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New York Law Journal

SECOND CIRCUIT REVIEW

Off-Campus Speech, Student Safety, and the Limits of School Authority: Leroy v. Livingston Manor Central School District

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November 26, 2025

In *Leroy* v. *Livingston Manor Central School District*, No. 24-1241, 2025 WL 3029421 (2d Cir. Oct. 30, 2025), the Second Circuit for the first time applied the First Amendment framework for off-campus student speech. Reversing the district court's grant of summary judgment, Senior Circuit Judge Barrington D. Parker and Circuit Judge Beth Robinson held that a five-day suspension and ban on extracurricular activities imposed on a student for an off-campus social media post violated the First Amendment.

Circuit Judge Myrna Pérez concurred in the judgment and filed a separate opinion. The opinion applies Supreme Court precedents for student free speech but declines to develop a bright-line rule for when a school's interests—such as preventing substantial disruption, protecting students who feel unsafe, or teaching racial sensitivity—will outweigh a student's First Amendment rights when the speech occurs off school property or outside school hours. Concurring, Judge Pérez sought to provide such a rule, while arguing for increased protections for students' safety while at school.

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Background and the District Court's Ruling

On April 19, 2021, the day the jury began deliberations in the Derek Chauvin trial for the murder of George Floyd, high school senior Case Leroy shared a photo on his Snapchat story. In the photo, a friend kneels on Leroy's neck, with

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the caption "Cops got another." Leroy deleted his post within minutes and asked his friends to do the same, testifying he did so once he realized its perceived resemblance to the killing of George Floyd; nonetheless, a screenshot circulated widely and prompted complaints to school officials, official statements, teacher-led discussions, a school-wide assembly, a student demonstration, and an investigation into Leroy.

Following the investigation, the superintendent imposed a suspension and barred Leroy from all extracurriculars for the remainder of the year, including sports and senior events. Leroy appealed within the school system and then to New York Supreme Court, which granted an injunction, allowing Leroy to attend graduation. Defendants then removed the case to the United States District Court for the Southern District of New York.

On defendants' motion for summary judgment, Judge Nelson S. Román concluded the school's disciplinary actions did not violate the First Amendment, because the speech fell "outside of the First Amendment's ordinary protection" due to the "substantial disruption" Leroy's posts had caused.

The *Tinker* and *Mahanoy* Framework

Writing for the majority, Judge Parker applied *Mahanoy Area School District* v. *B.L.*, 594 U.S. 180 (2021). In *Mahanoy*, B.L., a J.V. cheerleader upset at not making the varsity team posted an image to her Snapchat story with profanity-laced criticism of the decision. The image went viral within the school, leading other cheerleaders to question the coaches, including during a class one coach taught. B.L. was suspended from the team for violations of team and school rules in using profanity in connection with a school activity.

Applying the familiar protections for (and limits to) student free speech in *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969) to the out-of-school context, the Supreme Court held "we do not believe that the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus." *Mahanoy*, 594 U.S. at 187–88.

The Supreme Court declined, however, to articulate firm rules for determining what constitutes off-campus speech and when a school can regulate that speech. Instead, the court identified three aspects of off-campus speech that "often... diminish the strength of the unique educational characteristics that might call for special First Amendment leeway." First, unlike in the classroom, the school is not *in loco parentis* to students when they are off-campus. Second, the court identified the risks of 24/7 supervision by the school of students' speech when off-campus speech is regulated. And third, the court highlighted role of school as the "nursery of democracy," and the school's "interest in protecting a student's unpopular expression, especially when the expression takes place off campus." Taking these considerations together, the Supreme Court held three factors suggested B.L.'s First Amendment rights were violated: (1) the nature of the speech; (2) when, where, and how the student spoke; and (3) the school's interest in regulating the speech.

The School's Regulation of Leroy's Speech

The majority applied the same considerations and factors from *Mahanoy* to Leroy's Snapchat posts, and followed the Supreme Court's lead in declining to set out any bright-line rules.

First, the court assessed the nature of Leroy's snapchat post, and found it did not fall outside ordinary First Amendment protections—no fighting words, true threats, or obscenity. Nevertheless, *Tinker* and *Mahanoy* teach that because of the "the special characteristics of the school environment," *Tinker*, 393 U.S. at 506, the court must still "assess the circumstances of that speech and its connection to the school."

Second, considering the "when where, and how" of Leroy's posts, the court found the circumstances were also "virtually identical" to those in *Mahanoy*. Leroy made the post off-campus, outside school hours, and to a private circle of Snapchat contacts, without identifying the school or targeting any member of the community. These features diminished the school's interests, notwithstanding social media's scale and risks to disrupting on-campus activities.

Third, the court considered the school's interest in regulating Leroy's speech. As in *Mahanoy*, the school's interest in regulating potentially racist (or crass) speech was "weakened considerably" by Leroy speaking outside school and on his own time, and the school could not be said to be standing *in loco parentis*. While acknowledging that schools have an *in loco parentis* obligation to make students feel safe on campus, that interest must be balanced against the Supreme Court's second and third observations in *Mahanoy*: students should not be regulated 24/7 by their schools, and offensive speech should nevertheless be protected.

Finally as in *Mahanoy*, the court held that the disruption to the school day was minimal, even though the school organized assemblies to address the issue and students protested. And, regardless, the court held that these disruptions were caused by others, not Leroy, and he could not be held responsible for them.

The panel "recognize[d] that adopting a bright line test here would aid schools in making these difficult determinations in future cases, we do not believe we can or should set out an exhaustive list or a broad rule about what speech falls on the 'protected' side of the line as opposed to the 'proscribable' side of the line." Ultimately, the court held that the school infringed on Leroy's First Amendment rights, because "the record is devoid of any indication that protecting students' sense of security was the District's interest in punishing Leroy" and "Leroy did not intend to threaten, bully, or harass any other students."

The Concurrence's Proposed Recklessness Standard

Circuit Judge Pérez concurred in the judgment, agreeing Supreme Court guidance allows schools to "regulate off-campus speech that materially disrupts classwork or involves substantial disorder or invasion of the rights of others." Departing from the majority's disinclination to impose a bright-line test for when off-campus speech regulation is permitted, Judge Pérez proposed a rule: "[T]o avoid overstepping the limits on their power laid out in *Mahanoy*, [schools] may only regulate speech made with some degree of intent, or another culpable mental state."

Judge Pérez wrote she could not "join in the majority opinion's approach, which could be interpreted to assert that student feelings can be dismissed as mere offense, not fear, because of the risk of too much regulation chilling legitimate expression on controversial topics."

Off-campus "speech that makes students feel unsafe at school and thus less able to learn effectively" must be regulable, a stronger position than taken by the majority. To uphold a regulation

of off-campus speech, the factfinder would first "objectively evaluate" if another student "could reasonably perceive" the speech to be threatening, bullying or harassing, and if it was or could be disruptive to school activities. Then, the court or jury would focus on the speaker's intent, as done in many First Amendment contexts, and require at least recklessness in making a threat, bullying or harassing other students.

This recklessness standard would provide the necessary "margin of safety around protected student speech," avoiding a too-low standard where students may feel the need to self-censor to avoid punishment, and a too-high standard protecting actual bullying or harassment. Application of this intent requirement would also be consistent with *Mahanoy's* limits on school authority: First, it focuses on the effect of speech within the school. Second, it limits the reach of school regulation, since only speech recklessly causing harm is regulable. And third, it teaches students that they must still be sensitive to the effect of their speech on others, without over-regulation of disfavored speech.

Judge Pérez acknowledged that statements on social media would be more likely to be regulable, because "the risk is far greater" social media will "make its way to classmates who will be harmed by it." Further, and unlike the majority, both speech and reactions to that speech could allow a school to regulate or punish a student's statements, so long as the student was at least reckless in the first instance to disrupt the classroom environment.

However, even under Judge Pérez's test, the district court would be reversed, and she joined in the judgement. "[T]he severe punishment Leroy received was not consistent with the First Amendment," because "it is undisputed that Leroy tried to take the post down as soon as he learned how people were reacting to it, which indicates that he did not intend that reaction and did not consciously disregard the risks." Moreover, record showed the school's discipline of Leroy was out of a fear of offense to other students and to safeguard Leroy's safety, not to actually protect other students from fear and to protect the learning environment from disruption.

Conclusion

Leroy is the first application of *Mahanoy* in the Second Circuit. While the holding reinforces that the First Amendment protects students, especially off-campus, it leaves open questions as to when a school has a sufficient interest in maintaining the school environment to regulate off-campus speech. Further maturation of the case law may develop these factors further, or lead to the adoption of Judge Pérez's proposed recklessness test.

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