

Student Expulsion Upheld for Off-Campus, Online Activity

On July 26, 2017, the 5th Appellate District Court of Appeals (Richland County) issued a decision in [N.Z. vs Madison Local Board of Education](#) that should be read by every school administrator involved in student discipline.

In October of 2015, a binder was found in the high school library with “Klebold Surprise” and the names “Dylan Klebold” and “Eric Harris” written on the binder’s cover. Because of the references to the 1999 Columbine High School shootings, the Administration conducted a thorough investigation. It was determined that the Columbine reference was the result of a group of students participating in a free mobile messaging app that was accessible by use of a password. In the message group, the Administration found posts containing hate speech, discussions about violent acts including school shootings, references to and images of various weapons, and other troubling topics and images. N.Z. was one of the students identified as a member of the message group and he, as well as other message group members, was placed on Emergency Removal. At the disciplinary hearing to extend the Emergency Removal to a 10-day out-of-school suspension, N.Z. acknowledged the accuracy of what the Administration uncovered, that he willingly participated in the message group, that he knew the content of the posts was inappropriate, and that he had nothing else to say about the matter or in his defense. Between the initial Emergency Removal and the expulsion hearing before the Superintendent, Madison Local School District received two bomb threats and one “shooter” threat. N.Z. was expelled through the end of the first semester of the 2015-2016 school year based on the student’s participation in the private message group that threatened violent school acts. On appeal to the Richland County Common Pleas Court, the expulsion was upheld with the Court noting that the student’s First Amendment rights involved in the private message group became subject to the school’s discipline procedures when the “Klebold Surprise” binder came into the high school and members of the message group refused to cooperate with the subsequent investigation. Additionally, the Court noted that this was occurring at a time when Madison Local School District was receiving multiple bomb threats and shooter threats, all of which created significant disruption of the school environment.

The Court of Appeals affirmed the trial court’s decision. The Appellate Court held that the private off-campus conversations of the students became subject to the Code of Student Conduct when the content of the chatroom and the students’ posts became known to the Administration through the discovery of the “Klebold Surprise” binder along with the content of the message group postings that glorified school violence as part of the school’s investigation. The record also reflected the fact that the students communicated with each other during the Administration’s investigation in an effort to obstruct that inquiry. Under these circumstances and the heightened state of anxiety at Madison Local School District, the District’s Code of Student Conduct did extend to the off-campus posts.

In all probability, this decision will be appealed and we will keep you advised of any new developments. In the interim, be advised that there are circumstances under which off-campus, private student statements and activities can be subject to the school’s student conduct code. When in doubt, confer with legal counsel.

If you have any questions regarding this decision and its impact on your school district, please contact any of Roetzel’s School Law attorneys.

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