



School Law FYI

U.S. Supreme Court Emphasizes that School Officials Have Limited Authority to Discipline Students for Off-Campus Speech

BRIAN P. GOODMAN | 06.24.21

A recent U.S. Supreme Court decision, *Mahanoy Area School District v. B.L.*, should lead school officials to take a cautious approach to regulating student speech that takes place off school grounds and outside of school-sponsored activities. With the rise of social media, school officials increasingly face complaints from parents and students regarding solely off-campus student speech. While in certain situations, school officials have the authority to take action regarding off-campus speech, the First Amendment places limits on that authority.

Frustrated Student Aired Her Grievances on Social Media.

At the end of her freshman year, student B.L. tried out for the varsity cheerleading squad. To her dismay, she made the junior varsity team but did not make the varsity team. After school, B.L. and a friend went shopping at a local convenience store and aired their grievances over Snapchat using B.L.'s personal device and account. B.L. and her friend "snapped" a photo of themselves, middle fingers raised, with the caption "F — school F — softball F — cheer F — everything" followed by a blank screen with a caption that read "love how me and [another student] get told we need a year of jv before we make varsity but tha[t] doesn't matter to anyone else 😏." The "F-word" was not censored in her snaps. The snaps were broadcasted to her 250 "friends" on Snapchat, which included other Mahanoy High School students, a few of which were on the cheerleading squad. At least one fellow cheerleader took pictures of B.L.'s snaps and shared them with other members of the cheerleading squad, including a cheerleading squad coach.

Throughout the following week, several other cheerleaders approached the coaches “visibly upset” about the posts. During an algebra class taught by one of the coaches, students discussed the snap for about 5-10 minutes of class time. Ultimately, the school decided to suspend B.L. from the junior varsity cheerleading squad for the upcoming year because the posts used profanity in connection with a school extracurricular activity. B.L. filed suit claiming the suspension from the cheerleading squad violated her First Amendment rights, and the case made its way to the Supreme Court.

The Supreme Court Held that the District Violated the First Amendment in this Case.

In a narrow ruling, the U.S. Supreme Court held that the district’s discipline of B.L. was a violation of the student’s First Amendment Rights. However, the Court left the door open for school officials to regulate off-campus speech in other situations. The Court outlined three characteristics of off-campus speech that often limit (but do not always limit) schools’ authority to regulate such speech:

- Schools do not have authority over students at the time students engage in off-campus speech. Schools do not stand *in loco parentis* to students when they are off campus. Instead, during those times, students are under the authority of their parents.
- Regulation of off-campus speech, when coupled with regulation of on-campus speech, means that a student’s speech would be subject to regulation 24 hours a day. Courts must be more skeptical of a school’s efforts to regulate off-campus speech because it might result in a student never being able to engage in certain types of speech.
- Public schools are “the nurseries of democracy,” and in this role, must protect certain speech, even speech that is unpopular.

The Court found that at its core, B.L.’s speech was critical of the team, the coaches, and the community. However, the First Amendment generally provides strong protection to this type of pure speech. The Court emphasized that at the time of the speech, B.L. was off campus, using her personal device, and messaging her private circle of Snapchat friends. She was not wearing any clothing bearing the school’s name, and she did not reference the school or any individual by name in her speech.

The Court rejected the following arguments of the district:

- The district asserted that it had an interest in teaching good manners and in punishing the use of vulgar language aimed at the school community. However, this interest is weakened considerably by the fact that B.L. spoke outside the

school on her own time. The school was not standing *in loco parentis* to B.L. when the snap was sent.

- The district asserted that it was trying to prevent a substantial disruption to a school-sponsored activity. However, the 5-10 minutes of discussion over a couple of days in algebra class regarding the snaps was not a substantial disruption. The desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint is not sufficient to demonstrate a substantial disruption.
- The district asserted that the speech could affect the morale of the cheerleading squad. However, the district lacked a basis for this assertion beyond concern for the general negativity put out there by the speech. This was also an insufficient basis for regulation.

When Can a School Discipline a Student for Off-Campus Speech?

In this case, the Supreme Court ruled the district went too far. However, the Court expressly stated that in certain circumstances, schools might be able to regulate off-campus speech. These circumstances might include:

- Serious or severe bullying or harassment targeting particular individuals;
- Threats aimed at teachers or other students;
- The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and
- Breaches of school security devices, including material maintained within school computers.

If the facts of this case were slightly different, the outcome might have been different. Let's say a student used Snapchat to harass and target a minority freshman student who made the varsity cheerleading squad. The snap contained racial slurs. The student was wearing her cheerleading outfit at the time with the school's logo prominently displayed. The snap "went viral," and caused heated debate among students and staff during instructional time that made it challenging for students to learn and resulted in several students filing complaints that they believed that the school permitted a racially hostile environment to develop on campus. Under these facts, the school likely would be able to take disciplinary action against the student because the district has a strong interest (and also a legal obligation) to provide a school environment free of racial harassment. There is also strong evidence in this hypothetical example that the snap created a substantial disruption to the learning environment on campus.

Take-aways.

1. This case does not change school officials' authority to regulate *on-campus* student speech. The First Amendment permits school officials to regulate on-campus student speech within the context of school-sponsored and controlled curriculum, speech that can reasonably be viewed as promoting illegal drug use, speech that is a true threat, and speech that is obscene, vulgar, lewd, indecent, or plainly offensive.
2. Under the test developed in *Tinker v. Des Moines Independent Community School District*, school officials may restrict otherwise protected student speech on campus if the school officials can reasonably forecast that the speech will substantially disrupt a school activity (or if such a disruption actually occurs), or if the expression intrudes on the rights of other students.
3. The main takeaway from this decision is that school officials should proceed with caution when contemplating discipline for off-campus student speech. Given the complexity of this issue and the limited authority schools have in these situations, school officials should strongly consider reaching out to legal counsel.
4. Districts may wish to review their policies to see what kinds of restrictions or control they place on off-campus student speech and consider any necessary revisions in light of this case.

If you have any questions regarding off-campus student speech, please contact the author of this article or any member of the Boardman Clark School Law practice group.

DISCLAIMER: Boardman & Clark LLP provides this material as information about legal issues and not to give legal advice. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.

Primary Author



Brian P. Goodman
(608) 283-1722

School Law Practice Group Members

Brian P. Goodman
(608) 283-1722

Douglas E. Witte
(608) 283-7529

Jennifer S. Mirus
(608) 283-1799

Christopher T. Schmidt
(608) 286-7157

Michael J. Julka
(608) 286-7238

Steve Zach
(608) 283-1736

Rhonda R. Hazen
(608) 283-1724

Daniel T. Fahey
(608) 286-7216

William L. Fahey
(608) 286-7234

Richard F. Verstegen
(608) 286-7233

Tess O'Brien-Heinzen
(608) 283-1798

Eric B. Hagen
(608) 286-7225

Eileen A. Brownlee
(608) 822-3251

David P. Weller
(608) 286-7235

Matthew W. Bell
(608) 286-7239