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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **IN AND FOR THE STATE OF ARIZONA**

13 N.M., a minor, by and through his
14 father, Curtis Merrill, and his mother,
15 Karalee Merrill,

16 Plaintiffs,

17 v.

18 Marana Unified School District;
19 Caitlyn Kauffman, in her individual
20 capacity; Kristin Reidy, in her
21 individual capacity; Robin Meece,
22 in her individual capacity;
23 Joshua Bayne, in his individual
24 capacity; and Daniel Streeter, in his
25 individual capacity,

26 Defendants.

No. CV-25-00377-TUC-EJM

**AMICUS CURIAE BRIEF OF
ELECTRONIC FRONTIER
FOUNDATION IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS**

(Assigned to Hon. Eric J. Markovich)

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Statement of Interest of *Amicus Curiae*

The Electronic Frontier Foundation (EFF) is a nonprofit civil liberties organization that has worked for over 35 years to protect free speech, privacy, and innovation in the digital world. With over 30,000 members, EFF represents the rights and interests of technology users, including students and young people, in court cases and broader policy debates surrounding the application of law to technology.

Introduction

Using a school-issued device and/or school-based cloud service should not automatically make any student speech made with these tools “on-campus” speech as a categorical matter.

Digital speech and digital privacy are inextricably linked. Public school students, especially high schoolers, need some sphere of digital autonomy, free of surveillance, judgment, and punishment, as much as anyone else—to express themselves, to develop their identities, to learn and explore, to be silly or crude, and even to make mistakes. This is true *even when* using school-issued tools like laptops and email accounts, and *especially when*, as here, Plaintiff N.M. was at home when he used these tools and thus physically not on campus at the time he wrote the speech for which he was punished, nor did he engage in the speech during school hours or even communicate it to anyone. [Compl. ¶¶ 32-33, 43] [Mot. to Dismiss Op. 4 & Exh. A]

There are risks to categorizing students’ use of school-issued devices and/or school-based cloud services as always “on campus,” without regard to where or when or how the speech occurred [Mot. to Dismiss 9], where school-directed surveillance and subsequent punishment for digital speech are most justified under the First Amendment per *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), and related student speech cases. *See Mahanoy Area School District v. B. L. by and through Levy*, 594 U.S. 180, 188 (2021) (discussing *Tinker* and explaining that public schools have “special characteristics [that] call for special leeway” when they seek to

1 regulate on-campus speech). Specifically, such a categorical rule will create a profound
2 chilling effect on the free expression of young people spanning the whole of their daily
3 lives, exacerbate existing inequities in public schools, and incentivize ongoing harmful
4 digital surveillance against students.

5 **Argument**

6 **I. Marana High School and Marana Unified School District Provide** 7 **Students With Google Chromebooks and Cloud Services Paired With** 8 **Three Surveillance Technologies**

9 Marana High School and Marana Unified School District more broadly
10 (collectively “Marana”) offer all students school-issued Google Chromebook laptops. Use
11 of a Chromebook appears optional, but is highly encouraged.¹ The Chromebook is a
12 laptop that uses the ChromeOS operating system,² which in turn uses the Chrome browser
13 to access the internet.³ A student must have a Google Account (based on the Gmail email
14 account)⁴ and must log into that account on the Chromebook to begin using the laptop,
15 which then allows access to web browsing and various online apps in the Google “cloud”⁵
16 ecosystem (although some work can be done offline on the Chromebook).⁶ Google offers

17 ¹ “MUSD is proud to provide District-owned Chromebooks to all MUSD students.
18 Students benefit having their own device rather than sharing with family members, and
19 many of the District’s specific learning applications only work on Chrome.” Marana High
20 School, *Chromebooks*, <https://maranahigh.maranausd.org/parent-tools/chromebooks>.

21 ² Google, *Learn About Chromebooks, What’s the Difference Between Chromebooks and*
22 *Other Computers, Like Windows or Mac OS?*,
23 <https://support.google.com/chromebook/answer/3265094#zippy=%2Cwhats-the-difference-between-chromebooks-and-other-computers-like-windows-or-mac-os>.

24 ³ Google, *Set Up Your Chromebook*,
25 https://support.google.com/chromebook/answer/1047362?hl=en&ref_topic=3403353&sjid=12687023698241693198-NC.

26 ⁴ “A Google Account lets you use an email address and password or passkey to get
27 Google-wide access to most Google products.” Google, *What Is a Google Account?*,
28 <https://support.google.com/accounts/answer/15277265?hl=en>.

⁵ Cloudflare, *What Is the Cloud?*, <https://www.cloudflare.com/learning/cloud/what-is-the-cloud/>.

⁶ Google, *Learn About Chromebooks, Do Chromebooks Work Offline?*,
<https://support.google.com/chromebook/answer/3265094?hl=en#zippy=%2Cdo-chromebooks-work-offline>.

1 Google Workspace for Education to schools and districts,⁷ which Marana High School
2 and Marana Unified School District use.⁸ As such, all Marana students are given “a
3 district-managed email account” that they use to log into Marana’s Google Workspace for
4 Education, either through a school-issued Chromebook or a personal device connected to
5 the internet.⁹ In other words, while Marana students need not use a school-issued
6 Chromebook, they must use their school-issued Google Account to access Marana’s cloud
7 environment, that is, Marana’s Google Workspace for Education suite of online apps.

8 In addition to using Google Chromebooks and Google Workspace for Education,
9 Marana uses three surveillance products that are integrated into Chromebooks and Google
10 Workspace for Education: **Gaggle, GoGuardian, and Securly**.¹⁰ Marana uses these tools
11 to surveil students around the clock,¹¹ regardless of whether a student is logged in while
12 physically off campus, after school hours, or using the Chromebook or Google apps for
13 personal purposes.¹² As for email, relevant here, Marana warns: “Marana Unified School
14 District scans all student email for objectionable content. Objectionable messages found
15 may be forwarded to school administration and subject to disciplinary action.”¹³

16 ⁷ Google, *Google Workspace for Education*,

17 https://edu.google.com/intl/ALL_us/workspace-for-education/editions/overview/.

18 ⁸ “Google Workspace for Education is a web-based tool for our students and staff.”

19 Marana High School, *Chromebooks, Google for Education*,

20 <https://maranahigh.maranausd.org/parent-tools/chromebooks>.

21 ⁹ “Google Workspace for Education is available from any computer connected to the
22 Internet.” *Id.*

23 ¹⁰ *Chromebooks*, *supra* note 1.

24 ¹¹ “Content in all student Google assigned email messages and information found in
25 Google Drive is monitored 24 hours a day, seven days a week. When an alert is triggered,
26 the school administrators receive a notification.” Marana High School, *Chromebooks*,
27 *Chromebook Safety*, <https://maranahigh.maranausd.org/parent-tools/chromebooks>.

28 ¹² “Safety features are available on the student’s device 24 hours per day, seven days a
week, no matter the location of the child’s Chromebook. An Internet filter and safety
management service are enabled regardless of where students access the Internet.
Parent(s)/Guardian(s) are ultimately responsible for monitoring their child’s internet
access on the device beyond the MUSD network.” Marana High School, *Chromebooks*,
Chromebook Parent and Student Contract, [https://maranahigh.maranausd.org/parent-
tools/chromebooks](https://maranahigh.maranausd.org/parent-tools/chromebooks).

¹³ *Google for Education*, *supra* note 8.

1 **Gaggle**—relevant to this case—has three main offerings. The *Gaggle Safety*
2 *Management* product provides constant AI-based, machine learning surveillance of
3 student content within Google Workspace for Education,¹⁴ including Gmail, Google
4 Drive, Google Chat, and Google Calendar.¹⁵ For Gmail, the body and subject line of email
5 messages are scanned, as are any attachments, images, links to websites, and shared items
6 from Google Drive.¹⁶ For Google Drive, items that are scanned include documents,
7 presentations, images, links to websites, PDFs, and other files.¹⁷

8 Gaggle’s *Web Activity Monitoring* tool, which is part of Gaggle Safety
9 Management, is integrated into the Chrome browser and “reviews student browser
10 activities on school-provided accounts or devices.”¹⁸ The company explains that this tool:

11 helps protect ... students by: [f]lagging concerning student searches and generating
12 alerts for Emergency Contacts; [a]ctively monitoring and capturing concerning
13 content entered into browsers, including forms, chats, emails, drafts, and unsent
14 content; [and] [s]haring screen captures of concerning browser activity with
Emergency Contacts.¹⁹

15 Gaggle further explains that Web Activity Monitoring “typically includes monitoring
16 input into the browser page, search queries made, social media engagements, and
17 communication exchanges.”²⁰ Thus, if students are logged into their school Google
18 Account but use the Chrome browser for personal purposes, such as doing a web search of
19 something unrelated to school or accessing social media, the student will be subject to
20

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22 ¹⁴ Gaggle, *Gaggle Safety Management*, <https://www.gaggle.net/safety-management>.

23 ¹⁵ Gaggle, *Gaggle Safety Management for Google*, [https://www.gaggle.net/safety-](https://www.gaggle.net/safety-management-google)
24 [management-google](https://www.gaggle.net/safety-management-google).

25 ¹⁶ *Id.*

26 ¹⁷ *Id.*

27 ¹⁸ Gaggle, *Gaggle Safety Management With Web Activity Monitoring*,
28 https://www.gaggle.net/hubfs/Product%20Documents/Gaggle_WAM_One%20Pager.pdf.

¹⁹ *Id.*

²⁰ Marie Hynes, *How Can Web Activity Monitoring Benefit My District*, Gaggle (April 24,
2024), <https://www.gaggle.net/blog/how-can-wam-benefit-my-district>.

1 surveillance by their school.²¹

2 It appears it was Gaggle Safety Management and Web Activity Monitoring that
3 were used against Plaintiff N.M. in this case, as it was his draft email that he deleted and
4 had no intention of sending that was screen-grabbed and sent to school officials. [Compl.
5 ¶¶ 47, 52] According to Gaggle, any AI-flagged content is subject to “expert review”²² by
6 “trained safety professionals” who “evaluate any flagged material for false positives
7 before reporting it to schools,” however a similar lawsuit out of Kansas²³ challenging
8 Gaggle surveillance “alleges that reviews are outsourced to third-party contractors.”²⁴

9 Gaggle also provides an automated *Web Filter* that monitors in real-time and
10 around the clock what websites students attempt to access, and can be integrated into
11 Gaggle Safety Management. The company explains: “When a student tries to access a
12 [web]site deemed inappropriate, the web filter promptly blocks the [web]site and the
13 student is redirected to a custom landing page that displays a notification explaining that
14 the page has been blocked.”²⁵

15 **GoGuardian**²⁶ is best known for its web filter, *GoGuardian Admin*.²⁷ The
16 company also offers *GoGuardian Beacon*,²⁸ an AI-based, machine-learning solution that
17 conducts surveillance “across all student content,” which “includes search engines, social

18
19 ²¹ “[I]f a student types a message implying that he/she will harm themselves or others on a
20 social network accessed through a social-provided device, Web Activity Monitoring will
21 detect the threat and alert the appropriate resource.” *Id.*

22 ²² *Gaggle Safety Management for Google*, *supra* note 15.

23 ²³ *See Tell v. Lawrence Board of Education*, No. 2:25-cv-02428 (D. Kan.), complaint
24 available at: <https://www.documentcloud.org/documents/26040279-lawrence-board-of-education-gaggle-complaint/>.

25 ²⁴ Daniel Wu, *AI Safety Tool Sparks Student Backlash After Flagging Art as Porn, Deleting Emails*, *Washington Post* (Sept. 24, 2025),
26 <https://www.washingtonpost.com/nation/2025/09/24/students-lawsuit-ai-tool-gaggle/>. *See also Tell Compl.*, *supra* note 23, ¶ 3.

27 ²⁵ Gaggle, *Gaggle Web Filter*, <https://www.gaggle.net/web-filter>.

28 ²⁶ GoGuardian, *Safety & Security Solution*, <https://www.goguardian.com/safety-security>.

²⁷ GoGuardian, *GoGuardian Admin*, <https://support.goguardian.com/s/goguardian-admin>.

²⁸ GoGuardian, *GoGuardian Beacon*, <https://support.goguardian.com/s/goguardian-beacon>.

1 media, email, web apps, and more. Beacon shows a holistic view of the student’s online
2 behavior.”²⁹ GoGuardian provides optional human review of Beacon’s AI-generated alerts
3 of student content.³⁰ Similarly, **Securly** offers the *Securly Filter* web filter³¹ and *Securly*
4 *Aware*, an AI-based tool that comprehensively surveils students’ online activities.³²
5 Human review of AI-flagged student content by Securly’s “On-Call” team of “safety
6 experts” is an optional add-on service of Securly Aware.³³

7 **II. Categorizing Use of School-Issued Devices and/or School-Based Cloud**
8 **Services as Always “On Campus” Means That Marana Students Who**
9 **Use Google Chromebooks and Google Workspace for Education Have**
10 **No Reprieve From Surveillance and Punishment**

11 There must be some place that is “off campus” for public school students even
12 when using school-issued devices and/or school-based cloud services, otherwise schools
13 will reach too far into students’ lives. *See Mahanoy*, 594 U.S. at 189–90. As one high
14 school student told the American Civil Liberties Union (ACLU), they would like to tell
15 their school “just like back off ... just give me room to breathe.”³⁴

16 As a practical matter, Marana students cannot escape surveillance by their schools
17 of their digital speech when they are using their school-issued Chromebooks and Google
18 Workspace for Education apps, *see supra* Part I, *even when they use these tools while*
19 *physically off campus, outside of school hours, for non-communicative purposes, or for*
20 *personal purposes, see infra* Parts IV and V.

21 As a legal matter, Marana students’ speech (digital or otherwise), while they are
22 physically *on campus* or otherwise under the auspices of the school, is fully subject to the

23 ²⁹ GoGuardian, *About Beacon*, <https://support.goguardian.com/s/article/About-Beacon-1629756055008>.

24 ³⁰ *Safety & Security Solution*, *supra* note 26.

25 ³¹ Securly, *Filter*, <https://www.securly.com/site/assets/product-briefs/filter.pdf>.

26 ³² Securly, *Aware*, <https://www.securly.com/site/assets/product-briefs/aware.pdf>.

27 ³³ *Id.*

28 ³⁴ Chad Marlow, et al., *Digital Dystopia: The Danger in Buying What the Edtech Surveillance Industry is Selling*, American Civil Liberties Union, at 20 (Oct. 2, 2023), <https://www.aclu.org/publications/digital-dystopia-the-danger-in-buying-what-the-edtech-surveillance-industry-is-selling>.

1 jurisdiction of the school under *Tinker* and subsequent cases. *See Mahanoy*, 594 U.S. at
2 187-88 (discussing the Court’s student speech precedents). If students’ use of tools such
3 as school-issued Chromebooks and Google Workspace for Education apps makes any
4 student speech automatically “on campus” for the purpose of justifying surveillance and
5 punishment by their schools under the First Amendment—irrespective of the other
6 circumstances of a student’s digital speech—Marana students will have no reprieve from
7 school authority. This is exacerbated by the fact that, per cases such as *Mahanoy*, *McNeil*
8 *v. Sherwood School District 88J*, 918 F.3d 700 (9th Cir. 2019), and *Chen Through Chen v.*
9 *Albany Unified School District*, 56 F.4th 708 (9th Cir. 2022), some *off-campus* speech
10 may also be subject to school regulation and discipline under the First Amendment, albeit
11 pursuant to higher burdens for the school. *See Mahanoy*, 594 U.S. at 189 (stating that
12 “courts must be more skeptical of a school’s efforts to regulate off-campus speech”).

13 The Supreme Court in *Mahanoy* cautioned against regulating “all the speech a
14 student utters during the full 24-hour day,” otherwise the “student cannot engage in [any]
15 kind of speech at all” due to the chilling effect. *See Mahanoy*, 594 U.S. at 189–90. *See*
16 *also Chen*, 56 F.4th at 720. [Mot. to Dismiss Op. 11]

17 Additionally, the Court noted that factors such as speaking from a location
18 physically off campus, speaking outside of school hours, and how the speech was
19 “transmitted” are particularly relevant when considering whether a student’s digital
20 speech may be subject to school regulation and discipline. *Mahanoy*, 594 U.S. at 190-91.
21 Here, Plaintiff N.M. was at home in the morning, before school began, and his speech was
22 *not* even transmitted to anyone—he deleted the speech in question without ever having
23 any intention of sending the email. [Compl. ¶¶ 42-43] As Plaintiffs argue, “N.M.’s speech
24 was fundamentally private.” [Mot. to Dismiss Op. 10]

25 The Court also observed that “the advent of computer-based learning” makes the
26 “on campus”/“off campus” distinction not so clear cut, *Mahanoy*, 594 U.S. at 189, making
27 even more inappropriate a categorical rule that any student speech made with school-
28 issued devices and/or school-based cloud services is always “on-campus” speech.

1 **III. Categorizing Use of School-Issued Devices and/or School-Based Cloud**
2 **Services as Always “On Campus” Coupled With Surveillance**
3 **Technologies Chills Students’ Freedom of Speech**

4 Rejecting such a categorical rule and thereby allowing public school students to
5 have a digital space that is “off campus” when using school-issued devices and/or school-
6 based cloud services is important to mitigate the chilling effect of digital surveillance on
7 students’ freedom of speech—that is, the risk that students will self-censor and choose not
8 to express themselves in certain ways or access certain information that may be disfavored
9 by school officials.

10 Surveillance generally creates a chilling effect due to rational fears around
11 judgment and punishment, and even the potential revealing of personal information, *see*
12 *infra* Part V; while digital surveillance and punishment for speech that is generated when
13 physically off campus, outside of school hours, and not even communicated exacerbates
14 that chilling effect. Notably, Plaintiff N.M. is now chilled from the Gaggle surveillance of
15 his email account and his subsequent suspension. [Compl. ¶¶ 115, 144] And the Kansas
16 complaint, which similarly challenges Gaggle surveillance, states, “Plaintiffs have self-
17 censored by refraining from creating and saving lawful, non-disruptive, expressive
18 content—such as original photography, creative writing, academic writing, and/or
19 journalistic drafts—to their District-issued devices and accounts.”³⁵

20 The U.S. Supreme Court has a long line of precedent recognizing the importance of
21 privacy to freedom of speech. Particularly relevant to teenagers who are coming into their
22 own identities, the Court recognized:

23 It is through speech that our convictions and beliefs are influenced, expressed, and
24 tested. It is through speech that we bring those beliefs to bear on Government and
25 on society. It is through speech that our personalities are formed and expressed.

26 *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000). As such, under the
27 First Amendment, individuals have the right to engage in speech activities in “the privacy

28 ³⁵ *Tell* Compl., *supra* note 23, ¶ 195.

1 of one's own home," free from government inquiry into a person's "private thoughts."
2 *Stanley v. Georgia*, 394 U.S. 557, 565 (1969).

3 Absent this First Amendment buffer, individuals experience a "deterrent effect" on
4 their freedom of speech. *Lamont v. Postmaster General*, 381 U.S. 301, 307 (1965). Other
5 courts agree. The Colorado Supreme Court rejected a search warrant seeking book
6 purchase records from a bookstore, stating, "Anonymity is often essential to the successful
7 and uninhibited exercise of First Amendment rights, precisely because of the chilling
8 effects that can result from disclosure of identity." *Tattered Cover, Inc. v. City of*
9 *Thornton*, 44 P.3d 1044, 1052 (Colo. 2002). *See also People v. Seymour*, 536 P.3d 1260,
10 1271 (Colo. 2023) (expressing the same concern related to a search warrant for Google
11 search history). In the digital context, district courts have also recognized the chilling
12 effect created by exposing private expressive activities. For example, if Amazon.com
13 were forced to reveal online book purchases, "the chilling effect on expressive e-
14 commerce would frost keyboards across America." *In re Grand Jury Subpoena to*
15 *Amazon.com Dated Aug. 7, 2006*, 246 F.R.D. 570, 573 (W.D. Wis. 2007). Similarly, the
16 revelation of online movie purchases would create "a chilling effect on the exercise of ...
17 First Amendment rights." *In re Grand Jury Investigation of Possible Violation of 18*
18 *U.S.C. § 1461 et seq.*, 706 F.Supp.2d 11, 17–18 (D.D.C. 2009).

19 Outside of the courtroom, research reveals the chilling effect of surveillance and,
20 conversely, the importance of some level of privacy and autonomy for young people.

21 Research has shown that, "when made aware of online surveillance by the
22 government, noteworthy percentages of respondents were less likely to speak or write
23 about certain things online, less likely to share personally created content, less likely to
24 engage with social media, and more cautious in their internet speech or search."³⁶

25 Relevant here, the same research found: "The younger the participant, the greater the

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27 ³⁶ Jonathon W. Penney, *Whose Speech Is Chilled by Surveillance?*, Slate Future Tense
28 (July 7, 2017), <https://slate.com/technology/2017/07/women-young-people-experience-the-chilling-effects-of-surveillance-at-higher-rates.html>.

1 chilling effect. This association was strongest in the scenario involving government
2 surveillance.”³⁷ Directly applicable here, the Center for Democracy & Technology (CDT)
3 found that of the students subject to school-directed digital surveillance (what CDT calls
4 “student activity monitoring”), 50 percent of students agreed with the statement: “I do not
5 share my true thoughts or ideas because I know what I do online may be monitored,” and
6 80 percent of students agreed with the statement: “I am more careful about what I search
7 online because I know what I do online may be monitored.”³⁸ CDT also found that
8 “[s]tudents with learning differences and physical disabilities report experiencing a greater
9 chilling effect from student activity monitoring.”³⁹ As Prof. Sarah Igo at Vanderbilt
10 University said, “One of the things [Gaggle is] teaching is not to share things, which is
11 presumably the opposite of what many mental health professionals would say.”⁴⁰

12 Prof. Danielle Citron at the University of Virginia School of Law argues that what
13 is called “student intimate privacy” or “intellectual privacy” is needed for “identity
14 experimentation.”⁴¹ Yet surveillance technologies threaten this

15 privacy that students need to explore, learn, befriend, and communicate. Students
16 experience enormous personal growth, especially during adolescence. They are
17 particularly vulnerable to feeling judged, misunderstood, and embarrassed.
18 Students need online spaces where they are protected from judgment, where they
19 can try on ideas and identities, and where they can explore friendships.⁴²

20 ³⁷ *Id.*

21 ³⁸ Elizabeth Laird, et al., *Hidden Harms: The Misleading Promise of Monitoring Students*
22 *Online*, Center for Democracy & Technology, at 22 (Aug. 2022), [https://cdt.org/wp-](https://cdt.org/wp-content/uploads/2022/08/Hidden-Harms-The-Misleading-Promise-of-Monitoring-Students-Online-Research-Report-Final-Accessible.pdf)
23 [content/uploads/2022/08/Hidden-Harms-The-Misleading-Promise-of-Monitoring-](https://cdt.org/wp-content/uploads/2022/08/Hidden-Harms-The-Misleading-Promise-of-Monitoring-Students-Online-Research-Report-Final-Accessible.pdf)
24 [Students-Online-Research-Report-Final-Accessible.pdf](https://cdt.org/wp-content/uploads/2022/08/Hidden-Harms-The-Misleading-Promise-of-Monitoring-Students-Online-Research-Report-Final-Accessible.pdf).

25 ³⁹ *Id.* at 23.

26 ⁴⁰ Caroline Haskins, *Gaggle Knows Everything About Teens And Kids In School*,
27 BuzzFeed News (Nov. 1, 2019),
28 [https://web.archive.org/web/20191102042910/https://www.buzzfeednews.com/article/car-](https://web.archive.org/web/20191102042910/https://www.buzzfeednews.com/article/carolinehaskins1/gaggle-school-surveillance-technology-education)
[olinehaskins1/gaggle-school-surveillance-technology-education](https://web.archive.org/web/20191102042910/https://www.buzzfeednews.com/article/carolinehaskins1/gaggle-school-surveillance-technology-education).

29 ⁴¹ Danielle Keats Citron, *The Surveilled Student*, 76 *Stan. L.Rev.* 1439, 1457-58 (2024),
30 [https://review.law.stanford.edu/wp-content/uploads/sites/3/2024/10/Citron-76-Stan.-L.-](https://review.law.stanford.edu/wp-content/uploads/sites/3/2024/10/Citron-76-Stan.-L.-Rev.-1439.pdf)
31 [Rev.-1439.pdf](https://review.law.stanford.edu/wp-content/uploads/sites/3/2024/10/Citron-76-Stan.-L.-Rev.-1439.pdf).

32 ⁴² *Id.* at 1457.

1 **IV. Categorizing Use of School-Issued Devices and/or School-Based Cloud**
2 **Services as Always “On Campus” Coupled With Surveillance**
3 **Technologies Raises Equity Issues**

4 If student speech made with school-issued devices and/or school-based cloud
5 services always counts as “on-campus” speech as a matter of law, that is, for purposes of
6 First Amendment-condoned punishment for speech and school-directed surveillance
7 precipitating that punishment, this raises equity issues among categories of students.

8 Students from higher-income families are more likely to have access to personal
9 devices and apps free of their schools’ surveillance software. Wealthier students may still
10 have to log into their schools’ online accounts when using their personal devices while
11 physically off campus or after school hours for *school-related purposes* like homework or
12 communicating with a teacher (this appears to be the case with Marana students and their
13 Google Accounts), and so are subject to school-directed surveillance in this context.⁴³
14 However, in some schools and districts, it may be possible for wealthier students to opt
15 out of using school-issued devices and/or school-based cloud services in their *entirety*,
16 freeing these students from surveillance by their schools and discipline derived from that
17 surveillance, because they can use personal technology while physically off campus or
18 after school hours *even for* school-related purposes.⁴⁴ This creates an inequitable and
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21 ⁴³ As CDT explained, “a student logged into a browser using their school credentials on a
22 personal device is subject to monitoring that may be comparable to that of a student using
23 a school-issued device.” DeVan L. Hankerson, et al., *Online and Observed: Student*
24 *Privacy Implications of School-Issued Devices and Student Activity Monitoring Software*,
25 Center for Democracy & Technology, at 9 (Sept. 2021), [https://cdt.org/wp-](https://cdt.org/wp-content/uploads/2021/09/Online-and-Observed-Student-Privacy-Implications-of-School-Issued-Devices-and-Student-Activity-Monitoring-Software.pdf)
[content/uploads/2021/09/Online-and-Observed-Student-Privacy-Implications-of-School-](https://cdt.org/wp-content/uploads/2021/09/Online-and-Observed-Student-Privacy-Implications-of-School-Issued-Devices-and-Student-Activity-Monitoring-Software.pdf)

26 ⁴⁴ When a father “learned about the Chromebooks being offered to third graders, he acted
27 quickly and was able to negotiate with his daughter’s teacher so she could use a different
28 computer and not have to use a Google account.” Rainey Reitman, *Roseville City School*
District Embraces Chromebooks, But At What Cost?, EFF Deeplinks (Dec. 1, 2015),
<https://www.eff.org/studentprivacy-casestudy>.

1 unjust “pay for privacy” scheme.⁴⁵ And wealthier students with access to personal devices
2 and apps may freely use these for *personal purposes* while physically off campus or after
3 school hours, without fear that school officials are watching over their shoulders.

4 Thus, notwithstanding the fact that some off-campus digital speech made with
5 personal devices and apps may still be subject to public school punishment, *see supra* Part
6 II, the odds are much lower that students from higher-income families will be punished
7 for digital speech, because they are simply using so-called “on-campus” school-issued
8 devices and/or school-based cloud services, with integrated surveillance technologies, less
9 often than their lower-income classmates.⁴⁶

10 By contrast, students from lower-income families are more likely to use their
11 school-issued devices and/or school-based cloud services, such as Chromebooks and
12 Google Workspace for Education apps, for both *school-related purposes* and *personal*
13 *purposes* while physically off campus or after school hours because their families cannot
14 afford a personal laptop or tablet.⁴⁷ CDT found that the majority of low-income students
15 (as well as Black, Hispanic, and rural students) “rely on a computer or tablet issued by
16 their school.”⁴⁸ This may also be true for a substantial number of Marana students given
17 that 25.5 percent of students district-wide receive free and reduced lunch.⁴⁹

18 It stands to reason, therefore, that lower-income and minority students are

19 ⁴⁵ “Privacy must not be a commodity that only the wealthy can afford.” Corynne
20 McSherry, et al., *Privacy First: A Better Way to Address Online Harms*, EFF Whitepaper,
21 at 7 (Nov. 2023), <https://www.eff.org/document/privacy-first-better-way-address-online-harms>.

22 ⁴⁶ “[Local Education Agencies] with wealthier student populations reported that their
23 students are more likely to have access to personal devices, which are subject to less
24 monitoring than school-issued devices.” *Online and Observed*, *supra* note 43, at 10.

24 ⁴⁷ “[I]n providing a breakdown of what proportion of students were currently using
25 devices from the district, one participant from an [Local Education Agency] with a higher-
26 poverty student body indicated that school-issued devices are used by nearly every student
27 in the district.” *Id.*

26 ⁴⁸ *Hidden Harms*, *supra* note 38, at 23.

27 ⁴⁹ Marzano Resources, *Evidence of Excellence: Marana Unified School District* (2025),
28 <https://www.marzanoresources.com/evidence-of-excellence/marana-unified-school-district>.

1 disciplined more often for digital speech, because they are subject to greater school-
2 directed surveillance due to using so-called “on-campus” school-issued devices and/or
3 school-based cloud services more often than their wealthier peers. CDT found that
4 “students in lower-income districts may be subjected to a higher degree of monitoring
5 than students in wealthier districts, who are more likely to make use of personal
6 devices.”⁵⁰ CDT also found that Hispanic and Black⁵¹ as well as LGBTQ+⁵² students are
7 more likely than other students to be disciplined as a result of student activity monitoring.
8 These outcomes are surely exacerbated when these groups of students are also lower-
9 income, and thus more likely to use school-issued devices and/or school-based cloud
10 services for a variety of purposes. A blanket rule that students who use school-issued
11 devices and/or school-based cloud services are automatically “on campus” would
12 reinforce these disciplinary disparities.

13 **V. Categorizing Use of School-Issued Devices and/or School-Based Cloud**
14 **Services as Always “On Campus” Incentivizes Public Schools to**
15 **Continue Using Surveillance Technologies That Harm Students**

16 A rule that counts all uses of school-issued devices and/or school-based cloud
17 services as “on campus” incentives public schools to *continue using* digital surveillance
18 technologies that harm students. Because the First Amendment generally grants public
19 schools greater authority to regulate “on-campus” speech, *see supra* Part II, with such a
20 rule on the books, schools will continue deploying surveillance technologies against
21 students—even when students use digital tools while physically off campus, outside of
22 school hours, for non-communicative purposes, or for personal purposes. Student
23 surveillance technologies are notoriously privacy invasive and inaccurate, causing various
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26 ⁵⁰ *Online and Observed*, *supra* note 43, at 10.

27 ⁵¹ *Hidden Harms*, *supra* note 38, at 24.

28 ⁵² Elizabeth Laird, et al., *Off Task: EdTech Threats to Student Privacy and Equity in the Age of AI*, at 27-28 (Sept. 2023), <https://cdt.org/wp-content/uploads/2023/09/091923-CDT-Off-Task-web.pdf>. *See also Hidden Harms*, *supra* note 38, at 21.

1 harms to students—including unnecessary investigations and discipline, disclosure of
2 personal information, and frustrated learning.

3 **Unnecessary investigations and discipline.** Here, Plaintiff N.M.’s speech was a
4 humorous way to vent privately about his grade. [Compl. ¶¶ 32-43] Venting on a personal
5 device wholly outside of the school digital ecosystem or even using pen and paper in the
6 pre-digital era would almost never reach school officials and so would not lead to school
7 punishment. Yet Gaggle’s invasive surveillance software led to the punishment of a high
8 school kid for making a joke—albeit a juvenile and tasteless one—in the privacy of his
9 own home and outside of school hours, and that he did not share with anyone or intend to
10 share with anyone beyond his mother.

11 Additionally, Gaggle’s AI-based system failed to understand that N.M.’s statement
12 was a joke, which was evident given the context of the other statements N.M. typed, from
13 the goofy slang he used, and from the fact that he immediately deleted the draft email and
14 never sent it to his teacher. AI systems are often inaccurate because they are bad at
15 understanding the nuances of human language, including context, humor/satire/parody,
16 slang, and cultural references.⁵³ Gaggle’s human reviewers, who ostensibly review any
17 AI-flagged student content before sending screenshots to school officials, provide little
18 comfort that they can mitigate false positives.⁵⁴ Numerous studies show that people often
19 defer to the decisions AI systems make.⁵⁵ (Moreover, some schools and districts may not

21 ⁵³ See, e.g., Antonios Kalloniatis & Panagiotis Adamidis, *Computational Humor*
22 *Recognition: A Systematic Literature Review*, Artificial Intelligence Review, § 1 (Dec. 20,
23 2024) (“The problem of humor recognition is considered one of the most complex
24 problems in artificial intelligence.”), [https://link.springer.com/article/10.1007/s10462-](https://link.springer.com/article/10.1007/s10462-024-11043-3)
25 [024-11043-3](https://link.springer.com/article/10.1007/s10462-024-11043-3).

24 ⁵⁴ Some reviewers may not be particularly motivated to get it right given that they are not
25 paid very well. See Glassdoor, *Gaggle Content Reviewer Hourly Pay* (last updated April
26 10, 2025), [https://www.glassdoor.com/Hourly-Pay/Gaggle-Content-Reviewer-Hourly-](https://www.glassdoor.com/Hourly-Pay/Gaggle-Content-Reviewer-Hourly-Pay-E672713_D_KO7,23.htm)
27 [Pay-E672713_D_KO7,23.htm](https://www.glassdoor.com/Hourly-Pay/Gaggle-Content-Reviewer-Hourly-Pay-E672713_D_KO7,23.htm) (showing an hourly wage as low as \$10 over the past year).

27 ⁵⁵ Automation bias “is a cognitive phenomenon where humans display an overreliance on
28 automated systems, favoring automated recommendations over their own judgment, even
when contradictory and more accurate information is available.” Giuseppe Romeo &

1 be able or willing to pay for optional human review of AI-generated alerts by other
2 products.) In Kansas, school officials accused a student of possessing child pornography
3 based on a Gaggle alert, even though the student had “uploaded a photography assignment
4 that included a picture of one of her friends who was fully clothed and wearing a
5 spaghetti-strap tank top,” which was permitted under the district’s dress code.⁵⁶ Another
6 student was questioned because she wrote “I wanted to kill” in reference to a fly.⁵⁷ Here,
7 Gaggle still sent N.M.’s joke to school officials, for which he received substantial
8 punishment in the form of a multi-day suspension. [Compl. ¶¶ 47, 84-85] Yet, according
9 to a U.S. Senate investigation, “Gaggle and GoGuardian both explicitly stated that their
10 products were not intended to be used for discipline or punitive purposes.”⁵⁸

11 **Disclosure of personal information.** The invasiveness of student surveillance
12 software is particularly problematic given that all students, regardless of socio-economic
13 status, may be inclined to use Marana Chromebooks and Google Workspace for
14 Education apps for personal purposes due to the tools’ convenience or ease of use, while
15 physically off campus or outside of school hours. This is not unreasonable—Marana’s
16 Google Workspace for Education includes several apps,⁵⁹ many of which can easily be
17 used for personal purposes, such as Docs to write a poem or Gmail to plan a weekend
18 outing with friends.⁶⁰ Students may also use the Chrome browser to navigate to websites

19 Daniela Conti, *Exploring Automation Bias in Human–AI Collaboration: A Review and*
20 *Implications for Explainable AI*, § 1.2, *AI & Society* (July 3, 2025),
21 <https://link.springer.com/article/10.1007/s00146-025-02422-7>.

22 ⁵⁶ *Tell Compl.*, *supra* note 23, ¶¶ 103, 106.

23 ⁵⁷ Wu, *supra* note 24; *Tell Compl.*, *supra* note 23, Exh. O at 7.

24 ⁵⁸ Sen. Elizabeth Warren & Sen. Ed Markey, *Constant Surveillance: Implications of*
25 *Around-the-Clock Online Student Activity Monitoring*, at 5 (March 2022),
26 [https://www.markey.senate.gov/news/press-releases/senators-markey-warren-](https://www.markey.senate.gov/news/press-releases/senators-markey-warren-investigation-finds-that-edtech-student-surveillance-platforms-need-urgent-federal-action-to-protect-students)
27 [investigation-finds-that-edtech-student-surveillance-platforms-need-urgent-federal-action-](https://www.markey.senate.gov/news/press-releases/senators-markey-warren-investigation-finds-that-edtech-student-surveillance-platforms-need-urgent-federal-action-to-protect-students)
28 [to-protect-students](https://www.markey.senate.gov/news/press-releases/senators-markey-warren-investigation-finds-that-edtech-student-surveillance-platforms-need-urgent-federal-action-to-protect-students).

29 ⁵⁹ “Student accounts may include but are not limited to Drive, Docs, Sheets, Slides,
30 Google Classroom, Gmail, Sites, Calendar, Maps, My Maps, and Earth.” *Google for*
31 *Education*, *supra* note 8.

32 ⁶⁰ *See id.* (“At the high school level, students are permitted to communicate with their
33 peers at the school where they attend.”).

1 for personal purposes while logged into their Google Account, *see supra* Part I, which
2 may reflect a myriad of personal information about students, from interests like music and
3 sports, to more sensitive details like medical conditions and political beliefs. Moreover, it
4 appears that Marana High School and Marana Unified School District actually
5 contemplate some personal use of their digital tools.⁶¹

6 Yet students who use these school tools in their personal lives are subject to
7 invasive surveillance. In Kansas, a student was logged into her school Google Account to
8 edit her friend’s college admission essay stored on the friend’s *personal* Google Account
9 when Gaggle flagged the friend’s essay for mentioning “mental health.”⁶² Students who
10 charged their personal cell phones via their school Chromebooks were subject to Gaggle
11 surveillance of intimate text messages.⁶³ Sometimes school surveillance technologies lead
12 to disastrous consequences, such as when LGBTQ+ students are “outed” without their
13 consent.⁶⁴ This is problematic because, according to Prof. Katy Pearce at the University of
14 Washington, “gay youth, especially those in more isolated environments, absolutely use
15 the internet as a life preserver,” when their families and communities are not supportive.⁶⁵

16 **Frustrated learning.** Web filters are notorious for their inaccuracy, whether they
17 flag when students access entirely benign online content or outright block students’ ability
18 to access online content. Web filters generally work based on a list of keywords or lists of
19

20 ⁶¹ “MUSD currently partners with a company, Securly, which provides a parent portal for
21 the student assigned devices (those students who take their Chromebooks back and forth
22 from home to school). This parent portal allows parent(s)/guardian(s) the option of further
23 defining their *child’s online experience away from school.*” *Chromebook Safety, supra*
24 note 11 (emphasis added).

25 ⁶² Wu, *supra* note 24.

26 ⁶³ Pia Ceres, *Kids Are Back in Classrooms and Laptops Are Still Spying on Them*, Wired
27 (Aug. 3, 2022) <https://www.wired.com/story/student-monitoring-software-privacy-in-schools/>.

28 ⁶⁴ *See Off Task, supra* note 52, at 27-28; *Hidden Harms*, *supra* note 38, at 21.

⁶⁵ Clare Bryan & Sharon Lurye, *Student Privacy vs. Safety: The AI Surveillance Dilemma in WA Schools*, Seattle Times & Associated Press (March 12, 2025) <https://www.seattletimes.com/education-lab/student-privacy-vs-safety-the-ai-surveillance-dilemma-in-wa-schools/>.

1 websites that are approved (“whitelisted”) and/or prohibited (“blacklisted”). *Amicus* EFF
2 conducted extensive research into GoGuardian’s web filter based on public records
3 requests sent to school districts, and produced a report⁶⁶ and related quiz called *Red Flag*
4 *Machine*.⁶⁷ The records revealed that GoGuardian flagged a wide range of websites for
5 ridiculous reasons, a subset of which related to history, politics, and news, as well as
6 general educational sites.⁶⁸ In one school district, for example, math websites were
7 flagged for including the word “colon,” even though the punctuation mark (not body part)
8 is used in math formulas.⁶⁹

9 As CDT found:

10 The most commonly cited risk of filtering and blocking is how the use of this
11 technology actually makes learning more difficult. For example, 71 percent of
12 students whose school uses filtering and blocking software agree with the
13 statement, “It is sometimes hard to complete school assignments because I get
14 filtered or blocked from being able to get all of the online information I need.”⁷⁰

14 Conclusion

15 *Amicus* EFF urges the Court to reject a rule that all uses of school-issued devices
16 and/or school-based cloud services are categorically “on campus.” Marana students,
17 especially teenagers, need a digital space that is “off campus” even when using
18 Chromebooks and Google Workspace for Education, free of surveillance, judgment, and
19 punishment. Otherwise, public schools will reach too far into students’ lives, chilling their
20 online speech. Such a rule will also exacerbate socio-economic inequities among students
21 and incentivize school-directed surveillance that harms students.

25 ⁶⁶ Dave Maass, et al., *GoGuardian: A Red Flag Machine By Design*, EFF Whitepaper
26 (Oct. 2023), <https://redflagmachine.org/research/>.

27 ⁶⁷ Take the quiz at: <https://redflagmachine.org/>.

28 ⁶⁸ *Red Flag Machine*, *supra* note 66, at 12.

⁶⁹ *Id.* at 14.

⁷⁰ *Off Task*, *supra* note 52, at 20.

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