



California Federal Court Rules Student's Online Speech Protected By First Amendment

In a lengthy decision regarding online student speech, the United States District Court for the Central District of California ruled that a student's posting of an online video containing derogatory, sexual and profane statements about a fellow classmate did not create enough of a substantial disruption on campus to permit discipline by the school district. (*J.C. v. Beverly Hills Unified School Dist.* (C.D. Cal. 2009) No. 08-03824.) Although the court held that the student's online speech was protected by the First Amendment in this situation the court nevertheless recognized that a school district has the authority to regulate off-campus speech, including online speech, if the specific facts show that the speech "materially and substantially disrupted the work and discipline of the school."

Plaintiff was a middle school student. While at an off-campus location and after school hours, she recorded a four-minute video making fun of a fellow classmate, C.C. The video included students calling C.C. derogatory names, making sexual comments and using profanity. On the video, plaintiff was heard urging the students to continue insulting C.C. Plaintiff returned home, posted the video on YouTube, a public video website, and sent emails to approximately ten students, telling them to watch the video. Plaintiff also contacted C.C. to alert her to the video posting. By the next day, the video had already received over 100 hits and students were discussing the video on campus.

C.C. was extremely upset and came with her mother to the school to report the video. C.C. did not want to go to class and met with a school counselor for 25 minutes because she was humiliated and hurt by the video. In response, school administrators called plaintiff from class and directed her to take the video down from the YouTube website. The district then suspended plaintiff for two days.

Plaintiff sued the district, and three individual administrators, alleging that the district violated her First Amendment rights by disciplining her for off-campus, online speech. The court explained that there was no bright-line rule applicable to all internet speech and acknowledged that "the substantial weight of authority indicates that geographic boundaries generally carry little weight in the student-speech analysis." In such cases, courts must apply the standard set forth by United States Supreme Court in *Tinker v. Des Moines Independent Community School Dist.* (1969) 393 U.S. 503, which allows school districts to regulate off-campus speech if the speech causes or is reasonably likely to cause a substantial disruption of school activities.

However, after applying *Tinker* to the facts of the case, the court concluded that the plaintiff's YouTube video had not caused or threatened to cause a substantial disruption on the school campus. First, the court reasoned that plaintiff's YouTube video did not actually disrupt school activities. Although the court acknowledged that an actual disruption need not have already occurred, it focused on the fact that the district staff had only spent a few hours addressing the concerns of an upset parent and only five students, including the student victim, had missed a minimal amount of class time in response to the video. The court also noted that there was no evidence of a "widespread whispering campaign [that] was sparked by the video [and] no students were found gossiping about C.C. or about the video while in class," even though these were the behaviors the administrators were attempting to prevent by having the student take down the video.

The court emphasized that the video was unlikely to lead to actual verbal or physical conflicts between students, none of the students involved had a history of violence and there was no evidence of similar incidents causing

disruptions in the past. In summary, the court concluded that a substantial disruption “must equate to something more than the ordinary personality conflicts among middle school students that may leave one student feeling hurt or insecure.”

The court rejected the school district’s arguments that there was a foreseeable risk of a future substantial disruption. The court explained that “undifferentiated fears or mere disapproval alone will not justify disciplining student speech” and instead, a school district must articulate specific facts suggesting a high likelihood of a future disruption. In the absence of such evidence, the court concluded that there was not a sufficient nexus between the student’s off-campus conduct and the disruptive effect on campus.

Finally, despite holding that the school had violated the student’s free speech rights, the court dismissed the claims against the individual administrators under the doctrine of qualified immunity. Under this doctrine, the employee of the public entity may avoid personal liability if the constitutional right that was violated was not clearly established at the time of the violation. Here, because the United States Supreme Court has never addressed a school’s authority over internet speech and the only Ninth Circuit Court of Appeals case addressing the issue *upheld* the school’s regulation of speech, the school district officials had no reason to know the discipline would potentially violate the student’s rights.

It is important to note that student speech cases are very fact-specific. Although the court failed to find a sufficient level of disruption in this case, the court nevertheless reinforced the idea that school districts may regulate off-campus speech if the speech creates or is reasonably likely to create a substantial disruption to school activities. Therefore, school districts should proceed cautiously when disciplining students for online or other off-campus speech and should make sure to support any disciplinary action with strong evidence of any actual or potential disruption to school activities.

Should you have questions about this case, or its impact on your school district, please contact one of our five offices.

*F3 NewsFlash prepared by Kimberly Smith and Kelley Owens.
Kimberly is a partner in the F3 Los Angeles office.
Kelley is an associate in the F3 San Marcos office.*

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2525 Alluvial Avenue, Suite 271, Clovis, California 93611 Tel. 323.330.6300 Fax 323.330.6311
6300 Wilshire Blvd., Suite 1700, Los Angeles, California 90048 Tel. 323.330.6300 Fax 323.330.6311
70 Washington St., Suite 205, Oakland, California 94607 Tel. 510.550.8200 Fax 510.550.8211
520 Capitol Mall, Suite 400, Sacramento, California 95814 Tel. 916.443.0030 Fax 916.443.0030
1 Civic Center Dr., Suite 300, San Marcos, California 92069 Tel. 760.304.6000 Fax 760.304.6011

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