



## **Federal Appeals Court Upholds Discipline of Student for Post on Off-Campus Blog**

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**By Jackie Wernz**

A federal appellate court recently ruled in favor of public school officials in Burlington, Connecticut, who prohibited a student from running for secretary of her senior class after she called administrators “douchebags” and encouraged disruptive action by other students and community members in a personal online blog written entirely off campus. The case, along with other cases from across the country, recognize that in certain factual situations, school officials have a limited right to discipline students for off-campus, online misconduct when that conduct has the potential to substantially disrupt the educational environment at school.

The case, *Doninger v. Niehoff*, is the fourth case arising out of a 2007 dispute between a high school student and school administrators. Avery Doninger, then a junior in high school, along with other members of the school's Student Council, planned an annual battle of the bands competition, “Jamfest,” which was to be held in the school's auditorium on a Saturday in April, 2007. Shortly before the event, however, school administrators learned that the teacher responsible for operating the sound and lighting in the auditorium was unable to attend on the scheduled date. The school administrators notified the Student Council that Jamfest would have to be held in a different location or on another day.

The announcement that Jamfest would have to be rescheduled upset Doninger and her fellow organizers of the event. In response, Doninger, among other things, posted a blog entry that evening from her home computer and on her private, but publicly accessible, blog regarding the dispute. Although the event had not been cancelled, Doninger stated that Jamfest had been “cancelled due to douchebags in central office” and encouraged readers to “write something or call to piss [one of the school administrators] off more.” A flood of calls and complaints were then received at the school. As a result of her blog post, school officials prevented Doninger from running for a senior class officer position on the Student Council, although she was permitted to retain her current position as Junior Class Secretary.

A group of students, including Doninger, also planned to wear t-shirts with “Team Avery” on the front and “Support LSM [Lewis S. Mills High School] Freedom of Speech” on the back during a school assembly during which candidates were to give speeches before approximately 600 other students. The school principal prevented the students, including Doninger, from wearing the t-shirts, based on a fear that the t-shirts might lead to outbursts during the assembly.

Doninger sued, arguing that her First Amendment rights to free speech were violated by the refusal to allow her to run for school office and to wear the “Team Avery” t-shirt during the election assembly. A trial court granted summary judgment in favor of the school district, and the Second Circuit Court of Appeals affirmed.

The Second Circuit did not directly address whether the school officials' actions violated the student's First Amendment rights. Instead, the court noted that, even if the First Amendment had been violated, the school officials could not be liable because of a legal doctrine known as qualified immunity. Under



the qualified immunity doctrine, if a constitutional right was not clearly established when a constitutional violation occurs, the defendant cannot be held liable for that violation.

The court noted that “[t]he law governing restrictions on student speech can be difficult and confusing, even for lawyers, law professors, and judges. The relevant Supreme Court cases can be hard to reconcile, and courts often struggle to determine which standard applies in any particular case.” Against this confusing legal backdrop, the court held that school officials could reasonably have believed that their discipline of the student was justified under First Amendment law, especially where the discipline was limited to extra-curricular activity participation, and did not include a school consequence. The court pointed out that “[t]he undisputed facts—that Doninger’s blog post directly pertained to an event at [the high school], that it invited other students to read and respond to it by contacting school officials, that students did in fact post comments on the post, and that school administrators eventually became aware of it—demonstrate that it was reasonably foreseeable that Doninger’s post would reach school property and have disruptive consequences there.” With respect to the t-shirts, the court noted that Doninger and her supporters were clearly upset with the decision to remove her from the ballot, and had shown their eagerness to speak out publicly on their views. Under those facts, it was reasonable for the school officials to believe that allowing the students to wear the “Team Avery” t-shirts in the assembly would cause a substantial disruption.

Although this court decision recognizes school districts’ right to discipline students for some off-campus, online misconduct, the factual basis of the court’s decision makes clear that decisions will be made on a case-by-case basis, taking into consideration the specific factual details of a case. The case is a reminder that schools that wish to discipline students for off-campus, online misconduct must make a strong factual record to support the fact that the misconduct had a sufficient nexus to the school environment and caused or could reasonably have been foreseen to cause a substantial disruption to the school environment.

## **More Information**

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