

Public Schools' Eye of Sauron

Surveillance of student speech is now reaching into off-campus email drafts as grounds for punishment

By JOSHUA DUNN



AS PARENTS AND TEACHERS discover more reasons to question the indiscriminate carpet bombing of classrooms with digital devices and ed tech of dubious pedagogical value, a case from Arizona reveals another, more Orwellian, danger.

The Marana Unified School District and Marana High School deploy a suite of ed-tech devices and programs, purportedly in service of improving learning. Unfortunately, this technology also allows the school to conduct what amounts to nearly 24/7 monitoring of students. Those gifted in math will recognize that includes students' time outside of the school walls.

Marana strongly encourages all its students to use a school-provided Chromebook laptop at school and at home. Whether they accept the device or not, students are obligated to open a school-managed Google account, including Gmail, through which they can access Google Workspace for Education. The school district then taps three other products—Gaggle, GoGuardian, and Securly—to monitor the students'

online activities, whether they are on campus or not. The district does warn students that it reads their email: “Marana Unified School District scans all student email for objectionable content. Objectionable messages found may be forwarded to school administration and subject to disciplinary action.”

If the district stopped there, it might not provoke objection. It’s reasonable for schools to tell students that sending inappropriate emails on school accounts is forbidden and could be punished. However, in this case, *Merrill v. Marana Unified School District*, the district went well beyond this simple warning—in a way that raises alarming privacy concerns.

A student at the high school, N. M., asked his mother how to handle a bad grade he had received in English class. She advised discussing it with his teacher, so he used his school-issued Chromebook to draft an email. While doing so he wrote and deleted several jokes. Readers will be shocked to learn that since they emerged from the mind of a teenage male—a demographic category normally known for its refinement and sophistication—that these jokes were not in the best taste. The last one, “GANG GANG GIMME A BETTER GRADE OR I SHOOT UP DA SKOOL HOMIE,” he read aloud to his mother. Although the student never sent the jokes nor even saved them, the school’s Eye of Sauron . . . ahem, *surveillance apparatus*, captured them. In less than an hour, his mother received a call from the school principal, who informed her that their technology had captured her son making a threat. Despite her explanations that it was a joke and not a serious threat—and despite N. M.’s spotless disciplinary record—he was suspended. When the family’s appeals failed, they sued. The case is currently before a state trial court in Arizona.

Considering the U.S. Supreme Court’s most recent intervention regarding off-campus speech by students, one suspects that N. M. has a strong case. Student speech when not on school grounds, particularly speech on the Internet and its monitoring by schools, has been a source of contention since the MySpace era in the ’00s. The court finally addressed the issue in 2021’s *Mahanoy v. B. L.*, when it ruled that the school’s authority to regulate and punish student speech beyond the school walls must be very limited. Schools, the court wrote, will rarely stand *in loco parentis* off campus, where students are subject to the guidance and discipline of their actual parents. Second, the court noted that allowing schools to regulate students’ off-campus speech as well as their on-campus speech would in effect give them authority over *all* the student’s speech. Third, the court said that schools must have an interest in students learning how to exercise their First Amendment rights since “America’s public schools are the nurseries of democracy.” Perhaps there is some way of reconciling the two roles—nurturing the First Amendment and monitoring speech—but on the face of it, it seems that functioning as a nursery of democracy is incompatible with constantly surveilling student expression. In fact, it would seem the school has learned precisely the wrong lesson. N. M. obviously exercised self-discipline by not actually sending the email. Presumably, we want students to be rewarded for thinking through what they’re drafting or are about to say and then exercising appropriate restraint.

Sadly, N. M. isn’t alone in being caught up in dystopian monitoring. In Lawrence, Kansas, two students were accused of uploading child pornography for a photography class assignment even though the pictures were of fully clothed students. Another student was questioned about an email to her grandmother that included the phrase “I wanted to kill.” She was mercifully spared further inquisition after reporting that she was referring to a fly.

These devices can almost certainly listen in on conversations as well. This might sound like tinfoil-hat paranoia, but a few years ago it would have seemed paranoid to think that schools would record every keystroke and suspend students for jokes they never sent. One hopes that the schools have not authorized the use of auditory monitoring functionality, but the same case would apply against that practice. Anyone who has not had the kindest words for someone who has cut them off in traffic might understand why it's not reasonable for schools to capture every ill-considered thought crossing a student's mind.

Naturally, the school's defenders will say that if a student isn't doing anything wrong, he won't have anything to worry about. But that argument is the autocrat's best friend and can be used to justify any abuse or violation of liberty. If our schools' civics courses are teaching students that individual rights in America are grounded in limited, constitutional government, perhaps the officials making these decisions could benefit from auditing them. **E**

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