Mahanoy Area School District v. B.L., 594 U.S. ___ (2021)*

JUSTICE BREYER delivered the opinion of the Court.

A public high school student used, and transmitted to her Snapchat friends, vulgar language and gestures criticizing both the school and the school's cheerleading team. The student's speech took place outside of school hours and away from the school's campus. In response, the school suspended the student for a year from the cheerleading team. We must decide whether the Court of Appeals for the Third Circuit correctly held that the school's decision violated the First Amendment. Although we do not agree with the reasoning of the Third Circuit panel's majority, we do agree with its conclusion that the school's disciplinary action violated the First Amendment.

I - A

B. L. [...] was a student at Mahanoy Area High School[,] in Mahanoy City, Pennsylvania. At the end of her freshman year, B. L. tried out for a position on the school's varsity cheerleading squad and for right fielder on a private softball team. She did not make [either], but she was offered a spot on the cheerleading squad's junior varsity team. B. L. did not accept the coach's decision with good grace[.]

That weekend, [...] B. L. used her smartphone to post two photos on Snapchat, a social media application that allows users to post photos and videos that disappear after a set period of time. B. L. posted the images to her Snapchat "story," a feature of the application that allows any person in the user's "friend" group (B. L. had about 250 "friends") to view the images for a 24 hour period.

The first image B. L. posted showed B. L. and a friend with middle fingers raised; it bore the caption: "Fuck school fuck softball fuck cheer fuck everything." App. 20. The second image was blank but for a caption, which read: "Love how me and [another student] get told we need a year of jv before we make varsity but tha[t] doesn't matter to anyone else?" [...]

B. L.'s Snapchat "friends" included other Mahanoy Area High School students, some of whom also belonged to the cheerleading squad. At least one of them, using a separate cellphone, took pictures of B. L.'s posts and shared them with other members of the cheerleading squad. One of the students who received these photos showed them to her mother (who was a cheerleading squad coach), and the images spread. [...] Questions about the posts persisted during an Algebra class taught by one of the two coaches. *Id.*, at 83.

After discussing the matter with the school principal, the coaches decided that because the posts used profanity in connection with a school extracurricular activity, they violated team and school rules. As a result, the coaches suspended B. L. from the junior varsity cheerleading squad for the upcoming year. B. L.'s subsequent apologies did not move school officials. The school's athletic director, principal, superintendent, and school board, all affirmed B. L.'s suspension from the team. In response, B. L., together with her parents, filed this lawsuit in Federal District Court.

B

*Note: This majority opinion has been edited from the original text by Dr. Travis Braidwood for classroom use. The full case text can be found here: < https://supreme.justia.com/cases/federal/us/594/20-255/ >. Footnotes match those used in the original Supreme Court slip opinion unless otherwise noted.

The District Court found in B. L.'s favor. [T]he District Court found that B. L.'s Snapchats had not caused substantial disruption at the school. Cf. *Tinker v. Des Moines Independent Community School Dist*., 393 U.S. 503 (1969). [On] Appeal, a panel of the Third Circuit affirmed the District Court's conclusion[, but differed in its reasoning.] In reaching its conclusion in *Tinker*, this Court emphasized that there was no evidence the student protest would "substantially interfere with the work of the school or impinge upon the rights of other students." *Id*., at 509. [...] Because B. L.'s speech took place off campus, the [Third Circuit] panel concluded that the *Tinker* standard did not apply and the school consequently could not discipline B. L. for engaging in a form of pure speech. [...]

C [...] II

We have made clear that students do not "shed their constitutional rights to freedom of speech or expression," even "at the school house gate." *Tinker*, 393 U. S., at 506; see also *Brown v. Entertainment Merchants Assn*., 564 U.S. 786, 794 (2011) ("[M]inors are entitled to a significant measure of First Amendment protection"[.)] But we have also made clear that courts must apply the First Amendment "in light of the special characteristics of the school environment." *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988)[.] One such characteristic, which we have stressed, is the fact that schools at times stand *in loco parentis*, i.e., in the place of parents. See *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986).

This Court has previously outlined three specific categories of student speech that schools may regulate in certain circumstances: (1) "indecent," "lewd," or "vulgar" speech uttered during a school assembly on school grounds, see *id*., at 685; (2) speech, uttered during a class trip, that promotes "illegal drug use," see *Morse v. Frederick*, 551 U.S. 393, 409 (2007); and (3) speech that others may reasonably perceive as "bear[ing] the imprimatur of the school," such as that appearing in a school-sponsored newspaper, see *Kuhlmeier*, 484 U. S., at 271.

Finally, in *Tinker*, we said schools have a special interest in regulating speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." 393 U. S., at 513. These special characteristics call for special leeway when schools regulate speech that occurs under its supervision.

Unlike the Third Circuit, we do not believe the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. The school's regulatory interests remain significant in some off-campus circumstances. [...] These include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices, including material maintained within school computers. [...]

[W]e do not now set forth a broad, highly general First Amendment rule stating just what counts as "off campus" speech and whether or how ordinary First Amendment standards must give way off campus to a school's special need to prevent[.] We can, however, mention three features of off-campus speech that often, even if not always, distinguish schools' efforts to regulate that speech from their efforts to regulate on-campus speech. [...]

First, a school, in relation to off-campus speech, will rarely stand *in loco parentis*. The doctrine of *in loco parentis* treats school administrators as standing in the place of students' parents under circumstances where the children's actual parents cannot protect, guide, and discipline them. [...]

Second, from the student speaker's perspective, regulations of off-campus speech, when coupled with regulations of on-campus speech, include all the speech a student utters during the full

24-hour day. [...]

Third, the school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off campus. America's public schools are the nurseries of democracy. Our representative democracy only works if we protect the "marketplace of ideas." [...] That protection must include the protection of unpopular ideas, for popular ideas have less need for protection. [...]

We leave for future cases to decide where, when, and how these features mean the speaker's off-campus location will make the critical difference. This case can, however, provide one example.

III [...]

B. L.'s posts, while crude, did not amount to fighting words. See *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). And while B. L. used vulgarity, her speech was not obscene as this Court has understood that term. See *Cohen v. California*, 403 U.S. 15, 19–20 (1971). To the contrary, B. L. uttered the kind of pure speech to which, were she an adult, the First Amendment would provide strong protection. See id., at 24; cf. *Snyder v. Phelps*, 562 U.S. 443, 461 (2011) (First Amendment protects "even hurtful speech on public issues to ensure that we do not stifle public debate")[.]

But what about the school's interest, here primarily an interest in prohibiting students from using vulgar language to criticize a school team or its coaches—at least when that criticism might well be transmitted to other students, team members, coaches, and faculty? We can break that general interest into three parts.

First, we consider the school's interest in teaching good manners and consequently in punishing the use of vulgar language aimed at part of the school community. [...] The strength of this anti-vulgarity interest is weakened considerably by the fact that B. L. spoke outside the school on her own time. See *Morse*, 551 U. S., at 405[.]

B. L. spoke under circumstances where the school did not stand *in loco parentis*. [...]

Second, the school argues that it was trying to prevent disruption, if not within the classroom, then within the bounds of a school-sponsored extracurricular activity. But we can find no evidence in the record of the sort of "substantial disruption" of a school activity or a threatened harm to the rights of others that might justify the school's action. *Tinker*, 393 U. S., at 514. [...] As we said in Tinker, "for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." 393 U. S., at 509. The alleged disturbance here does not meet Tinker's demanding standard.

Third, the school presented some evidence that expresses (at least indirectly) a concern for team morale. [...] There is little else, however, that suggests any serious decline in team morale—to the point where it could create a substantial interference in, or disruption of, the school's efforts to maintain team cohesion. As we have previously said, simple "undifferentiated fear or apprehension . . . is not enough to overcome the right to freedom of expression." *Tinker*, 393 U. S., at 508. [...]

* * *

Although we do not agree with the reasoning of the Third Circuit's panel majority, for the reasons expressed above, resembling those of the panel's concurring opinion, we nonetheless agree that the school violated B. L.'s First Amendment rights. The judgment of the Third Circuit is therefore affirmed.

It is so ordered.