

Recent Cases Differ on Whether Students Can Be Disciplined for Posting Fake Profiles of School Personnel on Social Networking Sites

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Schools are facing situations where anonymous students harass, defame or publicly humiliate educators by using web sites, such as *MySpace* or *Facebook*, with increasing frequency. Many of these situations have resulted in legal battles across the country. Two recent cases highlight the complex issues a school district can face when teachers or administrators become the subject of internet pranks or harassment.

In Layshock v. Hermitage Sch. Dist., a federal district court in Pennsylvania ruled that school officials violated high school student Justin Layshock's First Amendment free speech rights when they disciplined him for posting a fake profile of his principal on *MySpace*. The profile was not created on school grounds or during school time but Layshock did import the principal's photo from the District's web site and inserted in false information for the principal which, among other things, claimed the principal had smoked a blunt in the past month, had a keg behind his desk, used steroids and got "a big hard on" looking at female students. Layshock sent the fake profile to other students in the high school and the profile eventually reached most of the student body. Additionally, Layshock accessed the fake profile during his Spanish class and showed it to other classmates. Among other disruptions noted by the District, approximately twenty high school student were referred to the office because "they had made conversation, made a joke, made a disruption in class, that the teacher had to redirect" related to the fake profile. After admitting to creating the profile, Layshock was suspended for ten

days, reassigned to the District's alternative school for the remainder of the year and banned from school activities and his graduation ceremony.

The Court held that the requirement that there be a substantial disruption to the educational environment to warrant disciplinary action for student speech as set forth in the Supreme Court's ruling in Tinker v. Des Moines Indep. Cmty Sch. Dist., applied. Since the speech at issue was off-campus rather than on-campus however, the Court found that the District must also demonstrate an appropriate nexus between the speech and the school. In analyzing whether the facts of the case evidenced a sufficient disruption and nexus to school, the Court held that the evidence was unclear as to whether the "buzz" on campus resulted from the profile or the reaction of school officials. Additionally, "[t]he actual disruption was rather minimal," as no classes were cancelled, and no widespread disorder, violence, or student disciplinary action occurred. The Court concluded that the weight of student speech case law favored the view "that school officials' authority over off-campus expression is much more limited than expression on school grounds."

The Court further rejected the District's argument that the court should apply the holding in Bethel Sch. Dist. No. 403 v. Fraser, which held that lewd/ profane, and sexually inappropriate expression could be regulated by school administrators in a school setting. The Court found that even if the fake profile page did contain lewd, profane or sexually inappropriate expression, Bethel "does not expand the authority of schools to punish lewd and profane off-campus speech."

In opposite of Layshock, another decision out of Pennsylvania this past school year looked at a factual situation very similar to the Layshock case and found that the school district

did not violate the First Amendment rights of a student who was disciplined after creating a fake *Myspace* profile of her principal. In J.S. v. Blue Mountain School Dist., No. 07-585, a middle school student, J.S., created a fake profile on non school time using a home computer but did copy and paste a picture of her principal from the school's web site. In the fake profile she falsely described her principal as a bisexual man whose interests included having sex in her office and "hitting on students and their parents." The existence of the fake profile spread at school and sparked a general "buzz" throughout the school. After admitting to creating the profile, J.S. was suspended for ten days for violating the school's discipline code, which prohibits the making of false accusations against school staff members, as well as the district's computer use policy, which prohibits the use of copyrighted materials without permission from the agency or website from which its obtain it.

The Court found that J.S.'s speech was akin to the lewd and vulgar speech that the U.S. Supreme Court ruled in Bethel School District v. Fraser, was not protected by the First Amendment. The Court concluded that even in the absence of any on-campus disruption caused by the profile, the totality of the facts demonstrated that "the lewd and vulgar off-campus speech had an effect on-campus."

Since the courts have come out at polar opposites on what appears to be very similar cases, school districts are left with very little guidance on handling malicious internet pranks and harassment of school personnel. As such, the importance of having very clear policies cannot be stressed enough. Particularly important are those policies which allow a school district to discipline students for *conduct*, such as use of school district web site material without permission, rather than *speech*.

Additionally, school districts would be well advised to obtain the advice of their legal counsel prior to making any disciplinary decisions in situations which may have potential First Amendment implications. Legal counsel should be able to help a district walk through the facts and law to ensure that there is sufficient disruption and nexus to the school to support a disciplinary decision in an off-campus speech situation.