

Supreme Court Holds Public School Regulation of Off-Campus Student Speech Violates 1st Amendment

June 25, 2021

On June 23, 2021, the Supreme Court held in ***Mahanoy Area School District v. B.L.*** that a public school may not regulate off-campus student speech where there is no substantial disruption of school activities.

In *Mahanoy*, a high school rising sophomore tried out for her school's cheerleading team and did not make the varsity team. Upset that an incoming freshman had been advanced to the varsity squad ahead of her, the student posted photos of herself and a friend with their raised middle fingers bearing the caption: "F**k school f**k softball f**k cheer f**k everything" on her private Snapchat story, a feature of the social media app that allows any person in the user's "friend" group to view the images for a 24-hour period. The post was made from an off-campus location and during non-school hours. After screenshots of the messages made their way to the coaching staff, the student was removed from the junior varsity cheer team. The school took the position that the messages—which spread to other students at school—caused a "substantial disruption" of school operations. The student prevailed in both the trial court and in the Third Circuit Court of Appeals. Notably, the majority of the appellate court held that the school had no ability to discipline the student for pure speech which occurred outside of the school.

The Supreme Court upheld the result but did not adopt the Appellate Court's position that discipline for off-campus speech was never allowed. Writing for an 8-1 majority, Justice Breyer explained that a school may have an interest and right to discipline off-campus speech, but that it could do so only in limited circumstances where the speech causes significant disruption to the school's educational programs. The Court mentioned as examples bullying/harassment of particular individuals, threats of harm and cheating. Because the student did not use fighting words or obscenity, did not identify the school in her social media posts or target any school member with vulgar or abusive language, and circulated her speech to a private circle of her friends on Snapchat, the Court held that there was no substantial disruption of school activity or a threatened harm to the rights of others to justify the school's discipline.

Key Takeaways

- Off-campus speech may still be subject to discipline, but a court will require a clear showing of a disruption to the school's educational program before upholding the school's action. Discipline will most likely be upheld when the speech involves serious or severe bullying; harassment targeting particular individuals; threats (i.e., fighting words); and breaches of school security devices.
- Courts will apply stricter scrutiny of discipline for speech off campus. In particular, regulation of political or religious speech "that occurs outside school or a school program or activity" requires meeting a "heavy burden to justify intervention."
- *Mahanoy* likely will not affect a school's ability to discipline for speech that occurs in a context where the student is representing the school at an off-campus event.

A school's regulation of off-campus speech and the determination to impose discipline on a student for such speech will always require a fact-specific analysis. Please consult your **Miller Canfield education attorneys**, or the authors of this alert, with any questions or concerns that you may have related to this decision.