

CLIENT ALERT

June 25, 2021

**US SUPREME COURT LIMITS PUBLIC SCHOOL DISTRICTS' REGULATION OF
OFF-CAMPUS STUDENT SPEECH**

In a decision that is sure to draw the attention of students, parents, and school administrators, on Wednesday, June 23, 2021, the United States Supreme Court held that a Pennsylvania school district violated a student's First Amendment rights when it disciplined her for posting vulgar language and gestures on social media from an off-campus location. While finding in favor of the student based on the particular facts of the case, the Court also addressed potential circumstances where a student's off-campus conduct could be grounds for discipline, thereby leaving open the possibility that future cases could be decided differently.

In Mahanoy Area School District v. B.L., the student in question, while visiting a convenience store over the weekend, posted two images on Snapchat that expressed her frustration with her school and the school's cheerleading squad. One of the posts contained vulgar language and gestures. Upon learning of the post, the school district suspended the student from the junior varsity cheerleading squad for the upcoming year. After the student and her parents unsuccessfully sought to overturn the discipline, they filed suit in federal court alleging, among other arguments, that the school district's actions violated the student's First Amendment right to free speech. The federal District Court initially issued an injunction ordering the school district to reinstate the student to the cheerleading team and subsequently granted the student's motion for summary judgment, finding that her social media posts had not caused a substantial disruption at the school. On appeal, the Third Circuit Court of Appeals found for the student but on different grounds. The school district appealed the case to the Supreme Court.

In an 8-1 decision, the Supreme Court held that "although public schools may have a special interest in regulating some off-campus speech, the special interests offered by [Mahanoy Area School District] are not sufficient to overcome B.L.'s interest in free expression in this case." (emphasis added.) In its analysis, the Court reviewed the Supreme Court case of Tinker v. Des Moines Independent Community School District, which held that schools have a special interest in regulating on-campus speech that materially disrupts classwork or involves substantial disorder. The Court in Mahanoy Area School District found that the special characteristics that allow school districts to regulate student speech do not always disappear when the speech takes place off campus. As examples of off-campus conduct that could implicate school districts' ability to regulate student speech, the Court cited serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; failure to follow rules on lessons, writing papers, using computers or participating in online activities; and, breaches of school security devices. Furthermore, one of the characteristics that would allow a school to regulate off-campus speech would be a finding of material disruption to school and classroom activities. In this case, the Court found that the record did not support a finding of the type of "substantial disruption" in the school required under Tinker, even though the record reflected

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that the matter had been discussed in a class for 5-10 minutes for a couple of days and that members of the cheerleading team were upset about the content of the posts.

The Court identified three reasons why school districts have a diminished expectation of regulating off-campus speech, stating that schools do not stand *in loco parentis* when a student speaks off-campus; that regulating off-campus speech would mean that school districts could oversee all student speech, regardless of location; and, that school districts, as “nurseries of democracy,” have an interest in protecting unpopular expression.

Analyzing the particular facts of this student’s case, the Court found that the posts were protected First Amendment speech in that they reflected criticism of the rules of the community, that they were made outside of school hours from a location outside of the school, that she did not identify the school in her post, and she did not target any member of the school community with vulgar or abusive language. The Court also found it noteworthy that she transmitted the posts through her personal cell phone to a private circle of friends on Snapchat.

While it is possible that Mahanoy Area School District could open the door to other limits on schools and other public employers’ limitations of speech, for now the Court’s holding is narrow, and will provide public school districts with a benchmark against which to measure whether certain off-campus speech by students is grounds for discipline. Given the Court’s explicit identification of other circumstances that may warrant school regulation of off-campus speech, it is likely that the issue will be revisited in future cases presenting different circumstances.

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