



Federal Appeals Court Holds Schools Cannot Punish Students for Offensive MySpace Pages

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By Jennifer Smith and Jackie Wernz

In two long-awaited decisions by the Federal Court of Appeals for the Third Circuit, the court held that two school districts lacked authority to discipline students for off-campus, online speech. Although the American Civil Liberties Union, which represents the students in the cases, asked the court to hold that schools may never discipline students for off-campus, online misconduct, the court refused to do so. Accordingly, schools may continue to discipline students for misconduct that occurs off campus and online if it causes or reasonably might cause a substantial disruption of school activities. The court did, however, suggest some important limits on school officials' authority to discipline students.

The facts of the two cases, *Layshock v. Hermitage School District* and *J.S. v. Blue Mountain School District*, were similar. In each case, a student created a fake profile parodying his or her high school principal on MySpace. The profiles were created on personal computers outside of school. The profiles included lewd and vulgar language and the profile in *J.S.* suggested that the principal engaged in sexual misconduct, including sexual relationships with students. Each student created the website using the photograph of the principal from the school district's website. The students shared the profiles with their classmates. The principals, who were the subjects of the MySpace parodies, were upset by the parodies, but there was little evidence of disruption in the schools. After the websites were discovered, both students were suspended from school, among other discipline. The students each filed lawsuits alleging that the suspensions and other discipline violated their First Amendment rights to free speech.

Both school districts argued that a school district can discipline students for using lewd, indecent or offensive speech. Because the students' vulgar and obscene MySpace profiles were about school officials and were shared with other students, the school districts argued that the speech should be considered as having occurred "on school grounds." The school district in *J.S.* also argued that it could discipline the student because, although the speech did not actually cause a disruption, the speech could reasonably be forecast to cause a material and substantial disruption of the school environment.

In both cases, the Third Circuit held that school districts can not discipline off-campus speech by students based on lewd, indecent or offensive speech. Because the school district in *Layshock* had not based its defense on any other legal theory, it lost its case on that issue alone. In *J.S.*, the court held that the school district had not established that the speech at issue could reasonably be foreseen to cause a material and substantial disruption. On the issue of disruption, the *J.S.* court



found that the profile was so outrageous that no one could have taken it seriously, and the student also took steps to make the profile “private” so that it was not available to the general public. In addition, the student only shared the profile with a few friends who happened to be classmates. Moreover, although the fake profile contained the principal’s photograph, it did not contain his name, the name of the school, or other identifying information, making it less likely that it would disrupt the school community. And the school district’s computers blocked student access to MySpace at school, meaning no student was actually able to view the profile at school. Finally, the only copy of the profile that was brought to school was brought by a student other than J.S., and at the request of the principal. Under these facts, the court found that it was not reasonable to forecast a material and substantial disruption of the school environment.

The Third Circuit has jurisdiction over Delaware, New Jersey, and Pennsylvania, and so does not have the authority to issue opinions that are binding over courts in Illinois. The Seventh Circuit, which has jurisdiction over Illinois, has not ruled on the issue of off-campus, online speech in the school context. In light of these cases, it is advisable for Illinois administrators to proceed cautiously when disciplining students for off-campus, online speech. *Layshock* and *J.S.* illustrate that the outcome of legal challenges will be highly dependent on the facts of a particular case. Therefore, school district administrators should thoroughly document the basis for disciplining any student for off-campus, online speech, including what, if any, disruption or risk of disruption may have been created by the student’s conduct.

More Information

Jennifer A. Smith
jas@franczek.com
312.786.6589

Jacqueline F. Wernz
jfw@franczek.com
312.786.6137

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