

## CLIENT NEWS BRIEF

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### **COURT RULES THAT STUDENTS CAN BE DISCIPLINED FOR CREATING FAKE MYSPACE PROFILES**

The United States District Court for the Western District of Tennessee ruled in Barnett v. Tipton County Board of Education (2009) \_\_F.Supp.2d \_\_, 2009 WL 1140498 (“Barnett”), that a county board of education can discipline students for creating a fake personal profile for a teacher and a school administrator, even though the profiles were not created on school property, during school hours, or using school resources.

In Barnett, high school students sued a Tennessee county board of education, director and school principal alleging that the disciplinary actions taken against them violated the First Amendment and Fourteenth Amendment Due Process Clause. The high school students were subject to disciplinary action for creating and posting fake personal online profiles for a teacher and a school administrator. The profiles made sexually suggestive statements about female students and also contained pictures of and fake biographies for the teacher and school administrator. A concerned parent and local reporter, who believed that the school employees had authored the profiles and engaged in inappropriate communications with students, informed the school of the profiles. Although the fake profiles were created at the home of one of the students, an investigation revealed that the profiles were discussed at school and accessed from a school computer used by one student during class.

The school board held disciplinary hearings for both students. One student was placed on in-school suspension. The other student was sent to an alternative school for the remainder of the school year because in addition to authoring the fake profiles, he created a website with a “Wanted” poster containing the photograph of the classmate he believed had identified him as the creator of the fake profiles.

The students filed suit alleging that the disciplinary actions constituted violations of their First Amendment rights. First, they argued the school district could not regulate the speech because the profiles were not created at school, during school hours or with school resources. The court concluded that student speech may be reasonably regulated if it substantially disrupts the operation of the school. Therefore, although the fake profiles were created outside of school, because they caused substantial disruptions to the school, interfered with the rights of school employees, and violated school rules, the school could reasonably regulate this type of student

speech. Secondly, the students argued that the fake profiles were “parodies” and therefore protected speech under the First Amendment. The First Amendment protects parodies that cannot reasonably be understood as describing actual facts about the subject of the parody. Here, the court held that the fake profiles did not constitute protected speech because a visitor to the website would not reasonably understand the profiles to be parodies.

The students also argued that the disciplinary actions taken against them constituted a deprivation of their right to public education without due process of law. The court held that there was no violation of the students’ procedural due process rights under the Fourteenth Amendment because the students were given an opportunity to refute the allegations against them and question school officials during the disciplinary hearing. Similarly, the court held that there was no violation of the students’ substantive due process rights because there was a rational relationship between the punishments and their offense.

This case addresses some of the jurisdictional issues currently facing school districts with regard to student internet activity. We caution that these cases are highly fact specific. Further, courts in different jurisdictions sometimes come to different conclusions based on similar facts. This case demonstrates a rare instance in which a court has found substantial disruption based on off-campus conduct. If you have any questions regarding this case, jurisdiction over student internet activity, or student discipline in general, please contact any of our seven offices statewide.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

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