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## SCHOOL DISTRICT'S RETRACTION OF STUDENT EDITORIAL VIOLATED RIGHT TO FREE SPEECH

On May 21, 2007, a California court ruled in *Smith v. Novato Unified School District*, that a school district violated a high school student's free speech rights under California Education Code Section 48907 when the District stated in a letter that the student's editorial opinion should never have been published and ordered that copies of the opinion be retracted.

### Facts

A high school student wrote an editorial opinion on illegal immigration that was published in the school newspaper. It included such statements as: "If a person looks suspicious then just stop them and ask a few questions, and if they answer 'que?', detain them and see if they are legal;" "Seems to me that the only reason why they can't speak English is because they are illegal."

After the opinion was published, the school principal received complaints from parents and students. The principal told the teacher who oversaw the school newspaper to collect copies of the newspaper. The principal had a meeting with parents and students so that they could express their opinions over the article. Then, the principal and the superintendent sent a letter to parents stating that they regret the anger the article had created and also stating that the article should not have been printed in the school newspaper because it violated the district's policy.

The day after the article was published, a Latino student threatened to kill the student. Also, later that month, the student who wrote the article suffered a chipped tooth from another Latino student. The high school student and his father sued the school district for violating the student's right to free speech.

### Court's Analysis

The court first determined that the student's editorial opinion was protected speech. It reasoned that under Ca. Ed. Code Sec. 48907, schools cannot prohibit speech because it might create a disturbance. It stated that "schools may only prohibit speech that incite disruption, either because it specifically calls for a disturbance or because the manner of expression...is so inflammatory that the speech itself provides the disturbance." The court stated that the editorial was the student's viewpoint and was not a direct provocation. Although the student stated he wanted to get a "response...that would cause action," the court found that this was not sufficient evidence that he wanted to cause substantial disruption.

The court then determined that the district had violated the student's right to freedom of speech by stating to the community that the editorial should not have been printed because it violated the district's policy. The court found that this action could deter or "chill" future speech by the student because the threat of school discipline that was implicit in the school's statements.

### Recommended Action

- Review and update your policies regarding student discipline and disseminate guideline to all students.
- Train all of your administrators, especially your site administrators, on the implementation of the policy.
- On questionable issues, always call your legal counsel.