
Federal District Court Upholds Consequences for Student's Offensive Tweet

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In *Castro v. Clovis Unified School District* (E.D.Cal. May 20, 2022, No. 1:19-cv-00821-DAD-SKO), a United States District Court recently upheld the Clovis Unified School District's (District) decision to revoke a student's privilege of "walking" during his graduation ceremony in response to the student posting a tweet depicting a classmate captioned with a racial slur. Though the student argued that the District's actions impermissibly infringed his free speech rights, the court ruled that his offensive tweet invaded other students' rights to be secure and left alone, therefore justifying the District's decision.

Background

The plaintiff (Plaintiff), then a twelfth-grade student, published a picture of an African American classmate on his personal Twitter account captioned with a racial slur. The offensive tweet was sent while Plaintiff was on school grounds and during school hours, just hours before the high school's graduation ceremony. Another African American classmate confronted Plaintiff online regarding the offensive tweet, and Plaintiff retweeted the classmate's complaint seemingly in an effort to ridicule her. The classmate reported Plaintiff's offensive tweet to the principal, indicating that the tweets directly impacted her wellbeing. In response, the principal called Plaintiff into her office, furnished Plaintiff with his diploma, and advised him that he was prohibited from participating in the graduation ceremony. Plaintiff challenged the principal's action, alleging it violated his free speech rights and infringed his right to procedural due process.

The District Court Upholds the District's Actions

As a general principle, students do not forfeit their constitutional right to free speech upon reaching the schoolhouse gate. Courts, however, recognize the importance of appropriate discipline in the operation of schools and the protection of students' right to be free of abusive or materially disruptive speech. Here, where those interests collided, the court assessed Plaintiff's free speech claims pursuant to the school-specific framework articulated in the Supreme Court's *Tinker v. Des Moines* (1969) 393 U.S. 503 opinion. This framework authorizes schools to lawfully restrict student speech if the speech reasonably leads school authorities to anticipate substantial disruption or

material interference to school activities, or if the speech interferes with other students' rights to be secure and left alone. Focusing its analysis on the second prong of the *Tinker* framework, the court considered whether Plaintiff's tweet interfered with other students' right to be secure and left alone. Relying on case law establishing students' right to be free of online activity disparaging their race and to enjoy a safe and civil educational environment, the court upheld the District's action in revoking Plaintiff's ability to participate in the graduation ceremony.

While Plaintiff claimed that the student depicted in the tweet was a friend who consented to the "intercultural communication," the court disregarded Plaintiff's purported subjective intent. Instead, the court underscored how Plaintiff's offensive on-campus tweet concurrently invaded the victim's and the reporting classmate's individual rights to be secure and left alone. Accordingly, the District was within its discretion to prohibit Plaintiff from participating in the graduation ceremony.

The court also ruled in the District's favor regarding Plaintiff's procedural due process claim. Plaintiff claimed the District violated his Fourteenth Amendment right to due process by revoking the privilege to participate in the graduation ceremony without an opportunity to be heard. In rejecting Plaintiff's claim, the court emphasized the informal procedures that may arise when imposing consequences for student misconduct. Nevertheless, educational agencies must, at a minimum, provide a student with oral or written notice of the charges, the basis of the accusation, and an opportunity to explain their version of the facts. Here, the District provided Plaintiff with adequate notice that his actions were punishable and gave him an opportunity to be heard.

Takeaways

The U.S. District Court's ruling highlights the *Tinker* framework applicable to online student speech issues, particularly when considering whether the speech interfered with the rights of students to be secure and left alone. Educational agencies should consider whether student online speech was posted while on campus, as the ability to regulate student speech diminishes when the speech occurs off-campus. For the Supreme Court's latest decision on the regulation of speech arising off campus, see [2021 Client News Brief No. 16](#) on the *Mahanoy Area School District v. B.L.* case.

If you would like more information about this case, or to discuss disciplinary procedures implicating free speech issues, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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