

Rulings cloud issue of school MySpace suspensions

February 4 2010, By MARYCLAIRE DALE , Associated Press Writer

(AP) -- Federal appellate judges wrestling with whether schools can discipline students for Internet speech posted offsite reached different rulings Thursday in two Pennsylvania cases.

One 3rd U.S. Circuit Court panel upheld the suspension of a Schuylkill County eighth-grader who posted sexually explicit material along with her principal's photograph on a fake MySpace page.

However, a different three-judge panel said that school officials in Mercer County cannot reach into a family's home and police the Internet. That case also involves a MySpace parody of a principal created by a student at home.

And, in dissent, a judge in the first case said his colleagues were broadening the school's authority and improperly censoring students.

"This holding vests school officials with dangerously overbroad censorship discretion," Judge Michael Chagares wrote in refusing to uphold the March 2007 suspension of a Blue Mountain Middle School student. "Neither the [Supreme Court](#) nor this Court has ever allowed schools to punish students for off-campus speech that is not school sponsored and that caused no substantial disruption at school."

School boards, free-speech advocates and others had been awaiting the rulings for clarity on how far schools can go to control both online speech and offsite behavior.

"The law was unclear and now it's in a state of chaos," said lawyer Witold Walczak of the American Civil Liberties Union, who argued the Mercer County case.

Similar cases have surfaced across the country, with different rulings, but none have reached the Supreme Court. Judges are therefore left to rely on decades-old Supreme Court case law on the limits of school discipline for guidance.

Lawyer Anthony Sanchez, who represents the Hermitage School District in Mercer County, called the issue ripe for high-court review.

"With technology, ... we're in a very different world than we were when those other opinions came out," Sanchez said late Thursday. He did not immediately know if the district would appeal.

In the Blue Mountain case, both the district and circuit courts upheld the 14-year-old student's 10-day suspension.

Chagares' two colleagues concluded that her lewd, sexually graphic posting was likely to cause a disruption at school, and could therefore be restricted under prior case law.

The Web page, which used a fake name but an actual photo of the principal, was purported to have been posted by an Alabama principal who described himself as a pedophile and sex addict. The [Internet](#) address included the phrase "kids rock my bed."

The principal and other students at Blue Mountain quickly became aware of it, discussing it at school the next day, according to testimony.

"Electronic communication allows students to cause a substantial disruption to a school's learning environment even without being

physically present. We decline to say that simply because the disruption to the learning environment originates from a computer located off campus, the school should be left powerless to discipline the student," Judge Michael Fisher wrote in a footnote.

The ACLU did not immediately know if it would appeal, Walczak said.

Both 3rd Circuit panels upheld lower court decisions.

In the Mercer County case, U.S. District Judge Terrence McVerry had ruled that Hermitage School District officials failed to show then-senior Justin Layshock's parody [MySpace](#) profile of his Hickory High School principal substantially disrupted school operations.

"The school's right to maintain an environment conducive to learning does not trump Justin's First Amendment right to freedom of expression based on the evidentiary record in this case," McVerry wrote in a 2007 opinion. "Public schools are vital institutions, but their reach is not unlimited."

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