The United States Supreme Court has finally addressed a question that has perplexed school officials and divided courts for years: can schools discipline students for their speech outside school? In Mahanoy Area School District v. B.L., the Court found that a public school district violated a student’s First Amendment rights when it suspended her from the cheerleading team based on a profanity-laden social media post, which she made off-campus during the weekend. A copy of the decision can be found here.

**Takeaways**

The Supreme Court acknowledged that schools have some authority to regulate off-campus speech and expression by their students. For instance, the Court suggested that schools may punish off-campus speech that:

- Is Harassing;
• Is Threatening;
• Contains security violations; or
• Causes a concrete, substantial interference with school activities.

However, the Court also left important questions unanswered:

• Whether the traditional *Tinker* standard requiring “material and substantial disruption” criteria or does some modified version of it apply to off-campus speech?

• Would the analysis change if the student had named school employees, was racially derogatory, or if she sent her snap to the entire student population instead of her close circle of friends?

Further, schools should also be mindful of the interplay between *B.L.* and Title IX. Student-on-student sexual misconduct cases often spill out into social media. And students involved in Title IX proceedings frequently ask their school district to intervene in offensive online speech. The 2020 Title IX regulations generally do not diminish students’ free speech rights, and *B.L.* shows that such speech may also be entitled to an added layer of protection under the First Amendment.

All in all, the *B.L.* decision serves as an extra caution for schools policing student speech. In addition to the traditional analysis schools must apply before regulating on campus speech, schools should generally exercise caution when policing speech outside school, even with respect to addressing participation in sports and extracurriculars. This decision indicates that a school’s desire to police social etiquette, restrain off-campus vulgarity, or teach proper manners will not meet the rigorous standard for regulating student speech.

**Facts**

The case was filed by student *B.L.*, who was a sophomore in 2017 at a public high school in Pennsylvania. To her dismay, *B.L.* did not make the varsity cheerleading team but was offered a spot on the junior varsity team. *B.L.* expressed her disappointment over being snubbed with a “snap”—a message on the social media app Snapchat—in which she posted a picture of herself and a friend with their middle fingers raised, together with the caption: “F— school f— softball f— cheer f— everything.” Importantly, *B.L.* posted her snap away from campus during the weekend.

A screenshot of the snap soon circulated among *B.L.*’s peers and eventually found its way to the cheerleading coaches and the principal. The coaches suspended *B.L.* from the junior varsity team for one year because the snap, which contained profanity related to a school extracurricular activity, violated team and school rules.

When *B.L.*’s apologies did not sway the school to rescind the suspension, she and her parents went to federal court.

**Legal Background**
Traditionally, the law has allowed public school officials to punish students for their speech or expression on school grounds if the speech “would materially and substantially interfere with the requirements of appropriate discipline and in the operation of the school.” This “material and substantial disruption” rule, which the Supreme Court first articulated in *Tinker v. Des Moines Independent Community School District*, has been the governing standard since 1969.

In the half-century since *Tinker*, courts have wrangled with how to protect the free-speech rights of students in public schools while also affording school officials the authority needed to regulate student conduct and maintain an effective learning environment. One especially thorny issue has been the extent to which school officials may exercise authority over a student’s speech when he or she is outside the school campus. The proliferation of social media and other types of online speech has only complicated this question. And despite years of inconsistent court decisions on this issue, the Supreme Court had never taken a definitive stance.

In *Mahanoy Area School District v. B.L.*, the Supreme Court at long last helped clarify this question.

### The Supreme Court’s Decision

The student claimed that B.L.’s suspension violated the First Amendment. The district court agreed and entered judgment in B.L.’s favor. On appeal, the Third Circuit Court of Appeals affirmed the lower court’s decision. Notably, the Third Circuit concluded that the school district was powerless to discipline speech that occurred off-campus. The district then appealed that ruling to the Supreme Court.

The issue in *B.L.* was whether *Tinker’s* “material and substantial disruption” standard extends to off-campus student speech in the same way it applies to on-campus speech. Or, does a new First Amendment standard govern off-campus speech? Unfortunately, the Court did not answer either question clearly.

The Court began by rejecting the Third Circuit’s on-campus/off-campus geographical test for deciding what speech a school may regulate. The Court explained that schools may have a substantial interest in regulating many different kinds of on-campus conduct and speech, including severe bullying or harassment targeted as specific individuals; threats to employees or students; violations of rules on lessons, writing papers, using computers, or participating in other online school activities; and breaches of school security.

Aside from rejecting a strict geographical limitation, the Court declined to endorse a bright-line rule for deciding what off-campus speech is protected by the First Amendment. The Court instead observed that three characteristics of off-campus speech make it less likely that schools have a good enough interest in regulating it. First, a student’s parents usually have responsibility for monitoring his or her off-campus conduct. Second, if schools have the power to control off-campus speech, then everything a student says or does outside school could be subject to that control. And third, schools have an interest in fostering the “marketplace of ideas” by protecting the expression of unpopular ideas by their students. Given those considerations, the Court broadly declared that school officials’ power to regulate off-campus speech is “diminished” compared to speech in school.
Beyond those generalities, the Court agreed with the lower courts that the First Amendment protected B.L.’s speech. The Court reasoned that her snap did not fall into any categories of unprotected speech, such as obscenity or “fighting words.” B.L. created the snap off school grounds on her own time. Although she used profanity, she did not target any school staff members or individual students. She transmitted her speech only to a small audience of her Snapchat friends. And there was no evidence that her snap substantially disrupted school activities or threatened the rights of others. Those facts led the Court to conclude that “the school’s interest in teaching good manners” did not outweigh B.L.’s interest in free expression. Thus, the school’s decision to suspend B.L. violated the First Amendment.

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