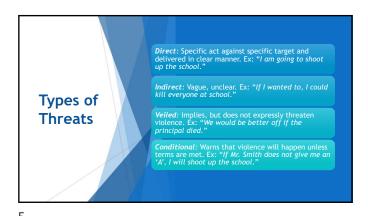




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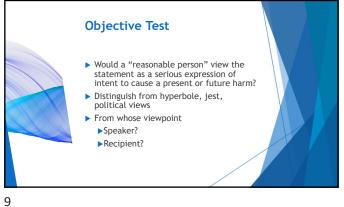


"Threat" Continuum High Level of First Amendment Protection ▶ Figure of speech ► Joke
► Fleeting expression of anger
► Attention-seeking ▶ Thrill of causing disruption ► Attempt to intimidate/frighten
► Warning of impending violence Not Protected

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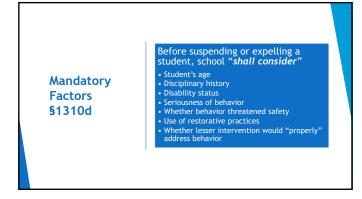


▶Whether reasonable person would: Take statement as serious expression of intent to inflict bodily harm, and Perceive such expression of intent **Sixth Circuit:** to inflict bodily harm as being communicated to effect some "True Threat" change or achieve some goal through intimidation U.S. v Landham, 251 F3d 1072 (CA 6, 2001)



**Revised School Code: Verbal Assault/Bomb Threat** Bomb threat or similar threat directed at school building, event, or property Verbal assault, or MCL 380.1311a(2), subject to 1310d factors

10



**First** Amendment & **School Nexus** 

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Tinker v Des
Moines Indep
SD
393 US 503
(1969)

\*Public school
students do not shed
their constitutional
rights to freedom of
speech or expression at
the schoolhouse gate."

Tinker
Requirements

School must prove that speech would "materially and substantially disrupt" school work or discipline or have a "reasonable forecast" of disruption

Cannot suppress speech due to "undifferentiated fear or apprehension of disturbance"

13 14

Substantial Disruption

▶"Certainly where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained."

Tinker v Des Moines Indep Sch Dist 393 US 503, 509 (1969) Mahaffey v Aldrich (ED Mich, 2002)

- Suspension for creating "Satan's web page" which listed
  - ▶Student names of
    - ▶ "People Who Are Cool"
    - ▶ "People Who Should Die"
  - ►Satan's "Mission of the Week"
- Expulsion proceedings began and student withdrew and sued

15 16

## Satan's Mission For You This Week

▶ "Stab someone for no reason then set them on fire throw them off of a cliff, watch them suffer and with their last breath, just before everything goes black, spit on their face. Killing people is wrong don't do it unless I'm there to watch - Or just go to Detroit. Hell is right in the middle. Drop by and say hi."

PS: NOW THAT YOU'VE READ MY WEB PAGE PLEASE DON'T GO KILLING PEOPLE AND STUFF THEN BLAMING IT ON ME.

## Mahaffey Court Ruling

- ► First Amendment violated
- No nexus to school
- ➤ No "true threat" because there was no serious expression of intent to harm
- No Tinker substantial disruption



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D.J.M. v Hannibal Pub Sch Dist (CA 8, 2011)

- District suspended student who threatened, in instant message, to get a gun and kill classmates
- Student had access to weapons and named specific names
- Court rules for school
  - Instant message was a "true threat"
    - Substantial disruption established



"It's pretty simple / I have a sweet gun / My neighbor is giving me 500 rounds / dhs [Douglas High School] is gay / I've watched these kinds of movies so I know how NOT to go wrong / I just cant decide who will be on my hit list / and that's totally deminted and it scares Even my self."

19 20



"and ill probably only kill the people I hate? who hate me / then a few random to get the record"

"that stupid kid from vtch. He didn't do shit and got a record. I bet I could get 50+people / and not one bullet would be wasted." Wynar v Douglas Co Sch Dist (CA 9, 2013)

- ➤ Student expelled for threatening IMs to shoot specific students and "take out" others on Virginia Tech anniversary
- ▶ Reasonable forecast of substantial disruption as school officials "reasonably could have predicted that they would have to spend considerable time dealing with [parents' and students'] concerns and ensuring that appropriate safety measures were in place."

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Deference to School Officials ▶"[I]n the context of student speech favoring violent conduct, it is not for courts to determine how school officials should respond. School administrators are in the best position to assess the potential for harm and act accordingly."

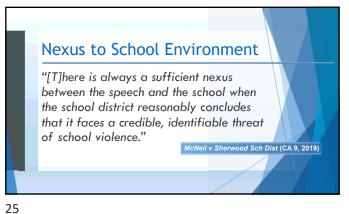
McNeil v Sherwood Sch Dist (CA 9, 2019)

- Student wrote "hit list" of other students in a personal journal
- Mother found journal, informed therapist, therapist informed police, who informed school
- School expelled student
- Court: Although student intended speech to remain private and it was created and maintained off-campus, speech content, student's access to firearms, and proximity of his home to the high school justified disciplinary decision
  - 9th Circuit upholds this test in light of Mahanoy in 2022 in Chen v Albany Sch Dist
  - Again upheld district's decision to discipline students for off-campus speech that constituted harassment

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Threat #2: **Discipling for** Non-Misconduct **Threats** 



 Unless discipline is appropriate, there is direct threat of harm, or parent agrees, unilateral removal is typically not authorized Non-▶ Direct threat of harm (not misconduct) for "significant risk to health or safety
of others that cannot be eliminated by **Disciplinary** Removal modification of policies, practices, or procedures, or by the provision of auxiliary aids and services." ▶ Do not code as suspension

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Threat #3: Failing to Receive Parental Consent

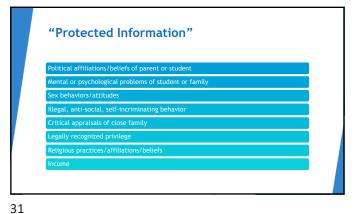
**PPRA Notice/Consent**  Survey/assessment Written • Funded with federal \$ consent if: • Asks about protected information Survey/assessment Notice/right • Funded with state/local \$ to opt out if: • Asks about protected information

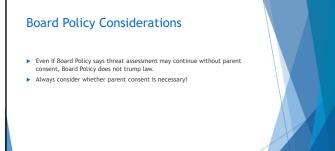
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**Evidence of Possible Disability?**  Referral for threat assessment Information ascertained through threat assessment Pattern of behavior giving rise to threat assessment Note: any time school prohibits student from attending counts as "ren for special ed. purposes

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## **Exclusion** Sudden concern that 11th grader would harm District required assessment of student's current emotional state before returning to school Student allowed to return after 9 school days, without assessment Michigan School District (OCR, 2015)

## **Violation of Section 504**

▶ "OCR...finds that the principal viewed the Student as having a mental impairment due to his emotional state and that the principal excluded him from the District's educational program based on unfounded fears, prejudices, and stereotypes associated with her perception of his perceived mental impairment."

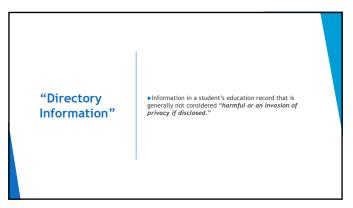
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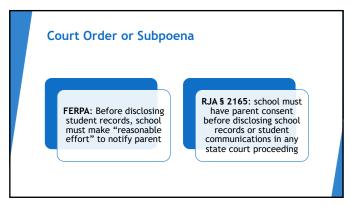








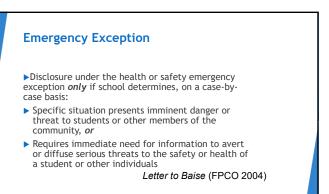
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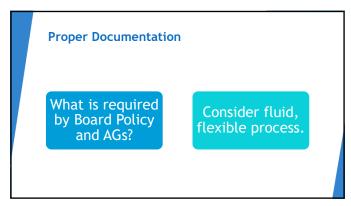
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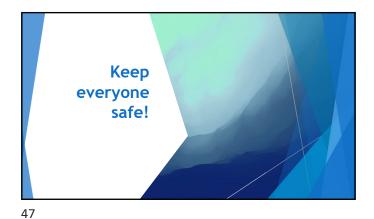








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