

Collaborate

Advocate

Educate

SCHOOL OFFICIALS LIABLE FOR DISCIPLINING STUDENT FOR DRUG-RELATED BANNER AT OFF CAMPUS EVENT

On March 10, 2006, the Ninth Circuit Court of Appeals held that a principal abused her power when she suppressed student speech regarding illegal drug use. Specifically, the principal suspended the student and removed a banner that the student displayed during a privately sponsored event where students were released from school to attend. The banner read “Bong Hits 4 Jesus.” *Frederick v. Morse*, 2006 WL 572006 (9th Cir. March 10, 2006).

SIGNIFICANCE OF THIS DECISION:

This ruling demonstrates how school officials can be liable for civil damages for censoring student speech. In this case, the school principal censored the student’s banner and imposed disciplinary sanctions because the banner ran contrary to the school’s mission of preventing illegal drug use. The court, however, found that the school principal unreasonably overstepped her authority and thus was subject to personal liability and damages with no immunity.

According to the Ninth Circuit, there are three distinct areas of student speech as provided under Supreme Court precedent: (1) vulgar, lewd, obscene, and plainly offensive speech, (2) school-sponsored speech, and (3) student speech that falls into neither of these categories.

Student speech that is plainly offensive to any mature person may be regulated as impermissible within the school context. Student speech that occurs within the realm of school-sponsored activities may be regulated if the regulation is intended to promote a legitimate educational concern. Student speech that does not fall into the previous two categories may be regulated if and only if the school can demonstrate a reasonable concern about the likelihood of substantial disruption or potential harm.

Moreover, the court found that the banner did not cause substantial disruption to school order. Although the promotion of drug use is inconsistent

with the school's educational mission, the court found no reason to perceive that it would cause substantial disruption. The court found it significant that school officials conceded that they acted with intent to punish speech inconsistent with the school's educational mission, and not to avoid potential harm. School officials are generally entitled to qualified immunity, which shields their actions from civil damages liability, but qualified immunity requires school official's actions to reasonably have been thought consistent with the rights they are alleged to have violated.

The court found that the school official was not entitled to qualified immunity because 1) the constitutional right to the student's speech was clearly established, 2) the school official knew or should have known that the speech in question was constitutionally protected, and 3) she could not have reasonably believed that her conduct did not violate a constitutional right

RECOMMENDED ACTION FOR RESPONDING TO THE PROPRIETY OF STUDENT SPEECH:

- Given the potential for liability, consult an attorney before imposing discipline or prohibitions;
- Consider where the speech takes place and whether it is school sponsored;
- Consider whether the speech is substantially disruptive to school order and whether action is needed to avoid potential harm;
- Consider whether the speech is vulgar, lewd, obscene, or plainly offensive.

For further information, or if you would like to receive our legal Alerts in electronic form please visit our website at www.ruizlaw.com. This information is meant to provide a general overview and is not intended to provide comprehensive legal guidance. The reader is advised to consult legal counsel with specific questions on particular matters.