

Supreme Court Upholds Student First Amendment Rights, Limits School District Authority to Discipline for Off-Campus Speech

Written by Tad Heuer, Seth Reiner

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The United States Supreme Court today [released its opinion](#) in *Mahanoy Area School District v. B.L.*, holding that the First Amendment protects most student speech from school disciplinary measures if such speech was not made on school premises or during school activities. The student, on a junior varsity cheerleading team at a public school, posted a Snapchat story to a private group of 250 friends expressing her expletive-laced frustration at not making the varsity cheer team. The images were viewed by the team coach, and led to the student's suspension from the cheer squad for violating school rules. The student sued, alleging a violation of her First Amendment rights. The district court held for the student, and the Third Circuit affirmed.

In an 8-1 decision by Justice Breyer, the Third Circuit decision was affirmed, although the Court disagreed with its reasoning. Unlike the Third Circuit, which held that public schools have *no* authority to regulate off-campus student speech, the Court ruled that public schools *may* have a special interest in regulating some off-campus student speech. As such, the Court observed that:

The school's regulatory interests remain significant in some off-campus circumstances. ... These include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices.

The Court identified three features of off-campus speech that diminish the "leeway" the First Amendment grants to schools as articulated in the Court's long-standing *Tinker* decision:

First, a school, in relation to off-campus speech, will rarely stand *in loco parentis*; [second,] when it comes to political or religious speech that occurs outside school or a school program or activity, the school will have a heavy burden to justify intervention; [and third,] the school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off-campus.

However, the Court declined to provide "a broad, highly general First Amendment rule stating just what counts as 'off campus' speech and whether or how ordinary First Amendment standards must give way off campus to a school's special need[s] . . ." Nor was the Court willing to provide guidance on when these three features make the speaker's off-campus location the "critical difference," instead leaving for future cases to decide the "where, when, and how."

In *Mahanoy*, the Court ruled that the student's speech was not one that the school could regulate and discipline. In fact, the student "uttered the kind of pure speech to which, were she an adult, the First Amendment would provide strong protection." Although the Court acknowledged that the school had a special interest in curbing the use of vulgarity among its students, "the strength of this anti-vulgarity interest is weakened considerably by the fact that [the student] spoke outside the school on her own time." Moreover, the Court noted that the student "spoke under circumstances where the school did not stand *in loco parentis*" and that "the school's interest in teaching good manners is not sufficient" to overcome the student's interest in free expression in this case.

Perhaps the most important aspect of the Court's opinion is the acknowledgment that schools have an interest in protecting rather than regulating off-campus speech. While not providing a bright-line rule, this statement provides valuable guidance for schools as they adjust their policies and protocols for disciplining students in their off-campus speech. While the majority noted that certain off-campus speech – such as bullying – would likely be subject to school discipline even under *Mahanoy*, today's decision urges caution for school districts

whose immediate inclination is to act when the broader community demands intervention. Indeed, Justice Alito's concurrence cautions schools who seek to regulate off-campus speech that:

If today's decision teaches any lesson, it must be that the regulation of many types of off-premises student speech raises serious First Amendment concerns, and school officials should proceed cautiously before venturing into this territory.

Mahanoy acts as a warning to schools wishing to regulate off-campus student speech, yet acknowledges that it can be done. By using broad brushstrokes to define this new standard, the Court has provided an area ripe for further dispute.

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