

## To Discipline or Not To Discipline

How far may school officials go in punishing off-campus student or faculty misconduct?

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Last summer, the topic of disciplining students for what they do when they're not in school was in the news.

A Bergen County district was sued by the parents of two students. The district, Ramapo Indian Hills, had enacted a policy holding students responsible for off-campus behavior. The policy was struck down by the commissioner of education. That decision is currently being appealed by the school district.

But that's not the first time the question of how far school officials may go in disciplining students for off-campus conduct has come up. In fact, the courts and the state's education commissioner have been wrestling with this issue since the 1970 case of *R.R. v. Shore Regional High School District*. In *R.R.*, the Superior Court Chancery Division was called upon to determine whether a school district could suspend one of its pupils for an assault he committed upon a fellow-pupil after school hours and off school grounds. The *R.R.* court held that the school could expel or suspend a pupil for conduct away from school grounds if "reasonably necessary for the student's physical or emotional safety and well-being, or for reasons relating to the safety and well-being of other students, teachers or public school property."

A more novel issue which this article addresses is under what circumstances school officials may discipline a staff member or even terminate his/her employment for conduct which takes place off school grounds, but which calls into question that staff member's fitness to educate pupils.

**Disciplining Students for Off-Campus Conduct** The standard for disciplining pupils for off-campus conduct articulated by the *R.R.* court was codified in a regulation



adopted by the State Board of Education on Sept. 6, 2005. *N.J.A.C. 6A:16-7.6* provides that, "School authorities have the right to impose a consequence on a student for conduct away from school grounds, including on a school bus or at a school-sponsored function. . ." However, "[t]his authority shall be exercised only when it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, ... [and] only when the conduct which is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school."

Applying this regulation, the commissioner held that the Woodcliff Lakes School District did not exceed its authority for suspending a pupil, M.G., who was arrested when a traffic stop of a vehicle in which M.G. was a passenger, led the police

to discover six bags of marijuana in M.G.'s backpack. (*P.G. o/b/o M.G. v. Woodcliff Lake Bd. of Ed.*) The events took place off school grounds. The commissioner agreed with the testimony of the district's school resource officer who testified that the manner in which the drugs in question were packaged suggested intent to distribute them, which was a potential threat to M.G. and his fellow pupils in school. This made it necessary for the district to take appropriate disciplinary action.

As mentioned above, the acting commissioner of education reached the opposite result in 2010 when she struck down a regulation adopted by the Ramapo Indian Hills School District. The regulation, entitled "Extracurricular Activities," allowed the district to deny pupils the ability to participate in extracurricular activities based upon pupil conduct away from school grounds, including use, possession or distribution of alcohol or drugs. The regulation also applied to violations of the New Jersey Code of Criminal Justice and/or applicable municipal code or ordinance provisions.

The commissioner found that although extracurricular activities are a privilege, a district that wishes to revoke a pupil's ability to participate in such activities for conduct that occurs off school grounds must still comply with the requirements of *N.J.A.C. 6A:16-7.6*. The commissioner found that the regulation "encompasses too many potential conduct violations" and that, "it is too much of a stretch to find that all off-school-grounds conduct that may result in one of these violations would automatically make it necessary for the Board to suspend or revoke a student's ability to participate in

continued on page 13

**LEGALLY SPEAKING** continued from page 12  
extracurricular activities in order to protect  
the well-being of the student [or others].”

**Disciplining pupils for off-campus use of social networking sites** A more vexing issue facing school districts is under what circumstances they may discipline a pupil for a website, blog, tweet, etc. that the student generates off-school grounds, but which serves to bully or torment a fellow-student or staff member. Two recent contradictory decisions decided by the Third Circuit Court of Appeals illustrate the difficulty inherent in this issue. In 2010’s *J.S. v. Blue Mountain (Pa.) School District*, the court upheld the suspension of a middle school student for her Internet profile of the school principal which she created on MySpace. The site included the principal’s photo which she purloined from the district website, as well as profanity-laced statements insinuating he was a sex addict and pedophile.

While recognizing that students have constitutional rights (which are even greater off school grounds), the court stressed that school officials may prohibit and punish speech that “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.” The court expressed doubt about the applicability of the U.S. Supreme Court’s decision in *Bethel v. Frasier*, which holds that there is no First Amendment protection for lewd or vulgar speech in the school setting. Nevertheless, the court found that the site’s potential to cause substantial disruption of, or material interference with the school, justified the regulation of the speech.

Conversely, in *Layshock v. Hermitage (Pa.) School District*, J.S. Layshock created a “parody profile” of his principal on MySpace using his grandmother’s computer. The profile included references to the use of drugs, steroids, theft and drinking and it also included a photo of the principal taken from the school website. Other students were granted access to the site and they viewed it in school. As a result, J.S.

was suspended, placed in an alternative school program and banned from a myriad of extracurricular activities. In reversing the disciplinary action, the court held that there was no significant actual disruption in the school district environment. Moreover, the relationship between J.S.’s conduct and the school was too attenuated to permit the district to impose discipline for the off-campus behavior.

Given the inconsistent rulings, the Third Circuit granted petitions for rehearing both cases, vacated these opinions and judgments, and set both cases for argument before the full Third Circuit Court of Appeals. A decision is expected shortly.

**Teaching Staff Members & Off-Campus Unbecoming Conduct**

The commissioner of education has long held that “educators, by virtue of the unique position they occupy, must be held to an enhanced standard of behavior and must continually realize that they serve as role models to students and the community,” as described in *I/M/O Lucy Lester* (1999). Thus, the commissioner has routinely held that teachers are subject to disciplinary action not only for unbecoming conduct which occurs on campus, but for behavior which occurs off-campus as well.

For instance, in *I/M/O Dawn A. Lewis*, the commissioner recently upheld the dismissal of a tenured teacher who was driving while intoxicated and was found to be in possession of cocaine at the time of her arrest. In the underlying decision, the administrative law judge found it irrelevant that the conduct took place off school premises, citing earlier case law for the proposition that “adolescents are especially vulnerable to the influences of their teachers, who serve as role models and help to shape how youngsters view themselves. . . .”

**Internet Communications Between Teachers and Students**

Just as pupil misuse of technology off-campus has posed unique challenges for school officials, teaching staff members’ misuse of technology has

also been a difficult issue for school officials who must determine when off-campus “speech” crosses the line.

While there is very little case law in New Jersey on this subject, there have been judicial decisions involving this topic in other jurisdictions. For instance, in *Spanierman v. Hughes*, the Federal District Court of Connecticut dismissed a lawsuit by an untenured teacher against various school officials alleging that they violated his Constitutional rights under the First and Fourteenth Amendments. Spanierman argued that his rights were violated when the school did not renew his contract after learning that he had inappropriate communications with his students on MySpace. Spanierman used the site to communicate about homework assignments and to learn more about his students. An investigation by school officials into his MySpace profile revealed that he posted pictures of himself, pictures of his students and pictures of naked men. In addition to these pictures, he posted personal comments.

Several of his students complained about his MySpace profile and his interactions with them. In reviewing the evidence, the court held that it was not unreasonable for the school officials to conclude that Spanierman’s MySpace profile and the communications he had with his students disrupted the school environment. The court opined that it could see “how a school’s administration would disapprove of, and find disruptive, a teacher’s discussion with a student about ‘getting any’ (presumably sex), or a threat made to a student (albeit a facetious one) about detention.” Moreover, because Spanierman’s speech did not touch upon matters of public concern, it was entitled to less constitutional protection. The court found that its likely disruptive content outweighed its First Amendment value, which entitled the school to take appropriate action.

Similarly in *Snyder v. Millersville University*, Stacy Snyder, a student-teacher assigned to teach high school English as a

practicum toward the attainment of her Bachelor's in Education, was not permitted to complete her practicum after she engaged in inappropriate communications with her students via her MySpace page. She challenged this action in Federal Court in the Eastern District of Pennsylvania alleging, among other things, that her First Amendment rights were violated. The evidence before the court established that during the orientation for the practicum, Snyder was advised that she should not mention or refer to students or teachers on her personal webpage. Notwithstanding this advice, Snyder communicated about personal matters with her students through MySpace and posted several inappropriate pictures on the webpage including a photo of herself holding a plastic cup with a caption that read "drunken pirate."

In considering Snyder's First Amendment challenge, the court empha-

sized that the Supreme Court and the Third Circuit (which includes New Jersey) "afford the speech of public employees, like public school teachers, First Amendment protection if their speech relates to matters of public concern..." If the speech had involved a matter of public concern, the school would "bear the burden of showing that they had a constitutionally valid reason for regulating her speech beyond a 'mere desire to avoid...discomfort and unpleasantness'." However, because the plaintiff conceded that the speech at issue concerned only personal matters, her MySpace postings were not constitutionally protected and, accordingly, her suit was dismissed.

**Deference to School Officials** The above cases illustrate that the courts and the commissioner of education will usually defer to school district authority to discipline stu-

dents and/or staff members for off-campus unbecoming conduct. However, with pupils, there must be some connection between the misconduct and the school district which materially affects the safety of the student or the school district environment. Because teachers are expected to be role models for pupils 24/7, the standard by which their conduct is judged often depends upon whether their actions violate the implicit standard of good behavior which we expect of our educators. Of course, when the conduct in question involves the off-campus Internet speech of teachers or students, school officials must be mindful of the protections guaranteed by the First Amendment when deciding whether to take disciplinary action. **sl**

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