

## Federal Judge Rules School Code's "Verbal Assault" Provision Unconstitutional

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A federal judge has declared unconstitutional Michigan's statute regarding "verbal assaults" in schools, and school districts are headed "back to the drawing board" to review and revise their policies in light of the decision.

In *Smith v Mt. Pleasant Public Schools*, Judge David Lawson declared the School Code's provision on verbal assaults constitutionally overbroad and vague, and struck down that portion of the statute, as well as any school district policy or rule enacted under authority of the statute. As a practical matter, this means that school administrators and school boards must carefully review their Board Policies as well as student code policies and procedures, in light of the opinion.

Smith, a high school student, read aloud a three-page personal--and highly critical--commentary on the school's tardy policy. He referred to the principal as a "skank" and "tramp" for reasons including her divorce from her husband, after allegedly having an affair with another school administrator. Additionally, the student claimed the assistant school principal was confused about his sexuality.

For this, he was suspended and then--with the sponsorship of the ACLU--filed his lawsuit alleging violation of his First Amendment rights to free speech, and asking that both the policy and the statute provision be struck down as unconstitutional. He also wanted the disciplinary action expunged from his record.

Judge Lawson decided the policy and statute lacked standards for uniform, nonarbitrary application; left too much discretion to the school officials for determining violations; and could be interpreted to prohibit constitutionally-protected speech. In addition, the statute was vague because it does not define the term "verbal assault" and the policy was vague because it didn't provide any guidance for determining violations.

If there was a bright spot for school administrators, it was the judge's determination that the disciplinary record would not be expunged--and this was because the student's statement about "marital infidelity and sexual identity" of named administrators "fell beyond the protection of the First Amendment."

If you need assistance with revision of this or any other school policy, or with other questions related to school law, please contact our Labor Group, Beverly Hall Burns at (313) 496-7508, email: [burns@millercanfield.com](mailto:burns@millercanfield.com).