

Deliberation: *Mahanoy Area School District v. B.L.**

Argued: April 28, 2021

Decided: June 23, 2021

1 **Background**

2 Although the First Amendment states that the government cannot make any law “abridging the
3 freedom of speech,” there are still many limits to where and when people can speak and what they
4 can say. Students in public schools, for example, have free-speech rights, but those rights are not the
5 same as those of adults outside of schools.

6 *Tinker v. Des Moines Independent School District* (1969) established that students have free-speech rights
7 at school as long as the speech does not cause a substantial disruption in the educational process or
8 invade the rights of others. If student speech causes a disruption, it can be restricted in school and
9 the student can even be disciplined. This is sometimes called the “substantial disruption standard” or
10 the “Tinker Test.” With the increased use of social media apps, other advancements in technology,
11 and the sudden switch to remote learning in many schools during the COVID-19 pandemic, the
12 issue of student speech that occurs outside of school but has the potential to disrupt the educational
13 process within school has become the focus of many court cases.

14 This case, *Mahanoy Area School District v. B.L.*, is about a student who sues her public school for
15 violating her First Amendment rights. It decided whether limits on student speech in public schools
16 may extend to speech made off campus but that has a disruptive effect on campus.

17 **Facts**

18 B.L. was a student and cheerleader at Mahanoy Area High School (MAHS) in Pennsylvania. B.L.
19 made the junior varsity (JV) cheerleading squad her freshman year and hoped to be named to the
20 varsity team for her sophomore year. She was very disappointed when the teams were announced,
21 and she was placed on the JV team again.

22 On Saturday of the week of the announcement, B.L. posted two messages on Snapchat while off
23 campus. Snapchat is a social media app in which the messages (called “snaps”) are visible for only 24

* B.L. is used instead of the student’s name because she was a minor at the time the case was filed.

hours and then self-delete. It is commonly known, and Snapchat warns its users, that permanent screenshots can be taken of the snaps by other users. B.L.'s first snap was a picture of B.L. and a friend with their middle fingers raised, tongues sticking out, and the caption, **"F*** school f*** softball f*** cheer f*** everything"** (Note: B.L. did not use *** and wrote out the full word). The snap reached about 250 friends, which included other MAHS students and members of the cheerleading team. A screenshot was taken of the snap by a classmate.

When students returned to school the next week, there was talk about the snaps. Several cheerleaders approached the coaching staff to express concerns about B.L. remaining on the team. One cheerleader showed her mother, a cheerleading coach, screenshots of the snaps. Another coach who is also a math teacher at the school, reported that her algebra class was "disrupted quite a bit" because they kept bringing up the snaps, which was "taking class time away from [other] students."

Cheerleaders at MAHS agree to follow rules that they "have respect for [the] school, coaches, teachers, other cheerleaders;" and will not use "foul language and inappropriate gestures." They are informed that, "There will be no toleration of any negative information regarding cheerleading, cheerleaders, or coaches placed on the internet." The coaches determined that B.L.'s conduct violated the rules and removed her from the team for the school year. The coaching staff told B.L. that she could try out again the next year. B.L. faced no further disciplinary action. The principal, athletic director, and school board supported the coaches' decision to remove B.L. from the team.

B.L. and her parents filed a lawsuit against Mahanoy Area School District in the U.S. District Court for the Middle District of Pennsylvania. They alleged that B.L.'s First Amendment right to free speech was violated because the school disciplined her for off-campus speech. They asked the court to grant a legal order (injunction) to reinstate her on the cheerleading team, erase (expunge) her disciplinary record, issue a statement that her rights had been violated (declaratory relief), and award money (damages). The District Court granted B.L. an injunction to be reinstated on the team, declaratory relief, expungement of her record, and some monetary damages. They said that even if *Tinker v. Des Moines* applied to off-campus speech, this situation was not sufficiently disruptive to the school to warrant the school's response.

The school district appealed this decision to the U.S. Court of Appeals for the Third Circuit. This court agreed with the District Court's ruling but for different reasons. They did not rule on whether the snaps were disruptive enough to be disciplined. Instead, they ruled that *Tinker v. Des Moines* does not apply to off-campus speech. They stated school officials may not "reach into a child's home and

control his/her actions there to the same extent that it can control that child when he/she participates in school sponsored activities.” In making this ruling, they decided differently than some other circuit courts that have decided similar questions regarding off-campus speech. When one court of appeals rules differently than another, it is referred to as a “circuit split.”

The school district asked the U.S. Supreme Court to hear this case, and it agreed.

Issue

Does the precedent set in *Tinker v. Des Moines Independent Community School District*, that public school officials may regulate speech that would materially and substantially disrupt the work and discipline of the school, apply to student speech that occurs off campus?

Constitutional Amendment and Supreme Court Precedents

– First Amendment to the U.S. Constitution

“Congress shall make no law... abridging the freedom of speech...”

– *Tinker v. Des Moines Independent Community School District* (1969)

Students John and Mary Beth Tinker and Christopher Eckhardt opposed the war in Vietnam. To show their opposition, they planned to wear black armbands to school. Having found out about the students’ plan, the Des Moines principals adopted a new policy prohibiting armbands. Despite the policy, the students wore armbands to school and were suspended.

The U.S. Supreme Court ruled in favor of the students. It made clear that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” To restrict speech, a school must demonstrate that the speech would “materially and substantially interfere” with the work of the school or interfere with the rights of other students. School officials in Des Moines, the Court explained, could not “reasonably forecast” that the students’ speech would cause a substantial disruption or invade the rights of others.

– *Bethel School District No. 403 v. Fraser* (1986)

During a school assembly at Bethel High School in Washington, Matthew Fraser gave a speech to nominate a classmate for student government. The short speech was filled with sexual references and innuendoes. The students greeted the speech with hoots, cheers, and lewd motions. Fraser was suspended for three days.

Ruling in favor of the school district, the U.S. Supreme Court emphasized that students do not have the same First Amendment rights as adults. It explained that school officials may prohibit the use of lewd, indecent, or plainly offensive language, even if it is not obscene. Schools have an interest in preventing speech that is inconsistent with the school’s “basic educational mission” and in “teaching students the boundaries of socially inappropriate behavior.”

– *Morse v. Frederick* (2007)

A school in Alaska took students on a walking-field trip to watch the Olympic torch passing nearby their school. Joseph Frederick, a student who had not come to school that day but joined his classmates at the field trip, unfurled a banner reading “BONG HiTS 4 JESUS.” He was suspended by the school. Frederick claimed he was not in school and sued the administration for violating his free-speech rights.

The U.S. Supreme Court ruled 5-4 for the school’s principal, concluding that she did not violate the First Amendment by confiscating a pro-drug banner. The Court dismissed Frederick’s argument that this case did not involve school speech because he was not at school. It emphasized that the field trip was approved by the school, monitored by teachers, and occurred during school hours, and, although he did not report to school, he was present at the event. The Court ruled it was reasonable for the principal “to conclude that the banner promoted illegal drug use—in violation of established school policy.”

Arguments for Mahanoy Area School District (petitioner)

- No matter where speech originates, schools should be able to treat students the same when their speech is directed at the school and causes the same disruption on the school environment.

- 108 – As *Tinker v. Des Moines* established, “Students do not check their First Amendment rights at
109 the schoolhouse gate,” but the First Amendment does not force schools to ignore speech
110 that disrupts the school environment or invades other students’ rights just because the
111 student speaks from one step outside the schoolhouse gate.
- 112 – Concerns about school censorship are exaggerated because even if schools are able to
113 discipline off-campus speech that causes a disruption, they still will not be able to punish
114 speech only because they disagree with the message.
- 115 – B.L.’s off-campus speech disrupted the learning environment at MAHS. Students were
116 talking about the snaps during class time, and it caused conflict within the cheerleading team.
- 117 – The fact that most students have smartphones and the complexity of remote and hybrid
118 learning during the pandemic, makes the decision of the U.S. Court of Appeals (that *Tinker v.*
119 *Des Moines* does not apply to off-campus speech) difficult to apply in real-life situations.
- 120 – It will be impossible for schools to clearly define what “off campus” and “on campus”
121 means. If on the weekend a student uses a private email to blast harassing messages to
122 school email accounts, is that off-campus or on-campus speech?
- 123 – Off-campus student speech is only within the school’s authority when the student directs
124 their speech at the school community, as B.L. did in this case.
- 125 – Schools need to be able to prevent harassment and bullying that impacts students at school
126 without any limitations on where the harassment originates. The ruling in this case will
127 impact the school’s ability to discipline online harassment and cyberbullying.

128 **Arguments for B.L. (respondent)**

- 129 – B.L.’s snaps were posted on a Saturday, off campus, not during any school-sponsored
130 activity, and sent from B.L.’s personal smartphone to only her Snapchat friends. The school
131 should not have any authority over this speech.
- 132 – If schools have authority to discipline students’ social media posts that encompass anything
133 said to a classmate, regardless of topic, and anything said about the school, regardless of
134 audience, it is tantamount to them having authority over students’ whole lives since a vast
135 majority of young people’s speech falls within those vague categories.

- 136 – The snaps taken on a Saturday would not still be visible by the time school started on
137 Monday morning. This shows that B.L. did not intend to disrupt school and could not have
138 reasonably foreseen that it would. Her original snap was not the cause of the disruption (if
139 there was one).
- 140 – Only B.L.’s Snapchat friends could see the snaps, which were not otherwise public. It was
141 only visible on campus because another student took a screenshot of the snap and shared it
142 within the school. It was not B.L.’s action, but the act of a third party that brought the snap
143 to school.
- 144 – The snap did not identify any school official or MAHS by name. In the photo, B.L. was not
145 wearing her cheerleading uniform, there was no school logo visible, and there was nothing in
146 the photo connecting B.L. or her friend to the school.
- 147 – The snaps were spontaneous expressions of frustration and were not threatening nor
148 harassing. If they had been, the school could have acted because they do have the authority
149 to punish true threats, harassment, bullying, and cheating even if it occurs off campus.
- 150 – Even if the Court does apply *Tinker* to this off-campus speech, B.L.’s snaps were not
151 substantially disruptive to the school environment. They, therefore, fail the *Tinker* Test (or
152 substantial disruption standard) that allows schools to discipline the speaker.
- 153 – Extending the school’s authority everywhere young people go would teach them to avoid
154 saying anything that might be controversial, politically incorrect, or critical of the status quo
155 (the way things are), for fear of punishment by the government. This would undermine the
156 First Amendment.