



In the Latest School Suspension, Student Gets Suspended For Tweeting Curse Words

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Everyone knows that school officials can constitutionally restrict student speech if the student, while on school property, causes a material or substantial disruption of school activities. But how many of us are thinking about whether it is constitutional for school officials to restrict student speech or conduct that takes place off campus?

Austin Carroll, a former student at Garrett High School in Indiana, is surely thinking about this issue. A few days ago, while fighting insomnia at 2:30am, the Indiana teenager used Twitter and cited the “F-word” multiple times, apparently in an effort to prove to his peers that the “F-word” could be used almost anywhere in a sentence. Austin alleges that he used his own home computer, while he couldn’t sleep that evening and that his tweet was not directed at any one person. Notwithstanding, Garrett High School officials disciplined Austin for his conduct, banned him from the high school prom, expelled him from school and ordered that he attend an alternative school.

Austin is arguing that the school acted unconstitutionally when it disciplined him in response to the tweet he posted while off school grounds. Is he right? Let’s look at both arguments:

- Austin Carroll’s argument: Austin alleges he was using his own computer and network to send the tweet and therefore, the school’s action was an incredible overreach and overreaction. Austin believes it’s his “own personal stuff, and none of its [the school’s] business.” He recognizes that while the US Supreme Court has generally ruled that students have free speech rights, and schools can prohibit speech only if it is vulgar or disruptive to schoolwork or other people, (*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)), that power does NOT reach beyond school property. To extend *Tinker* to apply to off-campus conduct would be a gross extension not intended by the Court. Therefore, the school in this case was unwarranted when it disciplined Austin and violated his constitutional rights.
- School’s argument: Austin was on a school computer, not in fact his own. This computer was given to him earlier in the year by the school district, and therefore, the school can regulate his off-campus conduct and discipline him for using the “F-word” multiple times on Twitter. *Tinker* can be extended to apply to this situation.

So what’s the final answer? Was the school’s discipline constitutional or did school officials, in expelling Austin Carroll from Garrett High School, violate Austin’s First Amendment right to free speech? The answer is unknown and both arguments have been recognized by courts across the country. Lower court rulings have varied widely and the Supreme Court has declined three separate times to review comparable student off-campus speech cases. As a result to the vast array of opinions being issued by lower courts, school officials are not sure whether they can constitutionally, within legal boundaries, discipline students for off campus conduct.

If your institution would like guidance on this issue or would like further information, please email Jim Ryan at jryan@cullenanddykman.com or call him at 516-357-3750. **A special thanks to Hayley Dryer, a third-year law student at Benjamin N. Cardozo School of Law, for helping with this post.*