



What happens at the Cocoa Hut, stays at the Cocoa Hut: U.S. Supreme Court determines school district's discipline of cheerleader violates First Amendment

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In a June 23, 2021, [decision](#) that reviewed the Mahanoy Area School District's discipline of a cheerleader, the U.S. Supreme Court determined that the Third Circuit Court of Appeals had reached the right determination, but for the wrong reason. When a student, identified only as B.L. in court documents, made junior varsity cheerleading instead of varsity, she, as many young people do, took to social media to air her frustrations. While at the Cocoa Hut on a Saturday night, she made a vulgar Snapchat post that criticized the school and the cheerleading team; her post did not expressly identify her coach, school or other members of the school community. The school suspended her from the junior varsity squad for one year. The Third Circuit ruled that the long-standing principle established in *Tinker v. Des Moines*, speech which causes substantial disruption at school is not protected by the First Amendment, did not extend to speech that takes place off-campus. As a result, the lower court ruled that the school's discipline for B.L.'s off-campus speech violated the First Amendment.

The U.S. Supreme Court agreed that the discipline imposed by the school violated the First Amendment. However, the decision was based on a determination that the record before the Court did not support the conclusion that B.L.'s off-campus speech caused a substantial disruption at school. The discussion of her Snapchat post took five to ten minutes of an Algebra class for "a few days," and some members of the cheerleading team were "upset." Nevertheless, the Supreme Court simultaneously acknowledged that in certain circumstances, schools still have a significant interest in regulating off-campus speech. "These include serious or severe bullying or harassment targeting particular individuals, threats aimed at teachers or other students,"

failure to follow academic rules related to lessons, writing papers, use of computers and breaches of school security devices.

This case highlights the swiftly moving currents in which student speech that starts off-campus can travel on-campus in the constantly shifting age of social media. The Tinker test remains alive and well, but the Mahanoy case now stands as a strong reminder to school administrators that an examination of the substantial disruption of any student speech will be paramount when making determinations about student discipline. Also, in light of this decision, school districts may wish to revisit both their student and athletic codes of conduct and their social media policies to consider if and how discipline and enforcement may need to shift in the coming school year.

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