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Court Rules on the ‘Cussing Cheerleader’ Case: Implications for Schools and Student Off-Campus Speech

On June 23, 2021, the United States Supreme Court concluded that a public school violated a student’s First Amendment rights when it suspended her from the cheerleading squad for her off-campus speech. In *Mahanoy Area School District v. B.L.*, the “cussing cheerleader” case, the Court confirmed that public schools do have the authority to regulate some off-campus speech. The Court, however, did not provide a bright-line rule for how to address these issues moving forward. Instead, the Court’s opinion provides broad considerations that schools should weigh as they consider when and how to address student off-campus speech. Providing at least one guidepost, the Court held that Mahanoy exceeded its authority when it punished B.L. for her profane off-campus Snapchat message that was critical of the school community.

At issue in this case were two images that B.L. sent to her friends on Snapchat, a social media platform for sharing temporary images. One of the images showed B.L. and a friend with their middle fingers raised and contained the caption “f**k school f**k softball f**k cheer f**k everything.” B.L. sent the images from a local convenience store during the weekend after discovering that she did not make the varsity cheer squad and had not received her preferred position on the softball team. Particularly upsetting to the rising sophomore was the fact that an entering freshman had made the varsity cheerleading squad ahead of her.

While Snapchat posts are typically temporary, another student at Mahanoy took a picture of the image and shared it with other members of the cheerleading squad. The image spread, and a number of cheerleaders approached their coaches to discuss the images. Importantly, the only disruption that was noted was a 10-minute conversation in an Algebra class taught by one of the cheerleading coaches. After the coaches became aware of the

matter, the coaches decided to suspend B.L. from the junior varsity cheerleading squad for the upcoming year. They reasoned that B.L.'s use of profanity and her disrespect for her coaches violated the team and school rules.

B.L. sued in federal court challenging the school's decision to suspend her from the cheerleading squad. B.L. argued that the school's actions violated her First Amendment free speech rights. The trial court held for B.L. and ordered the school to reinstate her to the cheerleading squad. The appellate court affirmed the trial court's judgment. The appellate court reasoned that, under the First Amendment, public schools lack any authority to regulate student speech that occurs outside of school activities and off school grounds. Mahanoy appealed.

In an 8–1 decision by Justice Stephen Breyer, the Supreme Court concluded that the school violated B.L.'s First Amendment rights when it excluded her from the cheerleading squad for her speech. However, unlike the appellate court, the Court did not categorically conclude that schools are powerless to address off-campus speech. Instead, the Court recognized that certain types of off-campus speech may be appropriate for schools to address. 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.
- Breaches of school security devices, including material maintained within school computers.

While illustrative, the Court stated that this was not a comprehensive or definite list of speech that is within the school's authority to regulate. It did provide three features of off-campus speech that distinguish such speech from on-campus speech, that is within the school's authority to regulate. These include:

- the fact that off-campus speech typically falls within the zone of parental authority rather than school-related responsibility,
- heightened concerns for school overreach outside the school day, especially related to political or religious speech; and
- the school's role in protecting robust speech since public schools act as "nurseries for democracy."

Rather than provide a bright-line rule, the Court stated that "taken together, these three features of much off-campus speech mean that the leeway the First Amendment grants to schools in light of their special characteristics is diminished." The Court then left to future cases the issue of when, where, and how these features impact the scope of student First Amendment rights outside of schools.

Mahanoy provides schools a useful case study. In determining whether the school had the authority to punish B.L. for her Snapchat message, the Court concluded that the school's interests did not outweigh B.L.'s free speech rights. First, the Court weighed B.L.'s speech rights. The Court held that B.L.'s speech, while vulgar, was the kind of pure speech that the First Amendment strongly protects because it expressed criticism of the school community. The fact that the speech occurred outside of school and did not identify the school or target any individual is also important. Against these concerns, the Court weighed the school's interest in (1) teaching good manners, (2) preventing disruption, and (3) upholding team morale. However, the Court concluded that teaching manners outside of school is typically a matter for parents, and there was no evidence of a substantial disruption, either in the school's academic programs or in its educational goals like team cohesion. Because of this, the Court held for the student.

Justice Samuel Alito, joined by Justice Neil Gorsuch, filed a concurring opinion. Both Justices joined the Court's opinion in full, but Justice Alito wrote separately to lay out his framework for analyzing off-campus student speech cases. This framework, while also bereft of bright rules, would limit school authority over off-campus speech in ways that align with the school's educational purpose. Ultimately, Justice Alito warns that "school officials should proceed cautiously before venturing into [regulation of off-

premises student speech].”

Justice Clarence Thomas dissented. According to Justice Thomas, the Court’s opinion deviated from established historical practice that recognized school authority to regulate student speech outside of school. Justice Thomas would have applied a historical “nexus” test to B.L.’s speech and would have held the school had the authority to discipline the student because there was a sufficient connection between her speech and the school.

As mentioned above, this is a complicated case with a complicated set of decisions and considerations. The Court’s opinion does recognize that some off-campus speech may be properly regulated by school officials consistent with the First Amendment.

We will continue to provide updates parsing the Court’s decision to help school leaders navigate this complicated area in the absence of a bright-line rule from the Court. Until then, if you have any questions about this decision or about student speech rights more generally, please contact [Dr. Chris Thomas](#), [Joe Scholler](#), [Alex Ewing](#), or any member of our [Government Services practice group](#).

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