

Appeals Court Upholds School's Right to Discipline Student for Off-Campus Speech

By David Hirt

The U.S. Sixth Circuit Court of Appeals, which governs Ohio, Michigan, Kentucky, and Tennessee, in *Kutchinski v. Freeland Community School District*, 69 F.4th 350 (6th Cir. 2023), reaffirmed a public school district's ability to discipline a student for off-campus speech that district administrators reasonably believe will cause material and substantial disruption to the school environment or that actually does cause such a disruption.

In *Kutchinski*, the student created a social media page on the weekend, using his own computer and internet, which purported to belong to a teacher. The student allowed other students to follow the page. The student also gave two of his friends the ability to add content to the page. Although the student who created the page posted only benign content, his two friends posted "graphic, harassing and threatening" content, including sexual content, that was directed toward three teachers and a student. A teacher alerted the administration but by Monday students were talking about the posts at school, which made the student decide to take the page down. One of the teachers targeted by the posts testified to being humiliated and was found crying at school on Monday. Multiple teachers testified to disruptions in their classrooms.

The administration imposed a 10 day out-of-school suspension on the student who created the page. The student sued, claiming the discipline violated his First Amendment right to freedom of speech.

The District Court granted summary judgment to the Board, and the Sixth Circuit Court of Appeals affirmed. The Court of Appeals concluded that the student who created the page and allowed his two friends to add content could be held responsible for his friends' speech. The Court held "that when a student causes, contributes to, or affirmatively participates in harmful speech, the student bears responsibility for the harmful speech."

The Court of Appeals acknowledged the restrictions imposed by the U.S. Supreme Court in *Mahoney* on the regulation of off-campus student speech. The Court of Appeals then noted that pursuant to the U.S. Supreme Court's decision in *Tinker*, school officials could regulate student speech if they "reasonably forecast" that the speech "would cause material and substantial disruption to schoolwork and school discipline." Applying this standard, the Court of Appeals held that the school could discipline the student who created the page.

If you have any questions about student discipline or any other school law issue, do not hesitate to contact any of Roetzel's education law attorneys.

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