no reasonable expectation of privacy when using school computers.

To receive the protection of the Fourth Amendment, an expectation of privacy must be reasonable and must be one that society is "prepared to recognize as legitimate." Hudson v. Palmer, 468 U.S. 517, 526 (1984). Drummond could not have reasonably expected privacy when emailing over school computers. By signing the Internet Policy, Drummond acknowledged that he was aware of Lincoln High's monitoring program. Additionally, recent

court decisions such as Smyth v. Pillsbury Co. demonstrate that society is unprepared to recognize a legitimate right of email privacy. 914 F.Supp. 97 (E.D. Pa. 1996). This is especially true when the individual formally acknowledges that those who own the computers reserve the right to search those computers. See United States v. Bailey, 272 F.Supp.2d 822 (D. Neb. 2003). In Bailey, the District Court found that the defendant did not have any expectation of privacy because each time he accessed his work computer, he gave consent for his employer to search that computer. Id. In the instant case, Drummond signed a waiver at the beginning of the school year and each time he checked out a laptop, acknowledging that Lincoln High reserved the right to monitor his use and search through files he accessed. He should not and could not reasonably expect any privacy when using a school-issued computer.

II. DRUMMOND’S SUSPENSION DID NOT VIOLATE HIS FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH.

Drummond contends that his suspension violated his freedom of speech because his personal website was protected speech under the First Amendment. He seeks a declaratory judgment that the disciplinary action is void as a violation of his First Amendment rights and seeks an injunction ordering the expungement of the incident from his record. Plaintiff’s request is DENIED.

Lincoln High did not violate Drummond’s First Amendment rights because they punished him based on his violation of the Internet Policy, not for the content of his personal website. This Court, however, will address the First Amendment issue in order to alleviate any concerns.

The Supreme Court has long recognized that students in public schools do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969). However, such

rights are “not automatically co-extensive with the rights of adults in other settings.” Bethel School District No. 403 v. Fraser, 478 U.S. 675, 682 (1986). A student’s speech may be limited if authorities reasonably fear that such speech will be disruptive to the operation of the school or will materially interfere with school activities. Tinker, 393 U.S. at 509. Furthermore, it is clear that public school officials have the right to regulate speech when the speech is inconsistent with the school’s “basic educational mission.” Fraser, 478 U.S. at 683. Courts must analyze any expression by a public school student in light of that school environment’s special characteristics. Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 266 (1988).

A. School authorities can regulate off-campus student speech as long as it is accessible to students on campus.

A student’s First Amendment rights are substantially limited on school grounds and even more so when school facilities are used for student speech. See Hazelwood, 484 U.S. at 267. In Hazelwood, the Court held that a high school could restrict student speech when the mode of communicating that speech was not a “public forum.” Id. School facilities may be deemed to be public fora only if school authorities have by policy or by practice opened those facilities for use by the general public. Id. If the school facilities have been set aside for other purposes, communicative or otherwise, then no public forum has been created, and school officials may impose reasonable restrictions on student speech. Id. Certainly here, Lincoln High’s technology lab and computers were bought and maintained for the specific purpose of furthering the school’s educational goals. Because use of the school computers is not open to the general public, there is no context in which the computer facilities could be deemed a public forum. Therefore, Lincoln High may reasonably restrict student speech on those computers.

Drummond argues that because he did not create or access his website on school grounds or through school computers, the school is not entitled to regulate or restrict his speech.

However, the Seventh Circuit held that as long as material was distributed on campus, it would be considered student speech and thus susceptible to school regulation speech. Boucher v. School Board of the School District of Greenfield, 134 F.3d 821, 829 (7th Cir. 1998). The Boucher court held that a student newspaper article explaining how to hack into school computers was speech subject to greater limitations because the article advocated on-campus activity and was distributed to students on school grounds. Id. The students in that case had not created the article using any school facilities, and the newspaper in which it appeared was not school sponsored. Id. Similarly, Drummond did not create the website on campus, but it was accessible to all students, teachers and administrators on school grounds via school computers. Further, the website itself promoted on-campus activity by inciting students to rebel against the school. The court in Boucher held that school regulation of student speech is proper when the speech advocates on-campus activity which may be detrimental to the school. Id. Therefore, because Drummond's website is accessible to students on campus and because it promotes on-campus activity which could potentially harm Lincoln High, it is subject to reasonable restrictions by school officials.

B. School officials can regulate lewd and vulgar student speech because it is not protected by the First Amendment.

In Tinker, the Supreme Court held that a public school's suspension of students who had violated school policy by wearing armbands to protest the Vietnam War violated those students' First Amendment rights. 393 U.S. at 513. Unlike Tinker, however, there is no "pure speech" at issue in this case. Drummond's website was not created for any political purpose, so his speech cannot be compared to that of the students in Tinker. The speech in question is more analogous to that in Fraser. 478 U.S. at 675. In Fraser, the Supreme Court held that a school district acted within its authority in disciplining a student who gave an offensive and indecent speech at a

school assembly. Id. at 685. The Court distinguished Tinker by noting that there was a significant difference between the political message of the armbands in Tinker and the lewd content of Fraser's assembly speech. Id. at 680. The Court's holding in Fraser allows schools to "categorically prohibit lewd, vulgar or profane language." Saxe v. State College Area School District, 240 F.3d 200, 214 (3rd Cir. 2001). Therefore, it was well within Lincoln High's authority to punish Drummond for his use of lewd and vulgar language on his website. Drummond was not trying to convey a political message and the vulgarity present throughout the site is only further evidence that such speech is unprotected by the First Amendment.

The Court in Fraser found that a school was entitled to "disassociate itself" from the speech in order to demonstrate to students that such speech is inconsistent with its educational values. 478 U.S. at 685-86; see also Hazelwood, 484 U.S. at 266-67. Drummond's website repeatedly names Lincoln High and even shows a picture of the school. However, the website is poorly written, makes numerous spelling and grammatical mistakes and further uses extreme vulgarity throughout the page. Certainly, anyone searching for information on Lincoln High would come across Drummond's website. Therefore, the school has a right to regulate lewd speech in order to ensure that others know that the school does not support, endorse or encourage that site. The only way for Lincoln High to "disassociate itself" from Drummond's speech was to restrict the contents of the website and to punish Drummond accordingly. Punishment was proper because other students must be aware that Lincoln High will not condone speech that conflicts with its educational values and goals.

C. School officials may discipline students for speech if such speech constitutes a true threat that substantially interferes with the educational mission or operation of the school.

School administrators are allowed to discipline students for conduct or expression, in class or out, that materially disrupts class work or involves substantial disorder. Tinker, 393 U.S. at 513. School officials may discipline student conduct that occurs off of school premises “where it is established that the conduct materially and substantially interferes with the educational process.” J.S. v. Bethlehem Area School District, 757 A.2d 412, 421 (Pa. Cmwlth. 2000). School authorities should not be required to wait until conduct or speech reaches the point of interfering with the work of the school or the rights of other students. The relevant test here is whether school authorities “have reason to believe” that the student expression will be disruptive. See Hazelwood, 484 U.S. at 266; see also Tinker, 393 U.S. at 514. In this case, the Lincoln High officials were reasonable in their belief that Drummond’s site would be disruptive.

Moreover, the Supreme Court has made clear in cases such as NAACP v. Claiborne Hardware Co., that threats are not expression protected by the First Amendment. 458 U.S. 886 (1982). Courts should take even more responsibility when faced with threats to the peace and security of others within the school context. Such threats do not merit constitutional protection.

Lincoln High officials had reason to believe that Drummond’s website constituted a threat to the safety of the school. Although Drummond stated that his views were “not a threat,” they surely were. Student websites, such as Drummond’s, are an early indication of a student’s violent inclinations that can easily spread to like-minded or susceptible people, such as the other student Drummond emailed. See Department of Justice, The School Shooter: A Threat Assessment Perspective, available at <http://www.fbi.gov/publications/school/school2.pdf> (last

visited September 24, 2005). These factors provided Lincoln High with sufficient reason to believe that Drummond's website would be disruptive.

Schools have the inherent responsibility of ensuring the safety of their students, while also making sure that students are immersed in an environment where learning and education are the top priorities at all times. Distractions to students or disruptions to either of these goals can severely impact the operation of a school and the dynamic that a school has with its students.

CONCLUSION

For the above reasons, this Court holds that the Defendant did not violate the Plaintiff's Fourth or First Amendment rights, and therefore this case is **DISMISSED**.

IT IS SO ORDERED.

Dated: September 6, 2005

KAUFMAN, J.
District Court for the Southern District of Fordham

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Before GILMARTIN, Chief Judge, MADDEN, and DELANEY, Circuit Judges.

GLIMARTIN, C.J.

This is an appeal from an order by the United States District Court for the Southern District of Fordham, Kaufman, J., upholding the constitutionality of the Lincoln High computer monitoring policy under the Fourth Amendment and upholding the constitutionality of Drummond’s suspension as not violating his First Amendment right to freedom of speech. For the reasons set forth below, we now REVERSE both holdings of the District Court.

FINDINGS OF FACT

The Findings of Fact are set forth in Judge Kaufman’s lower court opinion. We need not repeat them here.

DISCUSSION

I. LINCOLN HIGH OFFICIALS VIOLATED THE PLAINTIFF'S FOURTH AMENDMENT PRIVACY RIGHTS BY READING THE CONTENTS OF HIS PERSONAL EMAIL.

As the District Court noted, the question of student privacy rights concerning school computers is one of first impression for this Circuit. Because little precedent exists on which to base this decision, it is critical that this Court conduct a thorough analysis of the issues. Although student's privacy rights on school grounds are limited, Drummond did have a reasonable expectation of privacy in accessing his personal Hotmail account. Lincoln High thereby violated Drummond's privacy rights by reading the content of his email. Accordingly, the District Court decision is REVERSED.

A. There is a reasonable expectation of privacy when using personal email.

The Fourth Amendment guarantees "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. An unreasonable search or seizure can only occur if there exists a legitimate expectation of privacy. Therefore, this Court must determine whether it is reasonable for a person who sends or receives an email via a personal email provider using the Internet to legitimately expect the message to remain private.

In Katz v. United States, Justice Harlan's concurring opinion articulated the present day test to determine whether a Fourth Amendment violation has occurred. 389 U.S. 347, 361 (1967) (Harlan, J., concurring). The test asks: 1) has the person exhibited an actual, or a subjective expectation of privacy and 2) is that expectation one that society is prepared to recognize as reasonable? Id.

The first element of Katz is satisfied because Drummond used his personal Hotmail account rather than his school email account, thereby exhibiting an expectation that his message would remain private. Third-party email accounts (e.g., Hotmail, Yahoo!, Gmail, etc.) require a username and password barring access by anyone other than the individual account holder. Furthermore, the message itself was directed and addressed to only one party. These factors prove that Drummond had an actual expectation of privacy, thus satisfying the first prong of Katz.

To satisfy the second element of Katz, whether there is an objectively reasonable expectation in an email, this Court will look to recent case law. In Dunlap v. County of Inyo, the Ninth Circuit stated in dicta that there exists a reasonable expectation of privacy in email messages. 121 F.3d 715, 3 (1997) (see Appendix IV). The court held that even when a police department routinely recorded conversations over one of its telephone lines, employees had a reasonable expectation of privacy. Id. The court stated "[t]he capability of monitoring does not create implied consent to any monitoring that occurs. Cellular telephones and electronic mail are both technologies of questionable privacy, but we nonetheless reasonably expect privacy in our cell phone calls and e-mail messages." Id. This court agrees with the reasoning in Dunlap and thus applies it to this case.

Although other cases have not taken such a stance, each case relevant to this issue is very fact-specific, and this Court concludes that none of them are readily applicable to this case. The United States Court of Appeals for the Armed Forces noted that users of a "chat room" have a lower expectation of privacy because it is a public posting of information. United States v. Maxwell, 45 M.J. 406, 419 (U.S. Armed Forces, 1996). The Maxwell court recognized that as the number of correspondents increases, the expectation of privacy decreases. Id. Conversely,

Drummond sent his email to only one person and never sent the message to a public forum such as a bulletin board or chat room.

Similarly, in United States v. Simons, the Fourth Circuit held that a public employer's remote, warrantless search of an employee's office computer did not violate his Fourth Amendment rights because, in light of the employer's Internet policy, the employee lacked a legitimate expectation of privacy in his Internet activity. 206 F.3d 392, 398-399 (4th Cir. 2000). In Simons, the employer's Internet policy clearly stated that the employer would "audit, inspect, and/or monitor" employees' use of the Internet, including all file transfers, all websites visited and all email messages. Id. The Lincoln High Internet Policy, however, is far more vague and did not reasonably put Drummond on notice that Lincoln High would read his private Hotmail account. The Internet Policy simply states that an unacceptable use of the Internet is to use email for a non-educational purpose. However, the policy does not specifically prohibit use of personal email accounts. He could reasonably expect that at least his Hotmail account would be private.

Although the District Court points to three cases to support its contention that there is no legitimate expectation of privacy in email, none of those cases are applicable here because the facts are significantly different from Drummond's case. For example, in Smyth v. Pillsbury, the court found that an individual cannot reasonably expect a right to privacy when using the company-owned email network. 914 F. Supp. 97 (E.D. Pa. 1996). Smyth is not persuasive because Hotmail is not owned, operated or maintained by Lincoln High. Moreover, Drummond's email to Marks did not contain child pornography, obscenity or other illegal Internet content. The District Court relies on cases that involve far more serious activity than merely checking a personal Hotmail account.

In light of growing identity theft and fraud concerns, this court is ready and willing to recognize an individual's privacy rights in a personal email from that individual to another. This court holds that Drummond had a reasonable expectation of privacy in his email to Marks, and that Lincoln High's monitoring of Drummond and subsequent reading of his personal email constituted a search which must be scrutinized under the Fourth Amendment.

B. The search was not reasonable under the circumstances.

In New Jersey v. T.L.O., the Court held that "the legality of a search of a student shall depend simply on the reasonableness, under all the circumstances, of the search." 469 U.S. 325, 341 (1985). Given the circumstances of this case, Lincoln High's search of Drummond's email and their monitoring policy were unreasonable. There is no indication on the record that Drummond had ever given Lincoln High officials reason to believe that he was using the school computers or the Internet improperly. Drummond's only prior indiscretion at the school was one minor vandalism prank that did not involve the Internet or school computers. If Lincoln High's "watch list" had been comprised of students who had violated the Internet Policy in the past, this Court might be more persuaded that a reasonable suspicion existed. However, no such basis exists in this case, and this Court holds that Lincoln High's monitoring policy was unreasonable.

As the Ninth Circuit held in Dunlap "the capability of monitoring does not create implied consent to any monitoring that occurs." 121 F.3d 715. Although Drummond signed an Internet Policy and was aware of the possibility that he would be monitored, it is reasonable to believe that Drummond did not know or consent to a technology administrator reading his personal email sent via a private email account. Generally, in an office or school setting, there is an expectation that the institution would randomly monitor the office or school supported email. It is unreasonable to believe, however, that anyone who accesses a third-party email system, such

as Hotmail, would consent to the monitoring of that email by anyone other than the company that supports it.

C. The search was not reasonable in scope.

Drummond's initial email did not create a reasonable basis to justify Lincoln High's further search of Drummond's website. Lincoln High only knew of Drummond's site and its contents because they unlawfully read Drummond's personal email to Marks. Nothing in the email indicated that the website might contain derogatory, lewd or threatening material. The District Court claims that Lincoln High's desire to guard the safety of their students justified reading through Drummond's emails. However, even if this were true, once the email was read, nothing within it warranted a further search by clicking on the link in the email and reading Drummond's personal website. A plain reading of the email shows that Drummond merely meant to say "check out this funny website." The email did not contain any material that a reasonable person would view as a threat to the safety of Lincoln High or its students.

Without a threat in the email there is no justification for extending the search beyond Drummond's screen view. In Vernonia School District 47J v. Acton, the Court held that the nature and immediacy of the school's concern for deterring drug use in athletes favored a finding of reasonableness. 515 U.S. 646, 661 (1995). Even if the nature of the concern in this case -- protecting students and the school -- could be considered compelling, there was no immediacy. Drummond's email did not present any reason for a tech administrator to be concerned enough to continue searching through the contents of his email and follow the link to his personal website. Use of the term "twisted" does not support a reasonable belief that the content of Drummond's website contained a threat to the school. Thus, Lincoln High's search was not only initially unjustified in that the school read Drummond's personal email, but was also unjustified in

further reading his personal website. Drummond had a reasonable expectation of privacy in his personal email, and Lincoln High's illegal search violated his Fourth Amendment rights.

II. LINCOLN HIGH VIOLATED THE PLAINTIFF'S FIRST AMENDMENT RIGHTS WHEN THEY SUSPENDED HIM FOR THE CONTENT OF HIS PERSONAL WEBSITE.

Lincoln High reasons that they suspended Drummond for "violating the Internet Policy," but this is a mere veiling of their true intent. LHS imposed a punishment more severe than necessary based on the anti-Lincoln High content of Drummond's website. There is no indication that Lincoln High had imposed any other week-long suspensions to students who improperly used the Internet at school, and most violations of the Policy resulted in detentions and mandatory study halls. Additionally, there is no evidence that Lincoln High would have even been aware of the website had it not been for their invasion of Drummond's privacy. This punishment and Crowley's requirement of Drummond to "clean up" his site were drastic violations of his First Amendment Rights. This Court holds that the suspension should be expunged from his record immediately, and accordingly, the decision is REVERSED.

A. The First Amendment protects off-campus student speech that is not sponsored by the school.

As the District Court noted, students retain their constitutional rights in a school setting, but those rights are limited in the school environment. See Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506-09 (1969); see also Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 270-71 (1988). However, the District Court has incorrectly applied the holding of Hazelwood because school authorities do not have broad discretion to regulate all student speech off campus. In Hazelwood, the Court held that educators can control the content and style of student speech, but only if such speech is school-sponsored and as long as the educator's actions were "reasonably related to legitimate pedagogical concerns." 484 U.S. at

273. The Court held that the school authorities in Hazelwood retained complete control over the forum in which the speech was to be disseminated. Id. at 268. Although the computer lab at Lincoln High is not a public forum, the Internet is. The Internet is accessible on campus, but Drummond did not use a school-sponsored forum to create or disseminate the content of his website. Furthermore, the Supreme Court's holding in Bethel School District No. 403 v. Fraser is inapplicable to this case because Fraser involved on-campus speech directed at 600 students. 478 U.S. 675 (1986). There is no indication that Drummond promoted his website to more than one friend.

The concerns raised in Fraser and Hazelwood are not present in this case. Drummond was not speaking to a captive audience, and the school neither sanctioned his expression nor provided materials to support it. See Coy v. Board of Education of the North Canton City Schools, 205 F.Supp.2d 791 (N.D. Ohio 2002) (finding that school officials violated a student's First Amendment rights by disciplining him for accessing his personal website using school computers). Moreover, although the website was accessible to students on campus, the reasoning in Boucher v. School Board of the School District of Greenfield is misplaced. 134 F.3d 821 (7th Cir. 1998). A better understanding of what is within a school's authority is that found in Thomas v. Board of Education, Granville Central School District. 607 F.2d 1043 (2nd Cir. 1979). In Thomas, the Second Circuit stated that school officials possess "substantial autonomy within their academic domain," and that this power "rests in part on the confinement of that power within the metes and bounds of the school itself." Id. at 1052. Therefore, Lincoln High cannot limit Drummond's website, which was neither created on campus nor sponsored by the school.

B. Drummond’s website did not constitute a true threat.

The District Court held that the website constituted a true threat and therefore was not subject to First Amendment protection. However, the analysis of a true threat should be based on the Sixth Circuit precedent of United States v. Lineberry, 7 Fed.Appx. 520 (6th Cir. 2001).

The Lineberry court defined true threat as:

a statement, written or oral, [made] in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily harm upon or take the life of [the target]. Id. at 524 (quoting United States v. Lincoln, 462 F.2d 1368, 1369 (6th Cir. 1972)).

There is no evidence that Drummond communicated or intended to communicate the website address to anyone other than one friend, Khri Marks. Additionally, nothing on the website named any student or teacher individually or made any specific threat against an individual. Notably, the website contained the statement “No this is not a threat.” In a similar case, Mahaffrey v. Aldrich, the District Court concluded that a student’s personal website, with a listing of names under the title “People I wish were dead,” did not constitute a true threat. 236 F.Supp.2d 779, 786 (E.D. Mich. 2002). The court held that a reasonable person in the student’s place would not foresee that the statements would be interpreted as a serious expression of intent to harm. Id. In this Court’s opinion, the Plaintiff’s position was analogous to Mahaffrey’s.

C. There is no evidence that Drummond’s website caused or would cause a disruption at Lincoln High.

While schools may limit speech for fear of disruption, that fear must be “reasonable” and not an “undifferentiated fear” of a disturbance. Tinker, 393 U.S. at 508-09. Mere dislike of the content of a student’s speech is not an acceptable justification for restricting such speech. Beussink v. Woodland R-IV School District, 30 F.Supp.2d 1175, 1180 (E.D. Mo. 1998). The

District Court in Beussink found that the school district did violate a student's First Amendment rights by disciplining him for his personal website containing material derogatory to the school and its officials. There was no indication in Beussink that the school punished the student because of a fear of disruption. Id. Similarly, there is no evidence that Lincoln High feared disruption at the time they punished Drummond. Furthermore, the District Court relies heavily on Boucher for determining that mere access to speech could cause a disruption. 134 F.3d at 826. Boucher is inapplicable, however, because the court in that case found evidence of past disruption and evidence of potential future disruption due to the article. Id. at 827. No such evidence is available in this case.

If Lincoln High truly feared that access to the site would cause a disruption to their students, then the appropriate course of action would be to install a filtering system. Violations of an individual's First Amendment rights will not be tolerated, especially when there are less restrictive means available to avoid any potential harm.

CONCLUSION

Accordingly, this Court holds that Lincoln High violated Drummond's First and Fourth Amendment rights by reading email in his personal Hotmail account, and by punishing him for the content of his personal website. The decision of the District Court is REVERSED.

IT IS SO ORDERED

Dated: September 26, 2005

GILMARTIN, C.J.
Fourteenth Circuit Court of Appeals

SUPREME COURT OF THE UNITED STATES OF AMERICA

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Lincoln School District and	:	
The STATE OF FORDHAM,	:	
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	:	DECISION
Petitioner,	:	and
	:	ORDER
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v.	:	Civ. No. 05-0921
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	:	
Jeremy DRUMMOND,	:	
	:	
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Respondent.	:	
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ON PETITION FOR A WRIT OF CERTIORARI to the Supreme Court of the United States of America, No. 05-0921.

ON CONSIDERATION of the Petition for a Writ of Certiorari herein to the Supreme Court of the United States of America.

IT IS SO ORDERED by this Court that the said Petition be, and the same is hereby granted in order that this Court may consider the following questions raised by the parties:

1. Whether Petitioner’s monitoring of Respondent’s personal email violated Respondent’s Fourth Amendment right to privacy; and
2. Whether the Petitioner’s suspension of the Respondent violated the Respondent’s First Amendment right to freedom of speech.

Dated: October 6, 2005

/s/ _____
 John Matthews, Clerk