

U.S. Supreme Court Declines Review of Matter Involving Student Discipline

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Practice Area: School Law & Government Law

On Monday, February 29, the U.S. Supreme Court declined to review a case involving a student who was disciplined for an off-campus music video he posted on social media. The denial of certiorari review leaves the decision of the Fifth Circuit Court of Appeals intact. The issue before the Court of Appeals was whether school officials could discipline a student for off-campus online speech directed intentionally at the school community and reasonably understood by school officials to be threatening, harassing, and intimidating under the First Amendment's Free Speech Clause.

In *Bell v. Itawamba Cty. Sch. Bd.*, 799 F.3d 379, 383 (5th Cir. 2015) *cert. denied sub nom. Bell v. Itawamba Cty. Sch. Bd.*, No. 15-666, 2016 WL 763687 (U.S. Feb. 29, 2016), the Fifth Circuit Court of Appeals held that the school district did not violate the student's First Amendment free speech rights when school officials disciplined the student for a video he created and posted online that contained threatening language directed at two teachers.

Away from school and without using school resources (off-campus speech), a student posted a music recording containing threatening language against two teachers on the Internet (first on his publicly accessible Facebook profile page and then on YouTube), intending it to reach the school community. In the recording on YouTube the student criticized the teachers over allegations that they behaved inappropriately toward female students. The student named two teachers and described violent acts to be carried out against them. Interpreting the language as threatening, harassing, and intimidating, the school took disciplinary action against the student.

The student was subsequently suspended for seven days and placed in the district's alternative school for the remainder of the school term. The student claimed that being disciplined for off-campus speech violated his First Amendment right to free speech. Despite the conduct occurring off-campus, during non-school hours, and without the use of school resources, the Fifth Circuit found that the substantial disruption standard first enunciated in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969), controlled.

The speech pertained directly to events occurring at school and identified the two teachers by name. The postings by the student were understood by one teacher to threaten his safety, and they were interpreted by neutral, third parties as threatening. The possible consequences of the threat were grave—serious injury to, including the possible death of, two teachers. The student admitted he intended the speech to be public and to reach members of the school community. The Court held that based on the facts surrounding the student's postings, the school authorities might reasonably have forecast a substantial disruption or material interference with school activities. "Conduct by the student, in class or out of it, which for any reason ... materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized" from discipline by the First Amendment.

Ultimately, the Court found that "with near-constant student access to social networking sites on and off campus, when offensive and malicious speech is directed at school officials and disseminated online to the student body, it is reasonable to anticipate an impact on the classroom environment," such that the school board reasonably could have forecast a substantial disruption at school, based on the threatening, intimidating, and harassing language in the student's music recording.

The Supreme Court's decision to decline review of the *Bell* case signals that in light of the increasingly difficult challenges school officials face in monitoring student behavior after school hours on social media, when off-campus conduct rises to the level of creating a substantial disruption to the school, schools have leeway to discipline students for such off-campus conduct. Note that the Fifth Circuit did not reach the issue of whether the student could be disciplined based on speech constituting a "true threat," however, several courts across the nation have recognized a school district's ability to discipline students based on off-campus conduct which threatens the school. The Fifth Circuit's decision, and the Supreme Court's subsequent endorsement of the decision in declining review, provides school districts with guidance and authority to discipline students whose off-campus conduct during non-school hours threatens the health and safety of the school.

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