

CLIENT NEWS BRIEF

Schools May Discipline Students for “Liking” Offensive, Targeted Social Media Posts

A federal district court has ruled that schools may discipline students for “liking” offensive, targeted social media posts.

In *Shen v. Albany Unified School District*, a Northern California district court concluded that a school could discipline students for liking or for writing approving comments on racist and offensive social media posts targeted at other students, even if the posts were created off campus. However, the court also ruled that the school’s additional decisions to discipline other students who had simply followed the offensive social media account or had approved of more generally offensive posts not directed at any particular student were violations of those students’ free speech rights.

The *Shen* case is significant because it is one of the first cases coming out of California addressing a school’s ability to discipline students for off-campus expression on social media.

Schools’ Right to Regulate Off-Campus Speech

Not all off-campus speech is beyond the reach of school officials. In order to discipline (or otherwise regulate) a student for off-campus speech, the speech must meet the requirements of the off-campus speech test. That is, the speech must: (1) be tied closely enough (have some nexus) to the school, **or** it must be reasonably foreseeable that the off-campus speech would reach the school; and (2) substantially disrupt or materially interfere with the school environment or activities, **or** it must be reasonable to forecast that it will cause a substantial disruption of or material interference with the school environment or activities, **or** collide with the rights of students to be left alone in the school environment. Each of these factors requires careful analysis, and school administrators should exercise caution and investigate thoroughly before proceeding with discipline. While every case is fact-specific, the district court’s analysis in *Shen v. Albany Unified School District* provides a framework for approaching these issues.

In *Shen*, a student was expelled after posting racist and derogatory content on an Instagram account, including images of nooses drawn around the necks of an African-American student and an African-American basketball coach. Even though the posts were made off campus, the court determined that because they targeted individual and identifiable students, were readily visible to other students, depicted school activities and responded to events that took place at school, the posts therefore had a close relationship to the school. Based on these factors, the court determined that administrators could reasonably expect the posts would reach the school because some of the targeted students would be affected by the content.

The offensive content was also found to have immediately caused a “substantial disruption.” After learning of the posts, students gathered in a hallway during the school day, intensely talking, crying, and yelling about the posts. Mental health counselors had to be called in to calm students down,

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classroom instruction was halted to discuss the posts, and several students struggled to attend school or perform schoolwork as a result of the posts. Based on these factors, the court determined that the district's expulsion of the student who created the posts was appropriate.

Turning its analysis to the students who were suspended for liking and commenting in approval of the posts targeting other students, the court found that their behavior "meaningfully contributed" to the campus disruptions, justifying the discipline and regulation of speech. Online posts that denigrate a student's race, ethnicity or physical appearance or that threaten violence—and any likes and comments expressly supporting those posts—interfere with a student's right to be left alone, the court ruled.

Notably, the court reached a different conclusion regarding likes and comments favoring generally offensive, racist, or hateful speech that was not directed toward a specific student. While unsettling, this type of speech is protected under the First Amendment and does not constitute harassment or bullying, the court said. Further, disciplining the student who only followed the social media account, but did not like or comment in support of the offensive content, violated their free speech rights because the act of following is "completely devoid of any affirmative speech."

Takeaways

While the *Shen's* summary judgment order is issued by a federal district court and thus not controlling in California state courts or in other district courts throughout the state, it is one of the first legal opinions analyzing student speech in the context of social media, including reactions to social media posts and following social media accounts. It will, therefore, likely have persuasive effect, if and when relied upon by federal and state courts in California.

For more information regarding the discipline of students for off-campus, online speech, or about student free speech rights in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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