

Students May Face Discipline for Off-Campus Speech

The United States Third Circuit Court of Appeals, which includes Pennsylvania within its jurisdiction, has ruled in two cases that students may be disciplined for out of school speech. In *Layshock v. Hermitage School District*, a unanimous three-judge panel decided that punishing students for out of school speech violates their First Amendment Rights. However, in *J.S. v. Blue Mountain School District*, the panel split, voting 2-1 in the decision that students may be punished for lewd speech on the Internet about school officials which had a potential to create a substantial disturbance at the school.

In *Layshock*, a student posted an offensive MySpace Profile in the principal's name. The school observed the profile and suspended the student for ten days, required him to finish high school in an "Alternative Education Program" and forbid him from attending graduation. Some of the discipline was retracted. The profile was created off campus and the speech took place almost entirely off campus. The Court decided that this was protected free speech. The Court expressed concern about a school disciplining a student for speech that occurs off campus, "It would be an unseemly and dangerous precedent to allow the state in the guise of school authorities to reach into a child's home and control his/her actions there to the same extent that they can control that child when he/she participates in school sponsored activities." There was no evidence in the case that the speech caused a substantial disruption in the school setting as a result of the profile. Since there was no substantial disruption, the Court decided that the school could not impose discipline upon the student.

By contrast, in *J.S.*, the discipline was upheld. The student in this case posted a profile on MySpace that showed a photograph of a principal and described him as pedophile and sex addict. The student was suspended for ten days. The speech in this case was more vulgar than that in *Layshock* and there was evidence that there was a "severe deterioration in discipline" in the school. The *J.S.* Court concluded that the school has the power to punish "student speech, whether on or off-campus, that causes or threatens to cause a substantial disruption of or material interference with school or invades the rights of other members of the school community." The Court reasoned that the Constitution permits schools to regulate student speech if it "reaches beyond mere criticism to significantly undermine a school's authority in challenging his fitness to hold his position by means of baseless, lewd, vulgar and offensive language." In this case, the actual disruption did not justify discipline. Rather, the immediate impact that the profile had in the school and that a substantial disruption that was reasonably foreseeable if the school did not take action, were outcome determinative.

These two Third Circuit panel decisions are significant because they demonstrate current uncertainty involving off campus student speech on the Internet. While the two cases may be difficult to reconcile, it appears that schools may impose discipline for off campus speech if that speech causes a substantial disruption in the school setting or if schools can show that failure to act would likely result in substantial disruption.

If you have any questions about student speech on the Internet, you are well advised to consult an educational law attorney. If you would like to discuss this or any educational law matter, please do not hesitate to contact me at 1-877-LAW-2555.

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