The Third Circuit Court of Appeals issued two significant en banc decisions on June 13, 2011 which help to define the legal boundaries where school officials can discipline students for offensive online speech that takes place outside of the school day and off of school property. In both cases, the court sided with students, ruling that the school district had overstepped the students’ First Amendment rights when the students were punished for off-campus internet speech.

In J.S. v. Blue Mountain School District1, the student created a MySpace profile mocking her middle

school principal while at home, on a weekend, using her own computer. The profile contained crude

language and sexually explicit content. Among other things, the profile alleged that the Principal slept

with students in his office and that his son “looks like a Gorilla.” The profile contained the Principal’s

photograph, which was taken from the official District website. Access to MySpace was blocked on

school property, so the profile could not be accessed from school. The student was suspended for 10 days

for making a false accusation about an administrator and for violating the District’s computer use policy

by utilizing the Principal’s photograph without authorization.

In Layshock v. Hermitage School District, the student, a high school senior, also created a MySpace

profile purporting to be of the school’s Principal. The parody profile also contained the Principal’s real

photograph taken from the District’s website, and the content of the profile, in general, mocked the

Principal for being a large man. Word of the profile spread like wildfire reaching nearly every student.

In this case, the profile *was* able to be accessed from school. Nonetheless, school officials admit that

despite having to limit computer use for about a week, the disruption to school activities in general was

minimal. The student was suspended for 10 days, sent to an alternative school for the remainder of the

school year, and prohibited from participating in graduation ceremonies.

In both cases, the court looked to existing Supreme Court precedent for on-campus student speech and

applied that standard to the off-campus speech. In J.S., the court cited the landmark decision in Tinker v.

Des Moines Indep. Comm. Sch. Dist (1969) as the most applicable controlling precedent. In Tinker, the

U.S. Supreme Court ruled that school officials cannot regulate student speech, even if the speech is

unpopular or unpleasant, unless the speech causes or is likely to cause a material and substantial

disruption to the work and discipline of the school. In Layshock, court looked to regulating crude and

offensive speech pursuant to Bethel Sch. Dist. v. Fraser (1986) and found that the school could not punish

the student for crude and offensive speech because Fraser is limited only to *on-campus* speech.

Consequently, in both cases, the students’ punishments were overturned based upon the students’ First

Amendment rights to freedom of speech and freedom of expression.

School officials must take great care when investigating and disciplining students for online and other offcampus speech so that students’ constitutional rights are not unduly impinged. While these cases

emphasize the limitations on school officials in responding to cyber-bullying and other off-campus

harassment, they also represent a victory for schools because off-campus speech may in fact be regulated

if it causes or is likely to cause a material and substantial disruption to the educational environment.