

The US Supreme Court has finally set some parameters on when public school districts can discipline students for off-campus speech. This marks the first time the court has weighed in on this issue and provides helpful guidance to public schools in navigating this issue.

In *Mahanoy Area School District v. B.L.*, a public school in Pennsylvania suspended a high school student from the JV cheerleading team after she vented frustration on her Snapchat account when she did not make the varsity squad. In two images, the student used vulgar language and gestures, and shared them with her Snapchat friends. When school officials saw the posts, they suspended her from cheerleading for the year.

The Supreme Court held the suspension violated the student's First Amendment rights. In an 8-1 decision, the justices said that while schools have an interest in regulating off-campus speech that materially and substantially disrupts the school environment, a school's interest in regulating off-campus speech is limited for three reasons: (1) the school is not typically acting *in loco parentis* when students are off-campus (unlike when they are at school); (2) allowing schools to regulate off-campus speech would amount to 24/7 control over students, which the court was very skeptical of; and (3) public schools have an interest in protecting unpopular expression as a means of fostering democratic thought.

In *B.L.*, the court has built on its existing "material and substantial disruption" test and provided a road map to the factors schools should consider in determining whether to punish students' off-campus speech. Factors that strengthen a school's interest in punishing off-campus speech are whether the speech is:

- Severe bullying or harassment targeting particular individuals
- A threat aimed at staff or students
- A failure to follow rules concerning lessons, the writing of papers, the use of computers or participation in other online school activities
- A breach of school security devices

By contrast, factors that weighed against disciplining the student in this case included:

- The student was criticizing rules of the community of which she was a part, which is at the core of First Amendment protected speech
- The student posted outside of school hours, from an off-campus location, and did not identify the school in her post or target any member of the school community with vulgar or abusive language
- The student transmitted her message through a personal cell phone to an audience of her private Snapchat friends
- There was no evidence of substantial interference or disruption of the school generally or even the cheerleading team specifically

Public schools should review these factors and refer to them as the schools consider disciplining students for off-campus speech. Consult with your district's counsel regarding specific questions or disciplinary situations.

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