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What the Supreme Court's Decision in Mahanoy Area School District v. B.L. Means for Students' Free Speech Rights

Publication:

School Law Alert July 13, 2021

At the end of its court term in June, the U.S. Supreme Court revisited the topic of public school students' free speech rights in Mahanoy Area School District v. B.L. By a vote of 8-1, the Court ruled that the First Amendment's free speech protection extended to a high school student who shared a vulgar critique of her school's cheerleading team on social media.

B.L., a freshman at a Pennsylvania public high school, failed to make the varsity cheerleading team and was placed instead on the J.V. squad. She was unhappy with this result. The following weekend, she vented her frustration online by sharing a profanity laden post with her 250 Snapchat "friends." When school officials found out about the post, they suspended B.L. from the J.V. team, citing a school policy which forbid the use of profanity in connection with school extracurricular activities. B.L. filed suit, alleging that such action amounted to a violation of her First Amendment rights.

Under the Supreme Court's previous precedent in Tinker v. Des Moines Independent Community School District, students' speech is constitutionally unprotected when it "materially disrupts classwork or involves substantial disorder." In considering B.L.'s case, the Court faced the question of whether "off campus" speech could ever be "materially disruptive."

The Court declined to adopt a bright-line rule. Justice Stephen Breyer, writing for the majority, observed that schools' regulatory interests remain significant in some "off campus" contexts, such as when remote classes are conducted over the internet. To provide guidance in this grey area, the Court emphasized three contrasting

considerations that courts need to take into account when deciding whether a school may legitimately penalize student speech.

First, the Court noted that "off campus" speech is typically within the purview of parental supervision. When a student is in school, the school operates *in loco parentis*, or in the place of parents, but such a responsibility does not typically extend outside of the classroom or other school facilities. Second, "off campus" speech is potentially all-encompassing. Because the school could theoretically sanction speech anywhere, no principle prevents the school from sanctioning speech at any time, either. Courts must be wary of upholding a 24/7 restriction. Third, schools have an interest themselves in protecting students' unpopular opinions. Public schools are the "nurseries of democracy" and therefore serve to develop the free exchange of ideas on which the nation depends.

In B.L.'s specific case, the school's identified interests included teaching good manners, avoiding classroom disruptions, and preserving team morale. The court weighed these interests against the three factors described above, and found them lacking. B.L.'s speech did not occur while the school was operating as a parent. Her statements were made outside of school hours, from her private smartphone. And the content of her speech had value as a criticism of her local community, even if it was crude.

The Court's decision therefore limits, but does not eliminate, a public school's ability to sanction student expression outside of the typical classroom environment. Some potential instances identified by the Court where such sanctions might be constitutional include cases of severe bullying or harassment, threats aimed at teachers or classmates, failure to follow rules concerning plagiarism, and the outside use of school computers or technology platforms.

If you have any questions about this Alert, please contact Teresa Moore or any member of our School Law Group.

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